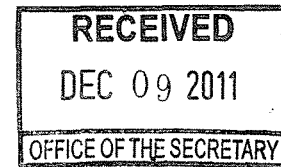


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
December 8, 2011

ADMINISTRATIVE PROCEEDING
FILE NO. 3-14458



In the Matter of
LEILA C. JENKINS

MOTION FOR SUMMARY DISPOSITION

MOTION FOR SUMMARY DISPOSITION

NOW COMES Leila C. Jenkins ("Jenkins") who hereby respectfully moves for the entry of Summary Disposition in the Matter concerning Jenkins. Jenkins asserts that the Division of Enforcement of the SEC (DOE) found no wrongdoing on the part of Jenkins, that there are no genuine issues of material fact to be decided, and that Jenkins is therefore entitled to a Summary Disposition in her favor as a matter of law and SEC rules.

1) The Administrative Proceeding (AP) lacks any Basis or Foundation: The DOE filed a Complaint against Jenkins in March of 2009 which alleges that Jenkins had invented a large client due to incomplete recordkeeping. However, after extensive investigations, the DOE never found any evidence of wrongdoing. In the Court case the DOE admits that their findings were only circumstantial. Further the DOE surmised that assets under management (AUM) at Locke Capital Management (LCM) were inflated due to the alleged fictional client and that the firm's performance track record did not always include discretionary clients. Also the DOE alleged that reports to the SEC regarding AUM were not correct in some years and that some documentation had been fabricated.

However, the documents that were alleged to have been fabricated were produced at the request of a DOE examiner in accordance with the SEC recordkeeping rule and could not have been quickly created as the data was so extensive. In fact, Jenkins used the client's bank statements in order to execute the requested reconciliations with LCM's third party portfolio accounting system. While it was discovered in January of 2009 that a number of original bank statements proving the client in question had disappeared from LCM's office, Jenkins was in possession of them until August 2008, when she copied the requested years as part of the SEC exam information production. The last time AUM and performance figures were reported to any clients or other parties was in July of 2008 for the second quarter of that year. As such, no reports were ever made to any party about AUM or performance when required records were not available. The fact that a very small portion of the firm's bank statements for all clients were not available when requested in January of 2009 amounts to a discrepancy in an exam discrepancy letter. It was only due to massive miscommunications that the situation at LCM ever escalated to a civil complaint, let alone one fraught with so many problems from the beginning.

2) Extensive Prosecutorial Misconduct: In the Court case, Judge Smith found that service of the summons in the case had been determined to be waived by Magistrate Judge Martin, when it had not been, and in fact the Court had been misled by the DOE about service. There are affidavits from the two relevant defense attorneys stating that service of the summons and the complaint had never occurred, nor had it been waived. Additionally, Jenkins was never sent a copy of Judge Martin's order where he first mentions waiver of service so she had no opportunity to question the issue. She did, however, raise it in every Court filing and hearing for the case and the DOE repeatedly stated that service had occurred and that proof of that service would be provided. It wasn't until eleven months had passed that the DOE fulfilled the production of service documents promise. Once received, it became clear that the alleged "service" email(s) (which did not even match each other)

had been fabricated. Also, two DOE attorneys filed untruthful affidavits about service. Judges Smith and Martin overlooked this evidence in the Court case as they were repeatedly misled by the DOE, who kept insisting that service had been completed based on the erroneous information handwritten on the summons. Jenkins also filed a Motion to Dismiss in July, 2009, more than 120 days after the Complaint issued. That Motion was denied by Judge Martin as it included both Defendants, and Jenkins did not have an attorney. However, whether it had been filed or not, denied or not, the Court was obligated to dismiss the case under FRCP 4 which requires that service of process of the summons must be completed within 120 days or the Court must dismiss the case. (attached in Exhibit 1 - Exh B Hunt vers fraud service email feb 17 2010.pdf)

As reported in the Jenkins's original answer to the Complaint, the DOE continues to rely on its Bad Faith investigation in filing its original complaint and its ongoing pursuit of the case. The affidavit of prior Defense Counsel Ken Walsh (attached in Exhibit 2 - 9 10 11 Exhs Walsh Affidavit of KJW (2241897).pdf) clearly outlines a) the lack of service and b) the timing of the delivery of SEC requested data. It took Locke's former counsel three months to sort the data in order to rectify the privilege violations and documentation which was agreed to be returned to Counsel but never was. Walsh records the timing of the delivery of the vast majority of Locke's production of requested documentation which was AFTER the March 9, 2009 complaint filing due to the time needed by Counsel to organize it, thus demonstrating and proving conclusively that the SEC did NOT take into consideration most of the evidence provided by Locke. The DOE not only chose to withhold critical information proving the innocence of the Defendants, it never considered most of it before filing the complaint. The complaint included three references to data gleaned from Locke computers - items #s 16, 22, and 29b - that had been harvested BEFORE March 9, 2009 which was before the agreed dates and WITHOUT regard for privilege issues. (attached in Exhibit 3 - 2 19 Exh 2 Marciano affidavit 1611506409.pdf)

3) DOE's malicious withholding of requested evidence previously provided by the Defendants: This information would have materially assisted in demonstrating the innocence of the Defendant. In October of 2010, Judge Smith ordered the DOE to provide a copy of all information provided by the Defense back to the Defense so that Jenkins could search for missing bank statements. The DOE remains in contempt of this order as they only provided about 4500 pages of hard copy documents, when Jenkins had originally sent over 7000 to them. Jenkins produced the receipt for the copies made externally proving 5733 copies (attached in Exhibit 4 - IIA pdq copy bill.pdf), as she had reproduced the rest personally. Judge Smith overlooked this hard evidence in the former Court case because the DOE misled him. The DOE insisted that they had complied with the Court order to produce all documents. But they in fact only produced about one third of the previously provided evidence from Jenkins and Locke. The DOE Sevilla Declaration - Item 3 - says that the "entire box (of Locke provided data) consisted of what appeared to be custodial statements for Locke's clients in the 2001 time frame" (even though more than one box was shipped on 8/18/08). Yet what was shipped back per the Court order includes much more than 2001 custodial data, further indicating the cursory and incomplete nature of the DOE bad faith investigation, first referred to as such in the original answer to the Complaint.

The bank statements proving the existence of the confidential client remain missing. The reconciliations done at the DOE's request immediately following the June 2008 first routine exam, which clearly demonstrate that the bank statements were in the possession of Jenkins when they were made, appear not to be credible even though they would not have been possible without the bank statements. Instead of the DOE admitting that they asked for these documents, they have accused Jenkins of fabricating them. The DOE even asked the Chase Bank if they were legitimate bank statements, which they were not and had never been represented to be, so of course Chase did

not "know" them. The DOE said that they asked Chase to search for these accounts with specific account numbers, when Locke had never had the Chase account numbers, since Locke never interacted with Chase directly. It is not known where the DOE obtained such account numbers. The DOE grossly misrepresented many "facts" during the former court case and even admitted that all evidence they had was circumstantial. Legal ethics for government prosecutors are even more insistent than those for other prosecutors in their obligation to assist Defendants where they can to prove their innocence. The fact that the DOE prosecutors have repeatedly refused to let the Defendants review all of the information submitted, in contempt of the Court order, is a gross violation of US government legal ethics and is evidence of Gross Prosecutorial Misconduct. Also, Judge Smith's decision that the Plaintiff can pick and chose what evidence it uses is also in violation of these legal ethics. The Plaintiff should not be able to pick and chose through the evidence to make sure that none of the evidence demonstrating innocence is used. That is further Gross Prosecutorial Misconduct.

The DOE misrepresents what is on the record for the Jenkins deposition. Jenkins has no firsthand knowledge about who custodied the Swiss client's account, and admits that she never spoke with anyone at Chase about them. Statements provided had all of the appearances of being valid Chase statements but as Locke did not direct the brokerage of these accounts, similar to a number of its other accounts, it would not have had any reason to interact with the custodial bank. (attached in Exhibit 5- Exh 4, 5, 6, and 7 of Docket 67 of the Court.pdf, pp 19-29)

Jenkins also does not know who sent the Chase statements to Locke, although it must have been either Chase or the client directly. However, Jenkins did use some of them for the periods requested to make account reconciliation documents at the request of DOE examiner Hagelstein. She referred to the "Books and Records Rule" in her request and it specifically calls for: SEC Rules: Section

275: Rule 204-2 Books and Records: "...and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph."

4) Gross misrepresentation of facts established during investigation and discovery in the former case caused Judge Smith to come to erroneous conclusions. For instance, Judge Smith agreed with the DOE's repeated very misleading statements that Jenkins "had never visited the Swiss client, had never personally met any representative of the Swiss client, and had no phone records due to using prepaid phone cards". Jenkins never said nor alleged any of those things and has notes from the phone call in question to prove it, which were provided to the Court. Jenkins never would have had the Swiss client if she had not met them in the office of another prospect that the two groups shared. She was only ever asked if she had met the more recently hired Trader, whom she had not, but she had met with the Principals several times over the years. Jenkins never used a prepaid phone card to communicate with any client. The SEC complaint accuses Jenkins of inventing the Swiss client in 2006 when they were the basis of Locke's SEC registration in 1997. (attached in Exhibit 6 - IIB sec tel call notes 123008.pdf)

What Judge Smith cannot know due to the fact that he is not a DOE or industry employee familiar with the specifics of SEC rules is that the only thing Jenkins can be accused of legitimately is not having 100% of supporting bank statements for clients when asked on the 9th of January, 2009. This amounts to one discrepancy in the result tally of a routine SEC exam. That she obviously had them at prior times and could still produce 100% of any required bank statements (bank statements are not mandatory recordkeeping documents for clients when the advisor does not also have discretion to execute the trading and brokerage functions) is lost to the sensationalism of the DOE accusations. Locke had five other institutional sub-advisory clients, like the Swiss client, and was

not required to have bank statements for any of them because it did not also perform the trading and brokerage functions for those clients. Locke met all of the requirements of SEC "know your client" rules for these six sub-advisory clients and has all of the appropriate and required records. Details about the Swiss client and the visit to Zurich in January, 2009 are documented in the Webster affidavit in the former Court case (See (Docket 65) and is provided here. (attached in Exhibit 7 - Affidavit DWebster.pdf). The Jenkins notes from the call are attached which validate the Jenkins version of the facts about the Swiss client. The DOE continues to misrepresent what Jenkins said about the client during the 12/30/09 telephone call.

The DOE continues to misrepresent the truth found in discovery, while it also ignores critical documentation provided by Jenkins, most of which is still withheld. After discovery was completed, the DOE had to admit that it could no longer rely on data provided by Caithness (the husband whistleblower and US tax fraud criminal), nor the trading data provided by Day and Rosenblum (Locke traders and whistleblowers) because the data they provided was found to be dishonest and/or fabricated during discovery. The DOE made no attempt to validate information gleaned from these people, when they had all the data necessary to do so, but just did not bother. They now go on to say that they never relied on it in the first place, yet the trading data issues dominate both of the traders' depositions. Jenkins was given very little opportunity to participate and ask questions in these two depositions and was terminated altogether from the Rosenblum deposition for 40 minutes while it progressed on the record. Nevertheless, Jenkins managed to prove the fabricated trades and associated fabricated recordkeeping, using the same unalterable third party data also provided by Day to the DOE, although admittedly not reviewed by them. All six of the DOE's points made in their Argument, Memo of Law, pps 17 - 18 of their Motion for Summary Judgment were disproven during discovery, are contradicted by evidence still withheld and only remain in their case through their material misrepresentations of the evidence established during discovery.

The DOE also continues to misrepresent the information they received from Microsoft about the email that Jenkins set up in order to provide for more communication records with the Swiss client. Previously most trade instructions were relayed by phone, as prior to the end of 2007, the trading volume was very low. Once the volatility started, Locke was trading more frequently, making it more difficult to use phone only. The client had not previously permitted email communications, like many European clients were ten years after Locke's US clients, and only agreed to it if Jenkins set it up on a dedicated, confidential basis for them. Once it was set up, email was used the vast majority of the time.

When the DOE sent a subpoena to Microsoft to inquire about the records of this email, the response gave very little information. As Locke's last trading communication was sent on the email around December 1, 2008, by the time the DOE requested the information, the email had been deleted automatically for lack of use for thirty days. Locke and the client were unaware of Microsoft's policy so did not know to take any action to prevent this from happening. Microsoft's response to the subpoena explained that the lack of records was due to this fact, yet the DOE never admitted this to the Court. They used the sparse information to claim that Locke had not been using the email for trade communication, so that must mean the client did not exist, completely ignoring Microsoft's reply to their own subpoena. The Microsoft response to this DOE subpoena is attached as Exhibit 8 - msft response re hotmail enq subadvtrade acct fin.pdf.

5) Altered Assets under Management (AUM) data provided by the DOE caused Judge Smith to come to a further negative conclusion. The DOE accuses Jenkins of providing incorrect AUM information in the annual amendments filed three months after the fiscal year end. Jenkins provided the DOE with the correct AUM for each year of Locke's registration from 1999 to 2008 in a

submission during the investigation. The DOE counters this information by providing AUM information allegedly from the CRD system that is clearly altered. Jenkins has no information as to who altered the data and after Locke's voluntary resignation from SEC registration, was no longer able to access that system to try to discover what had happened. As all saved copies for Locke's ADV registration were kept on the system, Jenkins only has a paper copy of one year that was filed correctly and is significantly different from what the DOE claims by a factor of ten. Judge Smith comes to erroneous conclusions about what was filed by Jenkins and ignores the hard evidence provided by Jenkins. (attached in Exhibit 9 - ADV 2006 for 123105.pdf)

Jenkins provided and the DOE did return a variety of custodial bank statements concerning accounts allocated to Locke by a consultant called Vogel Consulting. Separately, the DOE provided copies of third party data from their efforts during discovery. One CD with information from Vogel is highly erroneous and contradicts the actual bank statements, many of which are now returned. Vogel says that accounts were managed by Locke from September, 2000 until December, 2003. The truth is, confirmed by the bank statements, that Vogel awarded Locke a single \$90 million account in February, 1999, one year and a half earlier, when Locke only had about \$35 million in AUM in total. This fact is very important as one of the main DOE accusations against Locke is that it was inflating its AUM with fictional accounts in 2006 because it was so important to have a large base under management in order to attract new business. This was never true for Locke as demonstrated by the bank statements, which the DOE completely ignored. Locke never had any reason to inflate assets as it never had a proactive sales effort, and did not have any problems attracting new clients with very little effort. The last Vogel account was resigned by Locke in October, 2003, not December, 2003, which Vogel also erroneously reports. All of this incorrect information provided in response to a DOE subpoena is further evidence that the DOE does not verify what it receives from third parties, yet continues to allege without any real facts or evidence that Locke was

dishonest about its AUM. Locke never had any reason to incorrectly report AUM and certainly never did so which is very clear in the correct data provided by Locke, not the obviously altered data put forward by the DOE. (The DOE altered data is provided in the Court case exhibits in the 5/24/10 filing NS6, NS7, NS8, NS9, NS10, and NS11 which are believed to be, without access to this data, exhibits attached to the Declaration of Naomi Sevilla.) Locke unknowingly lost access to the CRD system where its electronic files were stored when it voluntarily resigned from SEC registration in March, 2009 but one of the correctly filed ADVs was found in paper copy. (attached in Exhibit 9 - ADV 2006 for 123105.pdf). It correctly reports AUM for 2005 at ten times what the DOE altered number is. The DOE materially misrepresents the truth about Locke's AUM and is dishonest when it reports to the Court that Locke never provided its actual AUM. Locke only ever reported its correct AUM and retains the documentation provided to the DOE during the investigation in 2009.

6) Dishonest and fraudulent evidence created by two former employees of Locke and provided to the DOE during its investigation of Locke: It was found during DOE discovery efforts that the information provided by these two whistleblowers was fabricated by the two traders and then claimed to cast suspicion on the validity of the Swiss client by compromising only that one client's performance. Fortunately only a few of these fabricated trading instructions were communicated to the client and they were ignored because the instructions were to sell equities that the client did not own. As a result, during the disastrous fourth quarter of 2008, this client retained the 100% cash position directed by Jenkins as of September 29, 2008. The erroneous instructions were sent in early October and as they caused the discretionary mandate held by Locke to be invalidated, Locke had to remove the performance of this client from its discretionary firmwide performance statistics as of the end of September, 2008. The client resigned the contract with Locke in early January 2009 so that last time their performance could be claimed to be discretionary was as of the September, 2008

date. One of these culprits did manage to get an unapproved trade executed in Locke's hedge fund which was significantly outside of Locke's and the client's risk parameters. Fortunately the volatility of the market permitted Jenkins to trade out of this very risky position at a substantial profit for the client, even though it had been very negative for a few days.

The DOE knows this fraud was found during discovery yet never took any action against the two employees. All they did was state that they would no longer use the data to prosecute Jenkins. The DOE completely ignores the mitigating actions taken by Jenkins on behalf of both compromised clients, further proving the validity of the Swiss accounts. The traders were fired as soon as Locke's risk management system caught the problems, yet even Judge Smith takes no notice of the relevance of such important evidence.

7) All departments of the SEC are fully aware of the many recordkeeping requirements imposed on Investment Advisors and the only ever routine exam of Locke undertaken in 2008 did not reveal any deficiencies in this area. Locke used some of the best and most reliable third party systems available in the marketplace which allowed it to maintain such a high degree of compliance with SEC rules. However, Judge Smith writes that the DOE does not have to consider all of the data provided to it and can select that which they wish to look at or not as they please. As such, much of this required recordkeeping which proves the validity of all of the clients was not considered as the DOE said the data might be unreliable because Jenkins may have had something to do with entering some of it. Naturally Locke employees are the source of data that is kept appropriately and in a small firm, the principal may occasionally input some of it. As it happens in the case of Locke, Jenkins only ever entered some dividend data very occasionally over the years. Between 2006, when the DOE says the invention of the Swiss client started, and 2009, Jenkins entered dividend data once during the summer of 2008. Locke was almost finished an external audit of its

performance data by the end of 2008 and no problems were found with the data in multiple systems. The audit did not finish because of the DOE allegations. Even though the DOE refused to review this data offered by Jenkins, it turns out that the traders had provided it all to them in January of 2009.

The DOE's position is that much of Locke's data is unreliable because Jenkins might have input some of it. However, the extensive trading notes provided by Diane Hudson and other data returned by the DOE due to the Court order confirm that she was handling all of the trading and accounting system data entry for all accounts from 2000 - 2003 and 2006 - 2007 inclusive. The DOE knew this all along, yet continued with their erroneous allegations. Further data that remains withheld include John Day's trading files, in addition to facts established during his deposition, prove that he was handling all of the trading and trading communications after Hudson's departure through until December, 2008, while another Locke employee was doing all of the other data entry, Bathia and then Rosenblum. The DOE grossly and materially misrepresents the facts found about the integrity of Locke's properly kept systems information, and goes to further prove the bad faith and complete lack of substance of the DOE investigation. Exhibits 4, 5, 6, and 7 of Docket 67 of the Court case are relevant, in addition to the extensive evidence provided by Locke, only some of which was returned per the Court order. (attached in Exhibit 5 - Exh 4, 5, 6, and 7 of Docket 67 of the Court.pdf)

The DOE position is also that only Jenkins was involved with the trading for the Swiss client, which is clearly contradicted by the some of the critical evidence still withheld of the John Day trading files provided to the DOE by CD on 2/3/2009. This information confirms that Day was producing all of the Swiss client trade instructions and producing the trade communication documents. (See Docket 67 - 4 of the Day Deposition, pps 72 - 73.) Further, Jenkins did not learn until the end of

2010 that Day had produced all of the Locke accounting system files in discovery in January, 2009. The DOE says that they would not review it due to its "unreliability", when in fact their premise was always false, and the data proves that neither Jenkins nor Locke are guilty of any wrongdoing. While Jenkins entered a small amount of data in 1999 prior to Hudson and Lafay working for the firm, they validated all of the entries made by Jenkins by early 2000. Lafay joined several months before Hudson and her first job was to reconcile all of the accounts from the Swiss client and Vogel Consulting to the bank statements. (See Docket 67 - 5 of the Hudson Deposition, all six pages.) While Rosenblum tried to suggest that Jenkins made entries into the files during 2008, he eventually had to admit that it was not possible. He routinely "locked" all of the client files after reconciling them to bank statements so that no other person could make changes. Locke had to hire a consultant to teach the new trader, Doyle, how to unlock the files after he left in order to rectify the false trades he had entered into the system, the reason his employment was terminated. (See Docket 67 - 7 of Rosenblum Deposition, pps 257 - 261.) The DOE materially misrepresents the truth found in the evidence provided and the discovery process about Locke's trading procedures and accounting systems data entry for all accounts.

8) The DOE misrepresented a number of other facts about Locke. They suggested that Locke presented its performance figures inappropriately as being calculated in a GIPS compliant way. Locke never suggested that it had completed a GIPS compliant audit - that was almost done - but it was truthful to claim GIPS Level 1 in that the third party accounting system also relied on by the auditor, did all of the performance calculations in compliance with GIPS. The DOE said that Locke's US equity performance should only be presented versus the S&P total return index instead of the version that was without income. This was not correct as Locke's US track record did not include income. Once the DOE insisted that it be shown against the total return index, Locke added income to its track record so that the performance statistics would be comparable. The DOE also

said that Locke often misrepresented its employees. Locke had always worked with a number of part time employees and made this fact known to clients and potential clients. There was never any misrepresentation about any of the employees. Locke submitted multiple organization charts showing who the employees were so there was never any question about any misrepresentations.

9) How the Federal District Court was Misled: The Court was misled on a number of issues, not the least of which was the lack of service of the Summons. The Summons had a handwritten note on it that said that it had been served by email, and appeared to have been served as the note suggested. The handwriting is believed to be from DOE Attorney Scott Pomfret who had led the investigation against the Defendants. Attorney Pomfret told one of the Locke employees during the investigation that the Swiss client's contract and letter of resignation went a long way in proving the existence of that client. It was never explained as to why he had been removed from the case shortly after the lack of service was revealed in the original answer to the case, filed inside of the 120 day period that the Plaintiff is allowed to serve the Summons. All that was required for proper service to be completed was to do so before July 7, 2009. Instead of curing the service fault, someone at the DOE decided to fabricate not one, but two service emails, which did not even match each other. While the DOE promised the Court and the Defendants a number of times to provide the proof of service, these fabricated emails were not produced until February of 2010. Prior to this time, the Court relied on the Summons with the incorrect note on it, understandably. Judge Martin relied on it when he dismissed the Defendant's Motion to Dismiss filed in mid July 2009, when the Court was obligated under FRCP 4 to dismiss the case, and later wrote in an opinion that service had been waived, when it never had. The affidavits from the two defense attorneys verify all of the relevant points about service. Later in the case, Judge Smith relied on Judge Martin's view of the situation. Both Judges are very bright, fair and able in their respective roles as Judges, and had the Summons been correct, their decisions would have been correct. The dishonest affidavits claiming proper service filed by

DOE Attorneys Pomfret and Sevilla are attached in Exhibit 1- Exh B Hunt vers fraud service email feb 17 2010.pdf.

There were a number of other flaws in the DOE's complaint. They rely on one failed telephone call to allege that Locke's Swiss client never existed. They only looked for records of them in Swiss corporate databases and the Swiss financial firm registration agency. The apparently corporate name on the client contract could have been registered in any number of countries. Defendants did not have the resources to search the world for the company registration which may not ever have been required in any event. Defendants' relied on the SEC "Know Your Client" Rules as they were applied in the 1990s.

The client gave every impression of being a company. Their office building directory listed about six entities for their space, consistent with most Swiss based operations. Importantly, Locke had a number of European clients that, when the final contract was executed, the client name used had not previously come up before in the information exchanged. One of the Locke clients was run by a family office in Monaco, on behalf of an ultra high net worth Italian family, whose businesses were registered in Luxembourg, with assets custodied in Switzerland, while the entity on Locke's contract was a British Virgin Island trust. Further, the DOE said that they could not trace the remaining principal of this client. It turns out that there was a typing mistake in that person's name in the resignation letter. The DOE was looking for a "P. Hoffman" when the family name was "Hofmann".

Locke had always believed the client to be the Swiss version of a family office. As such, it would not have had to be a Swiss corporation or necessarily registered with any Swiss financial authority. If any registration was necessary, one of their other entities could have been the registered vehicle. In any event, any registration requirements, or lack thereof, would never have been any

responsibility of Jenkins or Locke. There was never any reason for any client of Locke's to be a corporation formed in Switzerland or registered with any financial authority there. Locke's only responsibilities were to be properly registered itself in appropriate venues, such as its SEC registration, which was based on this Swiss client's subadvisory business in 1997.

As part of the package provided to Jenkins in establishing this potential client's credibility was the research publications from Bank Hofmann. It was made clear that this Hofmann family was related to the large Hofmann banking family, quite a usual occurrence with the many family run banks in Switzerland. Some of this research was included with the Court case and is attached. Jenkins also knew Bank Clariden and its CEO Alex Hofmann and its CIO Beat Whitman. Subsequently, Bank Clariden acquired Bank Hofmann, then merged with Bank Leu, and later the group was acquired by one of the very large Swiss banks, I think Credit Suisse. The Bank Clariden website shows exactly the same set up in "private label" fund management products using sub-advisors as how the relationship operated with Locke. (attached in Exhibit 10 - bk clar leu website info.pdf) The Bank Hofmann research is unavailable until Jenkins has access to her computer again and can provide it to the ALJ and the DOE at that time. It was filed with one of the Court filings in 2010. The preponderance of evidence provided to the Court and the DOE should have been more than enough to establish this client's "bona fides", all of which had to be handled in a manner which preserved the famous Swiss concept of confidentiality.

Some of the evidence provided to the DOE and the Court is attached to this filing. The rest of it stretched from the extensive and significant Chase Bank statement reconciliations which could not have been done without the actual bank statements, through to voluminous data housed in the various independent third party systems used by Locke. As reviewed here, Jenkins had very little to do with any of the data entry or management, and all input was always verified by another Locke

employee and tied back to bank statements for a second independent verification. It has been explained several times that the Swiss client paid by using its soft commission dollars directed to the various broker dealer networks that Jenkins was affiliated with from 1995 through to 2009. In December, 2008, Jenkins had just arranged another such network which was never able to be used because the DOE started the investigation which caused all of Locke's clients to resign.

A very high degree of confidentiality was called for specifically in the Locke contract. Today Swiss authorities and financially oriented businesses have had to bend their rules to provide more transparency to US demands, but that process had only begun by 2008 so it was consistent behavior for Locke's Swiss client to resign in January 2009 with the looming threat of a DOE investigation, rather than be part of it.

CONCLUSION

The Court case which emanated from the March, 2009 complaint never had any basis. The DOE never researched who the original whistleblowers were so that they did not learn until well into discovery that the initial information which went as far back as 2006 was from the former husband of Jenkins and his criminal attorney, neither of whom had any knowledge of Locke or Jenkins's professional career. The former husband, The Earl of Caithness, it turns out was the target of a six month long inquiry into the death of his first wife as the facts of her death were so suspicious based on the coroner's report and that of another third party. Besides providing false information to the DOE in 2006 and 2008, after sending a letter to Jenkins stating that he was going to get her banned from the securities business, he filed false tax returns in her name with the IRS, as the IRS claimed that had independent proof of this. His "legal consultant" has served two jail sentences for fraud and claims on his website to be a member of the New York Bar, which is not true. The husband admitted in divorce court to hiring agents to pose as investors for the Locke Hedge Fund, causing

significant expense when the fund did not launch for another seven months after the imposters disappeared. There were a number of "unauthorized entries" at the Locke Rhode Island office between 2006 - 2010 which could only have happened if the perpetrators had a key and the alarm system code. A number of valuable personal items were stolen, but more importantly critical documents, both paper and electronic, went missing and some were even found added to Locke's networked systems.

The DOE did not produce any documentation proving wrongdoing on the part of Jenkins and has no substantial evidence, causing it to admit that its evidence was only circumstantial. This circumstantial evidence emanates from many material misrepresentations on the part of the DOE. A Case from the US Court of Appeals, 8th Circuit, Calhoun v Brooks Fiber Properties, Inc., 2/12/2001 is relevant and a summary of it is found in the Court case, Supplemental Memo Supporting Defendant's Motion for Summary Judgment, filed 11/30/10 and attached as Exhibit 11 - Exh III case summ judg okay no substantial evidence.pdf.

Lack of compliance with the FRCP 4 by the DOE should have caused the Court case to be dismissed after 120 days from the filing of the Complaint. Had Judge Martin not been relying on untruthful information from the DOE about service of the summons, he would have been bound by FRCP 4 to dismiss the case. A Case from the US Court of Appeals, 10th Circuit, Davis v Liese, 11/6/2009 refers and a summary is attached as Exhibit 12 - Exh IV case defend answer noted improper service.pdf of the Supplemental Memo Supporting Defendant's Motion for Summary Judgment, filed 11/30/10.

Finally, had the critical evidence been returned to Jenkins per the Court order to do so, there would have been no doubt whatsoever about the validity of the Locke evidence in proving that allegations

were not able to be substantiated. Even as far back as the end of 2009, when Jenkins went to the DOE's Boston office to review the data Locke had provided, it was nowhere to be found. DOE Attorney Huntington said that he didn't even know where it was, and proceeded to produce third party data for her review. If it was lost as far back as 2009, it's no wonder they did not comply with the Court's order to provide it back to Locke, attached as Exhibit 13 - Exh 1 wh evidence.pdf. There was never any need to file a complaint in the first place, had the DOE just reviewed the evidence properly and permitted the facts found in discovery to be used for the Judge's consideration.

The Affirmative Defenses first raised in the original answer to the Court case still apply:

57. The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

58. The Complaint is barred in that the SEC breached and invaded the attorney/client privilege.

59. The Complaint is barred, in whole or in part, in that the alleged actions and damages of which Plaintiff complains were proximately caused by third parties.

60. The Complaint is barred, in whole or in part, in that the SEC did not conduct its investigation in good faith but did so in bad faith, and so cannot prove all elements of each alleged cause of action without reliance on its bad faith investigation.

61. The Complaint is barred, in whole or in part, in that the SEC took actions which obstructed justice, precluding Locke from being able to remedy recordkeeping deficiencies, causing the filing of this action.

62. The Complaint is barred, in whole or in part, in that all relevant laws were fully complied with and Locke was always in good faith compliance with all relevant laws.

63. The Complaint is barred, in whole or in part, in that Locke has performed better than market indices and investors were not misled nor lost any funds by embezzlement or similar conduct.

64. The Complaint is barred, in whole or in part, in that the SEC has not shown and cannot prove the claims or the necessity for injunctive or equitable relief.

65. The Complaint is barred, in whole or in part, in that the SEC has not shown and cannot prove the claims or the necessity for restitution or penalty.

66. The Complaint is barred, in whole or in part, in that the Complaint was brought prematurely before the reasonable completion of any investigation of Locke in a manner that could have led to a non-public administrative resolution, but rather the SEC has sought only to destroy Locke's ability to engage in business by filing this public litigation.

67. The Complaint fails for lack of process or insufficient service of process.

Jenkins respectfully requests that the SEC Administrative Hearing be disposed of with no wrongdoing found based on the preponderance of evidence provided throughout the Court case which demonstrates the innocence of Jenkins and Locke.

Respectively submitted,



Leila C. Jenkins

by Power of Attorney

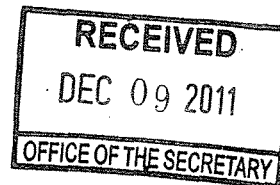
Kathleen J. Myer (aka Kathleen J. Ennen)

1000 1000 1000 1000 1000 1000 1000 1000 1000 1000



BOSTON
REGIONAL OFFICE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
33 ARCH STREET
23RD FLOOR
BOSTON, MA 02110-1424



February 16, 2010

**BY EMAIL (ljenkins@lockecapital.com)
and REGULAR MAIL**

Ms. Leila C. Jenkins
25 Walnut Street
Newport, RI 02840

Re: SEC v. Locke Capital Management et al. (D.R.I. Case No. 1:09-cv-100-S)

Dear Ms. Jenkins:

In accordance with the direction from Magistrate Judge Martin at the hearing on February 12, I am enclosing copies of the following items:

1. March 17-18, 2009 email exchange between Scott Pomfret, Esq. of the Commission staff and Edmund Searby, Esq. of McDonald Hopkins LLC in which attorney Searby agreed to accept service of the Complaint on behalf of yourself and Locke Capital Management, Inc.; and
2. March 18, 2009 email from Scott Pomfret to Edmund Searby with three attachments (the Complaint and one Summons for each defendant).

As you will see, and as the Commission has represented to the Court on several occasions, attorney Searby accepted service of the Complaint by email on March 18, 2009.

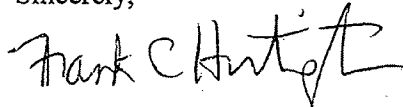
Also, I would like to reiterate what I put on the record at the hearing: If you inform the Commission in writing that you intend to invoke your Fifth Amendment right against self-incrimination in response to all substantive questions at your deposition, then the Commission will dispense with the formality of the deposition itself. However, the Commission will also reserve the right to file, at the appropriate time, a motion to preclude you from testifying at trial, as well as motion that the trier of fact draw an adverse inference against you.

Ms. Leila C. Jenkins
February 16, 2010
Page Two

Please let me know if you have any questions.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank C. Huntington". The signature is written in a cursive style with a large, stylized "H" and "T".

Frank C. Huntington
Senior Trial Counsel
(617) 573-8960 direct
(617) 573-4590 fax

Enclosures

Parker, Laura

From: Pomfret, Scott
Sent: Wednesday, March 18, 2009 10:10 AM
To: 'Searby, Edmund'
Cc: 'Jackowski, Mark'; Huntington, Frank; Pomfret, Scott
Subject: RE: Service

Ned:

I appreciate your clients' willingness to authorize you to accept service provided that we agree service of the Complaint and Summons will be deemed effective April 8, 2009. The staff agrees to this condition.

Accordingly and in furtherance of this agreement, by separate email, I will forward the Complaint and summons to you shortly.

Scott

From: Searby, Edmund [mailto:esearby@mcdonaldhopkins.com]
Sent: Tuesday, March 17, 2009 11:01 AM
To: Pomfret, Scott
Cc: Jackowski, Mark
Subject: Service

Scott, following up on our telephone call, Locke Capital Management and Miss. Jenkins will authorize us to accept service of the Complaint on their behalf provided that we agree that service of the Complaint will be deemed effective as of April 8, 2009. Please let us know whether this is acceptable. Best, Ned

Edmund W. Searby
McDonald Hopkins LLC | 600 Superior Avenue, E. | Suite 2100 | Cleveland, OH 44114-2653
direct 216.348.5769 | esearby@mcdonaldhopkins.com

IRS CIRCULAR 230 DISCLOSURE:

To ensure compliance with requirements imposed by the Internal Revenue Service, we inform you that any tax advice contained in this communication (including any attachments), was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of (1) avoiding any penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any transaction matter addressed herein.

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Parker, Laura

From: Pomfret, Scott
Sent: Wednesday, March 18, 2009 10:12 AM
To: 'Searby, Edmund'; Pomfret, Scott
Cc: Huntington, Frank
Subject: FW: Emailing: Summons - jenkins, Locke Complaint as filed, Summons - Locke Capital

Attachments: Summons - jenkins.pdf; Locke Complaint as filed.pdf; Summons - Locke Capital.pdf



Summons - jenkins.pdf (51 KB)



In connection with our agreement regarding service, please find the Complaint and summonses for your clients attached.

Scott

Leila Jenkins

From: Huntington, Frank [HuntingtonF@SEC.gov]
Sent: Monday, February 22, 2010 9:00 AM
To: Leila Jenkins
Subject: RE: Ltr to Leila Jenkins dtd Feb 16, 2010

Dear Ms. Jenkins – I do not understand what you mean by forwarding the “original” email to you. What I sent you is the actual email just as it is stored in our correspondence file for the case. There is no “original” version that is different from what I sent you. Sincerely, Frank Huntington

From: Leila Jenkins [mailto:ljenkins@lockecapital.com]
Sent: Saturday, February 20, 2010 9:49 PM
To: Parker, Laura; Huntington, Frank
Subject: RE: Ltr to Leila Jenkins dtd Feb 16, 2010

Dear Ms. Parker and Mr. Huntington,

Thank you for the data provided. As the email you provide a copy of representing the actual service of documents dated March 18, 2009 1012 am was never received by former counsel Mr. Searby, would you please forward the original email to me by email as soon as possible?

Many thanks, Leila Jenkins

From: Parker, Laura [mailto:ParkerL@SEC.gov]
Sent: Wednesday, February 17, 2010 12:38 AM
To: Leila Jenkins
Cc: Huntington, Frank
Subject: Ltr to Leila Jenkins dtd Feb 16, 2010

<<02.16.10 Ltr Huntington to Leila Jenkins (Enc).pdf>>

Leila Jenkins

From: Leila Jenkins
Sent: Tuesday, February 23, 2010 5:18 PM
To: 'Huntington, Frank'
Subject: Ltr to Leila Jenkins dtd Feb 16, 2010

Here is a forward of the original that I just sent to you, regards, Leila

From: Leila Jenkins
Sent: Tuesday, February 23, 2010 5:16 PM
To: 'Huntington, Frank'
Subject: RE: Ltr to Leila Jenkins dtd Feb 16, 2010

I mean the original email as sent from Mr. Pomfret. You sent me a print out of a copy of the email. Since the original never arrived with Ned Searby, and it seems like the failure message did not get back to Mr. Pomfret, but the original will be in Mr. Pomfret's sent files. That's all.

I'll send you this one now. And then I will follow it by forwarding the original to you in a second email. I hope I'm not being confusing.

Regards, Leila

From: Huntington, Frank [mailto:HuntingtonF@SEC.gov]
Sent: Tuesday, February 23, 2010 1:00 AM
To: Leila Jenkins
Subject: RE: Ltr to Leila Jenkins dtd Feb 16, 2010

Dear Ms. Jenkins – I do not understand what you mean by forwarding the "original" email to you. What I sent you is the actual email just as it is stored in our correspondence file for the case. There is no "original" version that is different from what I sent you. Sincerely, Frank Huntington

From: Leila Jenkins [mailto:ljenkins@lockecapital.com]
Sent: Saturday, February 20, 2010 9:49 PM
To: Parker, Laura; Huntington, Frank
Subject: RE: Ltr to Leila Jenkins dtd Feb 16, 2010

Dear Ms. Parker and Mr. Huntington,

Thank you for the data provided. As the email you provide a copy of representing the actual service of documents dated March 18, 2009 1012 am was never received by former counsel Mr. Searby, would you please forward the original email to me by email as soon as possible?

Many thanks, Leila Jenkins

From: Parker, Laura [mailto:ParkerL@SEC.gov]
Sent: Wednesday, February 17, 2010 12:38 AM
To: Leila Jenkins
Cc: Huntington, Frank
Subject: Ltr to Leila Jenkins dtd Feb 16, 2010

<<02.16.10 Ltr Huntington to Leila Jenkins (Enc).pdf>>

Leila Jenkins

From: Sevilla, Naomi [SevillaN@SEC.gov]
Sent: Wednesday, February 24, 2010 11:50 AM
To: Leila Jenkins
Cc: Huntington, Frank
Subject: FW: Emailing: Summons - jenkins, Locke Complaint as filed, Summons - Locke Capital
Attachments: Summons - jenkins.pdf; Locke Complaint as filed.pdf; Summons - Locke Capital.pdf

<<Summons - jenkins.pdf>> Na <<Locke Complaint as filed.pdf>> om <<Summons - Locke Capital.pdf>> i J. Sevilla Senior Counsel U.S. Securities & Exchange Commission Boston Regional Office
33 Arch Street, 23rd Floor
Boston, Massachusetts 02110-1424
T: (617) 573-8826
F: (617) 573-4590
E: sevillan@sec.gov

-----Original Message-----

From: Pomfret, Scott
Sent: Wednesday, March 18, 2009 10:12 AM
To: 'Searby, Edmund'; Pomfret, Scott
Cc: Huntington, Frank
Subject: FW: Emailing: Summons - jenkins, Locke Complaint as filed, Summons - Locke Capital

Ned:

In connection with our agreement regarding service, please find the Complaint and summonses for your clients attached.

Scott

Leila Jenkins

From: Sevilla, Naomi [SevillaN@SEC.gov]
Sent: Wednesday, February 24, 2010 5:47 PM
To: Leila Jenkins
Cc: Huntington, Frank
Subject: RE: Emailing: Summons - jenkins, Locke Complaint as filed, Summons - Locke Capital

Ms. Jenkins:

I forwarded the emails to you because it was my understanding that you had asked for them.

The SEC's position on service is that both you and Locke were served with the complaint and summonses through your counsel back on March 18, 2009, after your counsel agreed to accept service.

Naomi J. Sevilla
Senior Counsel
U.S. Securities & Exchange Commission
Boston Regional Office
33 Arch Street, 23rd Floor
Boston, Massachusetts 02110-1424
T: (617) 573-8826
F: (617) 573-4590
E: sevillan@sec.gov

-----Original Message-----

From: Leila Jenkins [mailto:ljenkins@lockecapital.com]
Sent: Wednesday, February 24, 2010 5:39 PM
To: Sevilla, Naomi
Subject: RE: Emailing: Summons - jenkins, Locke Complaint as filed, Summons - Locke Capital

Ms. Sevilla - thank you for forwarding the emails.

I am confused about one issue - are you trying to serve me now?

If so, please note that I will not accept your email as good service at this time, and want to make sure my rejection of email service to me is recorded properly.

Regards, Leila Jenkins

-----Original Message-----

From: Sevilla, Naomi [mailto:SevillaN@SEC.gov]
Sent: Thursday, February 25, 2010 3:50 AM
To: Leila Jenkins
Cc: Huntington, Frank
Subject: FW: Emailing: Summons - jenkins, Locke Complaint as filed, Summons - Locke Capital

<<Summons - jenkins.pdf>> Na <<Locke Complaint as filed.pdf>> om <<Summons - Locke Capital.pdf>> i J. Sevilla Senior Counsel U.S. Securities & Exchange Commission Boston Regional Office
33 Arch Street, 23rd Floor
Boston, Massachusetts 02110-1424
T: (617) 573-8826
F: (617) 573-4590
E: sevillan@sec.gov

-----Original Message-----

From: Pomfret, Scott

Sent: Wednesday, March 18, 2009 10:12 AM

To: 'Searby, Edmund'; Pomfret, Scott

Cc: Huntington, Frank

Subject: FW: Emailing: Summons - jenkins, Locke Complaint as filed, Summons - Locke Capital

Ned:

In connection with our agreement regarding service, please find the Complaint and summonses for your clients attached.

Scott

Leila Jenkins

From: Walsh, Kenneth J. [kwalsh@mcdonaldhopkins.com]
Sent: Wednesday, September 23, 2009 5:10 PM
To: Leila Jenkins
Cc: Searby, Edmund
Subject: SEC vs. Locke Capital Management, Inc. & Leila Jenkins
Attachments: Service e-Mail (3-17-09) (1857166).PDF

Leila,

Thank you for our conversation on this past Friday. This confirms your withdrawal of the Subpoena.

In addition, I attach a copy of Ned's email of March 17, 2009 to Scott Pomfret of the SEC your authority in behalf of both Locke and yourself personally to have Ned accept service of the Complaint provided that the date of service be deemed to be April 8, 2009, if acceptable to the SEC. I see no responsive email from Mr. Pomfret agreeing the proposed date was acceptable to the SEC.

The Complaint was filed March 9, 2009. After search, to my knowledge, we have no communication by letter, telefax, or email on or after March 9, 2009 from Scott Pomfret, Frank C. Huntington, or anyone from the SEC listed on the Complaint delivering a Summons or the Complaint that was sent or delivered to Ned or to me.

We have in the file a totally clean copy of the Complaint without any stamps or evidence of filing.

We also have a copy of the 22 page Complaint with the stamp " CV 09 100 " on page 1 and the copy of the 2 page signed Case Designation Sheet "March 9, 2009 s/ Frank C. Huntington" as appears to be from the pleadings filed March 9, 2009 available on the US District Court's website.

We also have a copy of SEC Litigation Release 20936 dated March 9, 2009 and the 22 page stamped Complaint which is cross-referenced with the Litigation Release with the multiple stamps as appears on the SEC website at www.sec.gov.

We do not have a Summons or a time-stamped Complaint from the SEC or counsel for the SEC

We did not receive the Returns of Summons filed at Docket Entries #2 & #3 on the Court's website.

I trust that this provides you the information requested. Thank you, Ken Walsh
<<Service e-Mail (3-17-09) (1857166).PDF>>

Kenneth J. Walsh, Esq.
Direct: 216.348.5736 | Fax: 216.348.5474
kwalsh@mcdonaldhopkins.com

600 Superior Avenue, East, Suite 2100, Cleveland, Ohio 44114-2653
Chicago | Cleveland | Columbus | Detroit | West Palm Beach
www.mcdonaldhopkins.com

IRS CIRCULAR 230 DISCLOSURE:

To ensure compliance with requirements imposed by the Internal Revenue Service, we inform you that any tax advice contained in this communication (including any attachments), was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of (1) avoiding any penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any transaction matter addressed herein.

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Searby, Edmund

From: Searby, Edmund
Sent: Tuesday, March 17, 2009 11:01 AM
To: 'Pomfret, Scott'
Cc: Jackowski, Mark
Subject: Service
Attachments: Searby, Edmund.vcf

Scott, following up on our telephone call, Locke Capital Management and Miss. Jenkins will authorize us to accept service of the Complaint on their behalf provided that we agree that service of the Complaint will be deemed effective as of April 8, 2009. Please let us know whether this is acceptable. Best, Ned

Edmund W. Searby
McDonald Hopkins LLC | 600 Superior Avenue, E. | Suite 2100 | Cleveland, OH 44114-2653
direct 216.348.5769 | esearby@mcdonaldhopkins.com

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:09-CV-100-S-DLM
)	
LOCKE CAPITAL MANAGEMENT, INC. and)	JUDGE WILLIAM E. SMITH
LEILA C. JENKINS,)	
)	
Defendant.)	

**DECLARATION OF SCOTT POMFRET, ESQ.
IN OPPOSITION TO
DEFENDANTS' MOTION CONCERNING PREMATURE DISCOVERY**

Scott Pomfret, Esq. hereby declares, pursuant to 28 U.S.C. §1746, that the following is true and correct:

1. I am an attorney and a member in good standing of the bar of the Commonwealth of Massachusetts. I am a Branch Chief in the Boston Regional Office of plaintiff Securities and Exchange Commission ("the Commission"). I was the principal supervisor for the investigation by the Commission staff which preceded the filing of this enforcement action, and I have remained actively involved in supervising the staff who are handling the litigation. I make this declaration based upon my personal knowledge and in opposition to the defendants' motion concerning premature discovery.

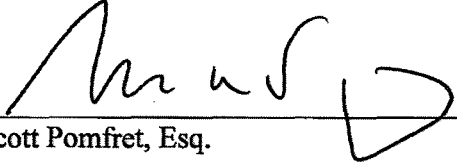
2. The defendants assert that the Commission "has issued at least one third party discovery subpoena" after the Complaint was filed. That is not true. The Commission has not

issued any subpoenas after the Complaint was filed. Indeed, the Commission has returned all documents which it received from third parties after the Complaint was filed in response to investigative subpoenas that had been issued before the Complaint was filed. Commission staff neither reviewed nor made copies of the documents and, in most cases, returned them within twenty-four hours of receipt.

3. Attorney Edmund W. Searby, Esq., of the firm of McDonald Hopkins LLC in Cleveland represented Leila C. Jenkins and Locke Capital Management, Inc. ("LCM") during the final months of the Commission's investigation. On March 4, 2009, I read the Complaint in this case to attorney Searby over the phone and specifically informed him that the case would be filed in Rhode Island. On March 5, I asked attorney Searby whether he was authorized by Jenkins and LCM to accept service on their behalf. Later that day, a member of attorney Searby's firm informed me by email that Jenkins and LCM had not authorized them to accept service. After the Complaint was filed on March 9, I again asked attorney Searby whether he would accept service of the Complaint on behalf of both defendants. Later that day, he responded in writing that he was still not authorized to accept service on behalf of Jenkins and LCM. On March 17, however, after I had made another inquiry, attorney Searby sent me an email stating that "Locke Capital Management and Miss. [sic] Jenkins will authorize us to accept service of the Complaint on their behalf provided that we agree that service of the Complaint will be deemed effective as of April 8, 2009." On March 18, I sent a reply email agreeing to the condition. [A printed copy of attorney Searby's March 17 email with my March 18 reply is attached hereto as Exhibit A.] Later on March 18, I served the Complaint and Summons on attorney Searby by email. At no time during my communications with attorney Searby or any member of his firm did I ever ask if

Jenkins and/or LCM would waive service of process under Rule 4(d) of the Federal Rules of Civil Procedure. Neither the concept of waiver of service nor Rule 4(d) itself was ever mentioned in any communication with attorney Searby or anyone at his firm until late April 2009, when a member of Searby's firm took the position – contrary to attorney Searby's March 17 email quoted above – that the defendants had not accepted service of the Complaint.

Executed under the pains and penalties of perjury this 14th day of May, 2009 at Boston, Massachusetts.



Scott Pomfret, Esq.

EXHIBIT A

Pomfret, Scott

From: Pomfret, Scott
Sent: Wednesday, March 18, 2009 10:10 AM
To: 'Searby, Edmund'
Cc: 'Jackowski, Mark'; Huntington, Frank; Pomfret, Scott
Subject: RE: Service

Ned:

I appreciate your clients' willingness to authorize you to accept service provided that we agree service of the Complaint and Summons will be deemed effective April 8, 2009. The staff agrees to this condition.

Accordingly and in furtherance of this agreement, by separate email, I will forward the Complaint and summons to you shortly.

Scott

From: Searby, Edmund [mailto:esearby@mcdonaldhopkins.com]
Sent: Tuesday, March 17, 2009 11:01 AM
To: Pomfret, Scott
Cc: Jackowski, Mark
Subject: Service

Scott, following up on our telephone call, Locke Capital Management and Miss. Jenkins will authorize us to accept service of the Complaint on their behalf provided that we agree that service of the Complaint will be deemed effective as of April 8, 2009. Please let us know whether this is acceptable. Best, Ned

Edmund W. Searby

McDonald Hopkins LLC | 600 Superior Avenue, E. | Suite 2100 | Cleveland, OH 44114-2653
direct 216.348.5769 | esearby@mcdonaldhopkins.com

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UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

)	
SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:09-CV-100-S-DLM
)	
LOCKE CAPITAL MANAGEMENT, INC. and)	JUDGE WILLIAM E. SMITH
LEILA C. JENKINS,)	MAGISTRATE DAVID L. MARTIN
)	
Defendant.)	
)	

**DECLARATION OF NAOMI SEVILLA, ESQ.
IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS**

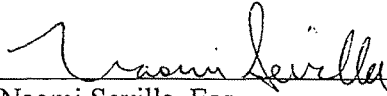
Naomi Sevilla, Esq. hereby declares, pursuant to 28 U.S.C. §1746, that the following is true and correct:

1. I am an attorney and a member in good standing of the bar of the Commonwealth of Massachusetts. I am a Senior Enforcement Attorney in the Boston Regional Office of plaintiff Securities and Exchange Commission ("the Commission"). I was actively involved in the investigation by the Commission staff that preceded the filing of this enforcement action, and I am now one of the attorneys handling the litigation. I make this declaration based upon my personal knowledge and in opposition to the defendants' motion to dismiss.

2. To my knowledge based upon a review of the Commission's records and communications with other members of the Commission staff, the Commission has not sent a copy of the Complaint to any bank or financial institution.

3. During the Commission's investigation, the defendants' then-counsel (Dechert LLP in Washington, DC) arranged for the production to the Commission of copies of certain materials in electronic format. Sometime later, the defendants' successor counsel (McDonald Hopkins LLC in Cleveland, Ohio) asserted that the production may have included privileged communications. The Commission staff stated that, if McDonald Hopkins could identify specific privileged communications, the Commission staff would remove them from its database and not review them. McDonald Hopkins later identified certain specific privileged communications, and the Commission's computer specialists deleted those communications from the electronic database. In the interim, the Commission staff took various precautionary measures to avoid reviewing any potentially privileged material (including conducting searches for any known attorney names and segregating those communications so they would not be reviewed).

Executed under the pains and penalties of perjury this 22nd day of July, 2009 at Boston, Massachusetts.



Naomi Sevilla, Esq.

STATE OF OHIO)
) SS. AFFIDAVIT
COUNTY OF CUYAHOGA)

KENNETH J. WALSH, being first duly sworn according to law, deposes and states as follows:

1. I am an attorney at law licensed to practice in the State of Ohio and a registered member of the Bar of the State of Ohio in good standing.

2. During relevant times hereto, I have practiced as a lawyer at McDonald Hopkins LLC, its offices at 600 Superior Avenue, East, Suite 2100, Cleveland, Ohio 44114 (“McDonald Hopkins”).

3. During the relevant times hereto from on or about January 26, 2009 until May 4, 2009, McDonald Hopkins represented Locke Capital Management Co. (“Locke”) and Leila Jenkins, owner and President of Locke, in such capacity and personally (“Leila Jenkins”).

4. During the relevant period of time, I worked with Edmund Searby, an attorney at McDonald Hopkins, in representing Locke and Leila Jenkins, together with other attorneys, paralegals, and staff personnel.

5. I have personal knowledge of the scope of a certain investigation initiated by the Securities And Exchange Commission (“SEC”) as B-02423 involving both Locke and Leila Jenkins which was coordinated for the SEC by Scott Pomfret, Esq. and Naomi Sevilla, Esq. of

the SEC Division of Enforcement at Boston Regional Office, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424

6. I have personal knowledge of the efforts of Locke and Leila Jenkins by and through the representation by McDonald Hopkins to respond to the Subpoenas Duces Tecum issued by the SEC to Locke and Leila Jenkins under its B-02423 matter:

7. At the direction of Locke and Leila Jenkins, McDonald Hopkins coordinated with the SEC by and through Mr. Pomfret and Ms. Sevilla and with Ms. Carrie Holt, IT Specialist – Litigation Support of SEC at 100 F. St. NE, Mail Stop 6553, Washington, DC 20549 and did produce responsive documents to the referenced Subpoenas in the format required by the SEC together with Privilege Logs and Reserved Logs.

8. Multiple productions in five (5) Phases were required because the documents of Locke and Leila Jenkins as subpoenas were in multiple original forms and obtained from multiple original sources.

9. In addition, I have personal knowledge that the SEC also received or should have received documents responsive to the referenced Subpoenas directly from:

- a. its own efforts at the home of Leila Jenkins;
- b. its own copy efforts through prior counsel at the Dechert LP law firm;
- c. its own efforts through prior counsel, Edward Horahan; and
- d. its own efforts through Global Digital Forensics of New York, New York.

10. In the course of the responsive efforts of Locke and Leila Jenkins coordinated by McDonald Hopkins, I personally confirmed the production of documents by letters to the SEC in

care of Mr. Pomfret, Ms. Sevilla, and Ms. Holt by multiple e-mail messages and letters. Exhibit "A" attached hereto and Bates-marked Nos. LJ-A-000001 to 000021 are true and genuine copies of the e-mails and letters described herein by which the documents and logs were transmitted by McDonald Hopkins to the SEC.

11. I have personal knowledge of the fact that the Complaint that Locke and Leila Jenkins worked from at the inception of the lawsuit captioned *Securities And Exchange Commission vs. Locke Capital Management, Inc. and Leila C. Jenkins*, Case No. 1:09-CV-00100-8-DLM in the United States District Court for the District of Rhode Island was obtained solely via the internet from the ECF filing system maintained by the District Court.

12. To the best of my personal knowledge, Locke and Leila Jenkins did not receive the Complaint and the Summons in Case No. 1:09-CV-00100-8-DLM by e-mail, telefax, certified mail, regular mail, hand delivery, or any other form of communication directed to McDonald Hopkins, Mr. Scarby, or myself from the SEC, including Mr. Pomfret and Ms. Sevilla, at any time after its filing on or after March 9, 2009.

13. McDonald Hopkins did not after March 9, 2009 receive a time-stamped and case number marked Complaint and Summons from any attorney for the SEC listed on the Complaint on file with the Clerk of Courts.

14. McDonald Hopkins did not after March 9, 2009 receive or authorize the Return of Summons filed at Docket Entries #2 and #3 on the Court's Docket.

15. The SEC did not stipulate or agree to an Answer date but unilaterally set a date of May 12, 2009 by which it would not seek a default. Exhibit "B" attached hereto and Bates-marked Nos. LJ-B-000001 to 000007 are true and genuine copies of the e-mails described herein

which described McDonald Hopkins' communication with the SEC and its counsel relating to the alleged service of the Complaint and Summons in Case No. 1:09-CV-00100-8-DLM.

16. By providing this Affidavit for use by Locke and/or Leila Jenkins, McDonald Hopkins has not asked for or accepted any benefit or remuneration from either and has not resumed or re-entered into a new attorney-client relationship or provided any legal advice; nor has Locke or Leila Jenkins waived the work product or attorney client privilege.

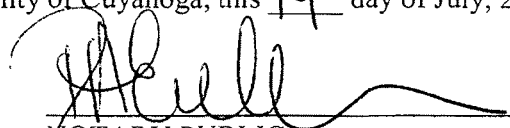
Dated: July 14, 2010



KENNETH J. WALSH (Ohio Reg. 0018712)
McDonald Hopkins LLC
600 Superior Avenue, East
Suite 2100
Cleveland, OH 44114
e-Mail: kwalsh@mcdonaldhopkins.com

VERIFICATION

SWORN TO BEFORE ME and subscribed in my presence before a Notary Public licensed in the State of Ohio, County of Cuyahoga, this 14th day of July, 2010.



NOTARY PUBLIC

PATRICIA A. EICHLER
NOTARY PUBLIC, STATE OF OHIO
RECORDED IN LORAIN COUNTY
MY COMMISSION EXPIRES OCTOBER 18, 2014

Walsh, Kenneth J.

From: Walsh, Kenneth J.
Sent: Friday, February 20, 2009 10:36 AM
To: 'SevillaN@SEC.GOV'
Cc: 'PomfretS@SEC.GOV'; Searby, Edmund; Rezek, Kathy
Subject: Locke Capital Management, Inc. B-02423 - Production

Attachments: Walsh, Kenneth J..vcf; LTR - CARRIE HOLT (1675958).pdf; Summary of Number of Records and Images sent to SEC (1675992).pdf

Naomi:

As a follow-up to our discussions, after coordination between my Firm's IT person, Ms. Kathy Rezek and Ms. Carrie Holt of the SEC, yesterday we sent out by Federal Express a production of documents. A copy of my transmittal is attached. The production was sent to Ms. Holt at her request since we had to use a vendor to convert the documents loaded originally in Summation into Concordance to comport with the SEC Data Delivery Standards. Ms. Holt represented that she would handle the receipt of the production and the loading for your purposes.

Ms. Holt received the CD early this AM, Friday February 19, 2009 as promised. Confirmation of receipt has been received here by Federal Express tracker. The produced documents are marked by Bates numbering as LCM 00001 and so on. A summary was included with the CD.

This production includes copies of the so-called Dechert boxes (5 of 7) that had been previously shipped from Rhode Island to Dechert in Washington DC for copying, less those documents within the 5 boxes that we have reserved for review based upon searchable terms regarding privilege, confidentiality, or immateriality. The 2 remaining boxes had been shipped to the custody of Dechert for preservation. You have authorized us to take possession of all the 7 so-called Dechert boxes from Dechert and I will now arrange to have them transported from Washington DC to our Firm's custody and control at our offices. I will advise you when this has been accomplished.

If you have any questions at any time, please let me know. Thank you, Ken Walsh

Kenneth J. Walsh, Esq.

McDonald Hopkins LLC | 600 Superior Avenue, E. | Suite 2100 | Cleveland, OH 44114-2653

direct 216 348 5736 | fax 216 348 5474 | <mailto:kw Walsh@mcDonaldhopkins.com> | <http://www.mcdonaldhopkins.com>

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Walsh, Kenneth J. - LTR - CARRIE HOLT
J..vcf (552 B) (1675958).pd...



Summary of
umber of Records a.

February 24, 2009

**Via Electronic Mail
Confirmation by First Class U.S. Mail**

Scott D. Pomfret, Esq.
Branch Chief
U. S. SECURITIES AND EXCHANGE COMMISSION
Boston Regional Office
33 Arch Street, 23rd Floor
Boston, MA 02110-1424

Re: *In the Matter of Locke Capital Management, Inc. (Your Ref. No. B-02423)*

Dear Scott:

This letter is to follow up on our discussion today and your letter of February 19, 2009.

Locke is willing to provide a privilege log identifying the documents that it contends are privileged, but we need the SEC's assurance that we will be given reasonable time to do so.

To date, the SEC has not been willing to stop its review. For this reason, we were surprised by Mr. Healey's statement after the fact faulting us for not providing a privilege log. By the time, we – current counsel for Locke and Ms. Jenkins – learned from you that the electronic mail contained what appeared to be a significant number of privileged documents, the preparation of a privilege log would have only been of utility if the SEC agreed to stop the review long enough to allow us to produce such a log and, furthermore, agreed to use such a log as the basis to return facially privileged material. We did not understand the SEC to agree as to either issue.

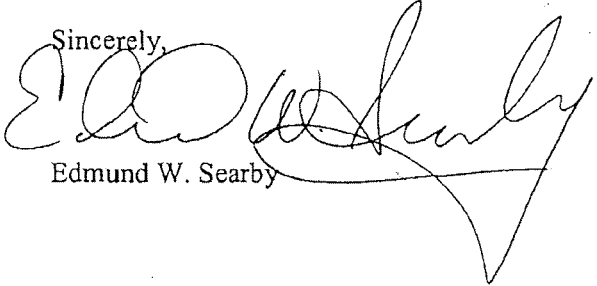
Accordingly, in light of your recent request for a privilege log, we ask will the SEC pause in reviewing the imaged computers to allow us time to produce a log? If so, will the SEC allow us until Friday, March 6, 2009, to get it done? Finally, will the SEC commit to using the privilege log as the basis for identifying and returning to us documents that from the log appear to be privileged?

Scott D. Pomfret, Esq.

February 24, 2009
Page 2

We respectfully request written assurance on those issues to know that the provision of a log will serve a beneficial purpose and that the request is not simply pretextual.

Sincerely,

A handwritten signature in black ink, appearing to read "Edmund W. Searby". The signature is fluid and cursive, with a large initial "E" and "S".

Edmund W. Searby

EWS:nlw

cc: Martin F. Healey, Esq.
Mark V. Jackowski, Esq.
Kenneth J. Walsh, Esq.

{1680823:}

McDonald Hopkins LLC
Attorneys at Law



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Boston Regional Office
33 Arch St., 23rd Floor
Boston, MA 02110-1424
Telecopier: (617) 573-4590

DIVISION OF ENFORCEMENT

Scott D. Pomfret
Branch Chief
(617) 573-8981

February 25, 2009

Via Facsimile (216-348-5474)

Edmund W. Searby
McDonald Hopkins LLC
600 Superior Avenue, East
Suite 2100
Cleveland OH 44114

Re: In the Matter of Locke Capital Management, Inc. (B-02423)

Dear Ned:

This letter responds to your letter of February 24, 2009. First, to clarify, at no time has the staff refused to return to you the documents you identified in a privilege log. Indeed, the staff's purpose in requesting the log is to evaluate your claims of privilege and to return such documents to you.

You also assert that you have not been given time to produce such a privilege log. As you know, on January 15, 2009, then-counsel for Locke sent a letter to the staff making clear it was aware of potentially privileged materials being produced, yet to date no privilege log has been forthcoming. We believe you and your predecessor counsel had sufficient time to prepare a log, and we continue to await its production.

With respect to review of the email productions, the staff has repeatedly assured you that it has taken adequate precautions to prevent review of material for which Locke may claim privilege, while at the same time permitting the staff to fulfill its obligations to conduct timely investigations. You have not identified any specific issue with the precautions taken, nor suggested any additional precautions you would like to see in place (other than in effect asking the staff to postpone its investigation).

Lastly, nearly two months after the production of certain electronic data retrieved from certain employees' hard drives and from a server known as the "I-drive" (collectively, the "Images") on January 2-3 by a vendor hired by predecessor counsel for Locke, I sent you my February 19 letter. Those two months afforded you (and


LJ-A-000004

predecessor counsel) ample time to review the Images and prepare a privilege log. We reject your suggestion that the staff's request may be "pretextual" in light of the two months that have elapsed since production. Indeed, my February 19 letter in good faith provided you yet another opportunity to identify privileged documents so they could be safeguarded before the staff commenced review of the vast majority of the documents contained in the Images. (As I noted on our February 24 phone call, the staff has already reviewed approximately 25 documents from the Images; these 25 documents are clearly not privileged. No other review of documents contained in the Images has occurred.)

Nonetheless, as a gesture of continuing good faith, the staff will agree to wait until Friday, March 6, 2009, for a privilege log concerning the Images. I urge you to focus your resources on the Jenkins and Webster laptop hard drives, to which the Staff will turn its attention first after March 6, 2009. In the event we do not receive a privilege log by March 6, 2009, the staff may commence substantive review of documents from the Jenkins and Webster hard drives as early as March 7, 2009, taking as always reasonable precautions to avoid review of documents with respect to which we believe Locke may assert privilege.

Please understand, however, that – as we have discussed – the Commission may take other action (not review of the documents contained in the Images) earlier than March 6, including without limitation filing a civil action and/or instituting administrative proceedings as it deems fit.

Sincerely,


Scott D. Pomfret
Branch Chief

Walsh, Kenneth J.

From: Walsh, Kenneth J.
Sent: Friday, March 06, 2009 7:58 PM
To: 'Pomfret, Scott'
Cc: 'SevillaN@SEC.GOV'; 'HealeyM@SEC.GOV'; Searby, Edmund; Jackowski, Mark
Subject: Locke Capital Management B-02423

Attachments: Walsh, Kenneth J..vcf; Pomfret 3-6-09 (1691420).PDF; Privilege log - phase 1 (1691035).pdf; Privilege log - Phase 2 (1691078).pdf; Privilege log - Phase 3 (1691413).pdf; Non Privilege Phase 1 (2nd production) (1691077).pdf; Non Privilege log - Phase 3 (1691414).pdf; LCM Resp. 3-6-09 (1691419).PDF

Scott:

Please see the attached self-explanatory letter along with attachments submitted in behalf of Locke Capital Management, Inc.:

1. Three privilege logs (1691035, 1691078; & 1691413);
2. Two supplemental production logs (1691077 & 1691414); and
3. One partial response to the duces tecum to Locke Capital Management, Inc. (1691419).

Should you have any difficulty with these attachments, please contact me. The supplemental documents referenced in the logs above are being converted into Concordance to meet the SEC's Data Delivery Standards and will be timely forthcoming. As referenced in the letter, we have additional phases to complete privilege logs regarding company email and company computers. I will keep you further advised.

Thank you, Ken Walsh

Kenneth J. Walsh, Esq.

McDonald Hopkins LLC | 600 Superior Avenue, E. | Suite 2100 | Cleveland, OH 44114-2653
direct 216.348.5736 | fax 216.348.5474 | <mailto:kwash@mcdonaldhopkins.com> | <http://www.mcdonaldhopkins.com>

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Walsh, Kenneth J..vcf (552 B)



Pomfret 3-6-09 (1691420).PDF (...



Privilege log - phase 1 (16910...



Privilege log - Phase 2 (16910...



Privilege log - Phase 3 (16914...



Non Privilege Phase 1 (2nd pro...



Non Privilege log - Phase 3 (1...



LCM Resp. 3-6-09 (1691419).PDF...

March 6, 2009

Via E-Mail and Regular U.S. Mail

Scott D. Pomfret, Esq.
Branch Chief
U. S. SECURITIES AND EXCHANGE COMMISSION
Boston Regional Office
33 Arch Street, 23rd Floor
Boston, MA 02110-1424

Re: *In the Matter of Locke Capital Management, Inc. (Your Ref. No. B-02423)*

Dear Scott:

This follows your letter of February 25, 2009 and is intended to update you on our good faith, diligent efforts to produce to the Commission responsive documents and to identify and provide a privilege log or logs. We are producing certain privilege logs as referred to herein.

Your letter of February 25, 2009 set an apparent "deadline" of March 6, 2009 for our side to provide a privilege log at least as to that "certain electronic data retrieved from certain employees' hard drives and from a server known as the "I-Drive" (collectively, the "Images") on January 2-3 by a vendor hired by predecessor counsel for Locke."

Of course, we have not had possession of these Images and, to update you, we have been working closely with the President of the vendor (Mr. Joe Caruso of Global Digital Forensics) to extract the data and host it or send it. We do not yet have possession or control of the Images as of this date, but expect to have such by next week. We will need to work with the data and expect to require a week. As to the Images, Locke therefore seeks a further extension for submission of a privilege log until March 18, 2009.

As to other data, as you know, the Commission obtained our client's e-mail through vendor LiveOffice Corp. We obtained the e-mail data from LiveOffice with a receipt date of March 4, 2009. We are presently processing the data and expect to be able to submit a privilege log as to this data by March 13, 2009.

Also, we have received other data from our client's prior counsel, Edward Horahan, Esq. that had previously been submitted to the Commission. We are submitting currently two (2) privilege logs as to this data (see "Locke CM Phases 2 & 3").

In addition, we previously provided the Commission on February 20, 2009 certain data from the documents that the Commission was involved in selecting and that had been shipped to our client's prior counsel at Dechert LP. We are submitting currently a privilege log and a supplemental production of this data. (see "Locke CM Phase 1" and "LCM Supplemental Production Phase 1")

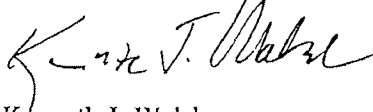
For your update, we now have obtained possession and custody of the seven (7) boxes previously selected by the Commission for copying or preservation that had been shipped to Dechert LP.

Furthermore, as to Locke, we are submitting currently a listing of various accounts sought pursuant to subpoena duces tecum to Locke. (see "LCM Duces Tecum Response Partial 3/6/2009")

Certain of the information being produced is being produced together with this letter via e-mail. We are also attaching to this e-mail a log of the supplement production. The supplemental document production of actual documents ("LCM Supplemental Production Phase 1") is being converted to Concordance and will be produced in the next several days to Ms. Carrie Holt, as before.

Should you have any questions, please contact me. Thank you.

Very truly yours,



Kenneth J. Walsh

KJW:rrk
Encl.

cc: Naomi Sevilla, Senior Counsel
Martin F. Healey, Esq.
Mark V. Jackowski, Esq.
Edmund W. Searby, Esq.

M

Walsh, Kenneth J.

From: Walsh, Kenneth J.
Sent: Wednesday, March 11, 2009 5:52 PM
To: 'Pomfret, Scott'
Cc: 'SevillaN@SEC.GOV'; Searby, Edmund
Subject: Locke Capital Management, Inc. B-02423

Attachments: Walsh, Kenneth J..vcf; LTR - CARRIE HOLT SEC Production 2 (1694144).pdf

Scott:

As a follow-up to my letter of March 6, 2009, I want to confirm that we have sent overnight to Ms. Carrie Holt, IT Specialist at the SEC in Washington, DC two (2) DVDs with production for loading in Concordance per the SEC's Data Delivery Standards. The attached letter identifies the privilege log and the production log following from that previously identified in our March 6, 2009 letter.

I also want to confirm our conversation of yesterday to the effect that the SEC has identified and prioritized for us the Jenkins and Webster laptops from the Images previously made and provided by Global Digital Forensics. We are obtaining the same data from Global Digital Forensics. You also indicated that you will not review the Images until after March 18, 2009 and then only these two laptops. I will keep you advised as we diligently work this project.

I'd like to confirm that we continue to work on all of our client's privilege logs including the LiveOffice emails and the Images from the computers and laptops of Locke Capital Management and want to again confirm that the SEC will continue to refrain from further searches into what may contain privileged material in your possession until March 19, 2009 or as further extended.

Thank you, Ken Walsh

Kenneth J. Walsh, Esq.

McDonald Hopkins LLC | 600 Superior Avenue, E | Suite 2100 | Cleveland, OH 44114-2653

direct 216 348 5736 | fax 216 348 5474 | <mailto:kwalsh@mcdonaldhopkins.com> | <http://www.mcdonaldhopkins.com>

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Walsh, Kenneth J..vcf (552 B) | LTR - CARRIE HOLT SEC Producti...

Direct Dial: 216.348.5736
E-mail: kwalsh@mcdonaldhopkins.com

March 11, 2009

Via FedEx Overnight Mail
Tracking No.: 7974 0781 0560

Ms. Carrie L. Holt
IT Specialist - Litigation Support
SEC
100 F. St. NE
Mail Stop 6553
Washington, DC 20549

Re: Locke Capital Management, Inc.
B-0202423

Dear Ms. Holt:

Enclosed please find two DVDs containing privilege log and production log, document images and OCR, Condordance load file, Opticon Cross-Reference file.

We will be sending you a test sample of the e-mail data later this week.

Please let me know if you have any questions. Thank you for your cooperation.

Very truly yours,

Kenneth J. Walsh

KJW:rrk
Encl.

cc: Kathy Rezek, Trainer/Applications Support

{1694144}
C:\DOCUME~1\KWalsh\LOCALS~1\Temp\workshare\mwtemp\4298\ws36.tmp\LTR - CARRIE HOLT SEC Production 2
(1694144).DOC

LJ-A-000010

March 13, 2009

Via E-Mail and Regular U.S. Mail

Scott D. Pomfret, Esq.
Branch Chief
U. S. SECURITIES AND EXCHANGE COMMISSION
Boston Regional Office
33 Arch Street, 23rd Floor
Boston, MA 02110-1424

Re: *In the Matter of Locke Capital Management, Inc. (Your Ref. No. B-02423)*

Dear Scott:

As a follow-up to our conversation this morning and my prior letter of March 6, 2009, I want to update you:

First, we sent yesterday by overnight delivery a test sample of our Phase 3 data to Ms. Carrie Holt, IT Manager in Washington at her suggestion pursuant to our contact with her. *See* attachment.

Second, we require additional time as we work diligently to input for review the LiveOffice e-mails. You indicated that the Commission would not commence review until March 19, 2009 at the earliest. We are likely to require additional time.

Third, we continue to work diligently with Global Digital Forensics on obtaining the data from the Images obtained from Locke Capital Management, Inc. We are focusing on the Leila C. Jenkins and Derrick Webster laptops. I will keep you advised as this proceeds. We will require additional time beyond March 19, 2009.

Finally, we have the ability to re-format our Phase 3 3-6-09 Privilege Log reflecting date and time fields. We will do so and provide it as soon as ready.

Scott D. Pomfret, Esq.

March 13, 2009
Page 2

Should you have any questions, please contact me. Thank you.

Very truly yours,



Kenneth J. Walsh

KJW:nlw

Attachment

cc: Naomi J. Sevilla, Senior Counsel (via e-mail, w/ attachment)
Edmund W. Searby, Esq. (via e-mail, w/ attachment)

{1695529;}
S:\CLIENTS\32941\00001\1695529.DOC

McDonald Hopkins LLC
Attorneys at Law

LJ-A-000012

Direct Dial: 216.430.2052
E-mail: krezek@mcdonaldhopkins.com

P 216.348.5400
F 216.348.5474

March 12, 2009

Via FedEx Overnight Mail
Tracking No.: 7974 1051 5700

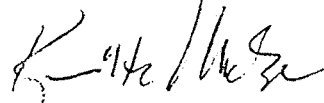
Carrie L. Holt
IT Specialist – Litigation Support
SEC
100 F. St. NE
Mail Stop 6553
Washington, DC 20549

Re: Locke Capital Management, Inc.
B-02423

Dear Ms. Holt:

Enclosed please find one CD containing a sample email production for this matter. This sample includes a PST, native email and document attachments. Please contact me if you have any questions or require additional information. Thank you again for your assistance.

Very truly yours,



Kenneth J. Walsh

KJW:rrk
Encl.

cc: Kathy J. Rezek, Trainer/Applications Support

Walsh, Kenneth J.

From: Walsh, Kenneth J.
Sent: Thursday, March 19, 2009 1:07 PM
To: 'Pomfret, Scott'; Sevilla, Naomi
Cc: Searby, Edmund; Hunt, Ann; Rezek, Kathy
Subject: Locke Capital Management : B-02423

Attachments: Walsh, Kenneth J..vcf

Scott & Naomi:

Responding to your follow-up call after the telephone conference this morning, we are prioritizing the Phase 3 (Horahan) privilege log; we are inputting and reviewing the Phase 4 (Live Office) emails which are substantial; and we are coordinating with Global Digital Forensics which is working on the Jenkins and Webster laptops data (Phase 5) as prioritized. We have not yet had access to Phase 5 data. I expect to get the Phase 3 logs out by tomorrow and update you on the rest on an ongoing basis. I trust that this adequately responds.

Thank you, Ken

Kenneth J. Walsh, Esq.

McDonald Hopkins LLC | 600 Superior Avenue, E. | Suite 2100 | Cleveland, OH 44114-2653
direct 216.348.5736 | fax 216.348.5474 | <mailto:kwalsh@mcdonaldhopkins.com> | <http://www.mcdonaldhopkins.com>

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Walsh, Kenneth
J..vcf (4 KB)

Walsh, Kenneth J.

From: Walsh, Kenneth J.
Sent: Friday, March 20, 2009 4:47 PM
To: 'Pomfret, Scott'; Sevilla, Naomi
Cc: Searby, Edmund; Hunt, Ann; Rezek, Kathy
Subject: Locke Capital Management, Inc. : B-02423

Attachments: Letter to Carrie Holt (1701479).PDF; Phae 3 - Reserved Log with Subject from Date Time Sent (1701283).pdf; Phase 3 Privilege Log with Subject from Date Time Sent (1701274).pdf; Walsh, Kenneth J..vcf

Scott & Naomi:

Attached is a copy of my letter to Ms. Carrie Holt which forwards our CD containing both a Privilege Log and a Reserved Log (reserved for attorney/client review) regarding our Phase 3 that is otherwise known as the Horahan E-Mails. We have produced the logs with Date, Time, Subject, and From fields. As we discussed, the logs have our own LCM document ID as well. I trust that this furthers our mutual ability to identify the data as discussed.

For your additional update, we have loaded and are working with our Phase 4 data from Live Office and expect to be able to provide logs by about mid-week. Also, we are working still with Global Digital to obtain the so-called Images data from the Jenkins and Webster laptops, as prioritized by you, but I will have to further update you on our progress with that project early in the week as Global Digital is still resolving some difficulties with the data and we do not yet have access.

Further, we have obtained some hardcopy materials from Locke Capital that has now been sent to a vendor for input into our Summation system as our Phase 6 LCM documents. I will update you on that project early in the week as well.

I want to continue to advise you that we are working diligently and in good faith to produce our appropriate Privilege and Reserved logs from our multiple sources of data and trust that you will continue to extend us the time and courtesy to complete our efforts.

Thank you, Ken Walsh



Letter to Carrie Holt Phae 3 - Reserved Log with Sub...
(1701479... Log with Sub... Phase 3 Privilege Log with Sub...

Kenneth J. Walsh, Esq.

McDonald Hopkins LLC | 600 Superior Avenue, E. | Suite 2100 | Cleveland, OH 44114-2653
direct 216.348.5736 | fax 216.348.5474 | <mailto:kwash@mcdonaldhopkins.com> | <http://www.mcdonaldhopkins.com>

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Walsh, Kenneth
J..vcf (552 B)

Direct Dial: 216.384.5736
E-mail: kwalsh@mcdonaldhopkins.com

P 216.348.5400
F 216.348.5474

March 20, 2009

Via FedEx Overnight Mail
Tracking No.: 7964 4770 9869

Carrie L. Holt
IT Specialist – Litigation Support
SEC
100 F. St. NE
Mail Stop 6553
Washington, DC 20549

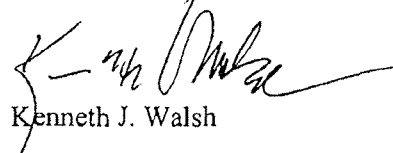
Re: Locke Capital Management, Inc.
B-02423

Dear Ms. Holt:

As per our recent telephone conference, I am enclosing one CD containing both Privilege log and a Reserve log. The logs are distinguishable by the sixth column which designates "Privilege" or "Reserved". The logs are in an Excel spreadsheet which lists the Date Sent, Time Sent, Subject and From data. It also contains information which indicates the email (Parent ID) and subsequent document attachments (Attach ID).

Please contact me if you have any questions or require additional information. Thank you again for your cooperation.

Very truly yours,


Kenneth J. Walsh

KJW:rrk
Encl.

cc: Scott Pomfret, Esq. (via e-mail only)
Edmund W. Searby, Esq.
Ann Hunt, Esq.
Kathy J. Rezek, Trainer/Applications Support

Walsh, Kenneth J.

From: Walsh, Kenneth J.
Sent: Saturday, March 28, 2009 9:45 PM
To: 'Pomfret, Scott'; Sevilla, Naomi; Holt, Carrie
Cc: Searby, Edmund; Hunt, Ann; Rezek, Kathy
Subject: Locke Capital Management : B-02423

Attachments: Walsh, Kenneth J..vcf

Scott & Naomi:

As we have been working forward diligently on this matter, I want to advise you that today we sent overnight by federal express a CD to Ms. Carrie Holt in Washington DC containing Locke Capital Management's Privilege log and Reserved log covering the so-described Live Office email. The logs are listed as Locke's Phase 4, 4A, and 4B corresponding to the three different sections under which we has to input them into our system. The transmittal letter to Ms. Carrie Holt explains the fields requested by the SEC under which we have prepared the logs.

In addition to this delivery of data, I want to advise you that we have been working diligently with Global Digital Forensics which still has had difficulty providing us with complete access to review the data derived from the Images of the Locke Capital Management computers, even while prioritizing the Jenkins and Webster laptops. I want to assure you that we continue to work diligently and in good faith in our efforts to ultimately prepare and produce appropriate Privilege and Reserved logs covering the Images, prioritizing the Jenkins and Webster laptops. We will require a continuing extension and trust that you can so agree under the extant circumstances that have not been created by us. I would appreciate it.

Lastly, I want to advise you that I will be out of the City next week with limited access to phone and email. I will be back the following Monday. In my absence we are continuing to work on the Images which we describe as our Phase 5.

If you have any questions at all, please let me know.

Thank you, Ken

Kenneth J. Walsh, Esq.

McDonald Hopkins LLC | 600 Superior Avenue, E. | Suite 2100 | Cleveland, OH 44114-2653
direct 216 348 5736 | fax 216 348 5474 | <mailto:kwalsh@mcdonaldhopkins.com> | <http://www.mcdonaldhopkins.com>

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Walsh, Kenneth
J..vcf (4 KB)

Walsh, Kenneth J.

From: Walsh, Kenneth J.
Sent: Monday, March 30, 2009 9:26 AM
To: 'Pomfret, Scott'; Sevilla, Naomi
Cc: Searby, Edmund; Rezek, Kathy; Hunt, Ann
Subject: Locke Capital Mangement, Inc. : B-02423

Attachments: Walsh, Kenneth J..vcf; Letter to Carrie Holt re. Phase 4, 4a, 4b (1707481).PDF

Scott & Naomi: Please see the attached copy of my letter of March 27, 2009 to Ms. Carrie Holt regarding our Live Office email review (our Phase 4, 4A, & 4B).

Thank you, Ken

Kenneth J. Walsh, Esq.

McDonald Hopkins LLC | 600 Superior Avenue, E. | Suite 2100 | Cleveland, OH 44114-2653
direct 216.348.5736 | fax 216.348.5474 | <mailto:kwalsh@mcdonaldhopkins.com> | <http://www.mcdonaldhopkins.com>

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Walsh, Kenneth
J..vcf (552 B)



Letter to Carrie Holt
re. Phas...

March 27, 2009

Via FedEx Overnight Mail
Tracking No.: 7974 5624 8278

Carrie L. Holt
IT Specialist - Litigation Support
SEC
100 F. St. NE
Mail Stop 6553
Washington, DC 20549

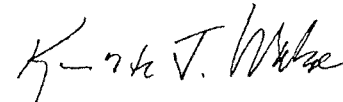
Re: Locke Capital Management, Inc.
B-02423

Dear Ms. Holt:

I am enclosing one CD containing both Privilege logs and Reserved logs for our Phase 4, 4A and 4B also known as the Live Office email recovered from Locke Capital Management, Inc. The logs are distinguishable by the sixth column which designates "Privilege" or "Reserved". The logs are in Excel spreadsheets which lists the Date Sent, Time Sent, and Summary data. It also contains information which indicates the email (Parent ID) and subsequent document attachments (Attach ID).

Please contact me if you have any questions or require additional information. Thank you again for your cooperation.

Very truly yours,


Kenneth J. Walsh

KJW:rrk
Encl.

cc: Scott Pomfret, Esq. (via e-mail only)
Edmund W. Searby, Esq.
Ann M. Hunt, Esq.
Kathy J. Rezek, Trainer/Applications Support

Walsh, Kenneth J.

From: Walsh, Kenneth J.
Sent: Tuesday, April 21, 2009 5:34 PM
To: Rezek, Kathy; Hunt, Ann
Subject: FW: Live Office Emails
Attachments: 4_clh.xls; 4A_clh.xls; LOCKE 4B_clh.xls

From: Pomfret, Scott [mailto:PomfretS@SEC.gov]
Sent: Tuesday, April 21, 2009 3:37 PM
To: Walsh, Kenneth J.
Cc: Pomfret, Scott; Huntington, Frank; Sevilla, Naomi
Subject: Live Office Emails

Ken:

As discussed, please find three spreadsheets concerning the Live Office emails. The highlighted rows indicate documents our IT specialist was unable to locate based on the information provided. In some cases, she found a read receipt or an out of office reply but not the substantive email that prompted the receipt or reply. She has marked such items in the column to the right of your data.

I understand from our discussion that the designation "reserved" means the document in question has been flagged for further review and that you may still produce such documents. Please let me know immediately if I have misunderstood you on this point.

Please advise as to how you would like to proceed.

Scott

<<4_clh.xls>> <<4A_clh.xls>> <<LOCKE 4B_clh.xls>>

Walsh, Kenneth J.

From: Walsh, Kenneth J.
Sent: Friday, April 24, 2009 12:52 PM
To: 'Sevilla, Naomi'; Pomfret, Scott; Huntington, Frank
Cc: Searby, Edmund; Rezek, Kathy; Hunt, Ann
Subject: Locke Capital Management - B-02423 - Live Office Email issues

Dear Naomi,

This is to follow up on the conference yesterday involving you and Carrie Holt together with Ann Hunt and Kathy Rezek of my office. I was unable to attend.

I understand that we assisted Carrie Holt in solving her inability to locate certain of the emails listed by sender, date, and exact time as recorded in your data. Apparently the same data that are on our logs were not locatable by Carrie Holt because she was unaware that our Summation software automatically "rounds up" the time field. As Ann Hunt and Kathy Rezek were able to advise you, we looked into it when we received Scott's email on Tuesday and believe that this should clear Carrie's problem.

If Carrie experiences any more problems in reviewing the Locke documents or our logs, then she can contact us either through you or directly and we'll be happy to assist her in any technical problems that she may encounter. Sooner rather than later would be the best.

I trust that this has resolved the issue that Carrie Holt experienced. If not, please let me know and we'll help out.

Thank you, Ken

Kenneth J. Walsh, Esq.
Direct: 216.348.5736 | Fax: 216.348.5474
kwalsh@mcdonaldhopkins.com

McDonald Hopkins LLC
Attorneys at Law

600 Superior Avenue, East, Suite 2100, Cleveland, Ohio 44114-2653
Chicago | Cleveland | Columbus | Detroit | West Palm Beach
www.mcdonaldhopkins.com

7/14/2010

LJ-A-000021

Walsh, Kenneth J.

From: Walsh, Kenneth J.
Sent: Thursday, March 05, 2009 8:41 AM
To: 'Pomfret, Scott'; 'SevillaN@SEC.GOV'
Cc: Searby, Edmund
Subject: Locke Capital Management, Inc. B-02423

Attachments: Walsh, Kenneth J..vcf

Dear Scott & Naomi:

To follow-up our conversation and confirm for you, we are not authorized by Locke Capital Management, Inc. or Ms. Jenkins to accept Summons and a Complaint should one be filed in this matter.

Thank you, Ken Walsh

Kenneth J. Walsh, Esq.

McDonald Hopkins LLC | 600 Superior Avenue, E. | Suite 2100 | Cleveland, OH 44114-2653
direct 216.348.5736 | fax 216.348.5474 | <mailto:kwalsh@mcdonaldhopkins.com> | <http://www.mcdonaldhopkins.com>

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Walsh, Kenneth
J..vcf (4 KB)

Searby, Edmund

From: Searby, Edmund
Sent: Tuesday, March 17, 2009 11:01 AM
To: 'Pomfret, Scott'
Cc: Jackowski, Mark
Subject: Service
Attachments: Searby, Edmund.vcf

Scott, following up on our telephone call, Locke Capital Management and Miss. Jenkins will authorize us to accept service of the Complaint on their behalf provided that we agree that service of the Complaint will be deemed effective as of April 8, 2009. Please let us know whether this is acceptable. Best, Ned

Edmund W. Searby
McDonald Hopkins LLC | 600 Superior Avenue, E. | Suite 2100 | Cleveland, OH 44114-2653
direct 216.348.5769 | esearby@mcdonaldhopkins.com

3/17/2009

LJ-B-000002

Walsh, Kenneth J.

From: Huntington, Frank [mailto:HuntingtonF@SEC.gov]
Sent: Wednesday, April 22, 2009 10:19 AM
To: Walsh, Kenneth J.
Cc: Pomfret, Scott; lehmanb@sec.gov
Subject: Re: SEC vs. Locke Capital Management, Inc. and Leila C. Jenkins - USDC RI #1:09-CV-00100

The Commission will not seek a default if the answer is filed by May 12.
Sent from BlackBerry Wireless Handheld.

From: Walsh, Kenneth J.
To: Huntington, Frank
Sent: Wed Apr 22 10:13:37 2009
Subject: RE: SEC vs. Locke Capital Management, Inc. and Leila C. Jenkins - USDC RI #1:09-CV-00100

Frank,

Are you saying that you will no longer extend the answer date to May 12, 2008 as you agreed to do on this past Monday, let alone my suggested stipulated date of May 26, 2008 ??? Did I say or do something to offend the SEC or you in some way ?

Thank you, Ken

From: Huntington, Frank [mailto:HuntingtonF@SEC.gov]
Sent: Wednesday, April 22, 2009 9:32 AM
To: Walsh, Kenneth J.
Cc: Pomfret, Scott; Sevilla, Naomi
Subject: Re: SEC vs. Locke Capital Management, Inc. and Leila C. Jenkins - USDC RI #1:09-CV-00100

Ken -- the Commission will not be filing any motions. We will expect an answer to be filed by the current deadline. If no answer is filed, we will seek a default. Frank
Sent from BlackBerry Wireless Handheld.

From: Walsh, Kenneth J.
To: Huntington, Frank
Cc: Searby, Edmund ; Pomfret, Scott; Sevilla, Naomi
Sent: Tue Apr 21 17:32:19 2009
Subject: RE: SEC vs. Locke Capital Management, Inc. and Leila C. Jenkins - USDC RI #1:09-CV-00100

7/14/2010

LJ-B-000003

Frank,

I do not have the freedom to file a motion with the court and would like to simplify all these matters by having the SEC file its form stipulating to our defendants' answer date of May 26, 2009. I would appreciate it. Please let me know that this is agreeable.

Thank you, Ken

From: Huntington, Frank [mailto:HuntingtonF@SEC.gov]
Sent: Tuesday, April 21, 2009 4:55 PM
To: Walsh, Kenneth J.
Subject: Re: SEC vs. Locke Capital Management, Inc. and Leila C. Jenkins - USDC RI #1:09-CV-00100

Ken -- how about this? We will assent to a motion that says the defendants can have until May 26 to file an answer and the Commission can start obtaining document discovery from third parties at once. If you agree, feel free to file such a motion and indicate that it is assented to.
Sent from BlackBerry Wireless Handheld.

From: Walsh, Kenneth J.
To: Huntington, Frank
Cc: Pomfret, Scott; Sevilla, Naomi; Searby, Edmund
Sent: Tue Apr 21 15:07:45 2009
Subject: RE: SEC vs. Locke Capital Management, Inc. and Leila C. Jenkins - USDC RI #1:09-CV-00100

Frank,

I understand your position. Regardless of what Ned or you said or didn't say in your conversation, I know that Ned expected the "acceptance" to be treated as a waiver with a 60 day answer deferral. I don't know what the SEC did or did not do to obtain service prior to Ned's conversation with you.

Nevertheless, I explained that we needed the time, and I left you a phone message earlier this afternoon proposing that the SEC simply agree to and file a stipulation by your form that the answer date is set at May 26, 2009 -- a date that I have chosen to split your May 12 date and our June 8 date. We have needs that I explained in my phone message including a need for Rhode Island counsel to be worked into the mix.

As I asked in my message, I trust that we can avoid unnecessary issues and have you file an agreed answer date for both defendants of May 26, the Tuesday following Memorial Day. Thank you, please let me know.

Ken

From: Huntington, Frank [mailto:HuntingtonF@SEC.gov]
Sent: Monday, April 20, 2009 1:38 PM
To: Walsh, Kenneth J.
Cc: Pomfret, Scott; Sevilla, Naomi
Subject: Re: SEC vs. Locke Capital Management, Inc. and Leila C. Jenkins - USDC RI #1:09-CV-00100

Ken -- Ned accepted service; he did not agree to waive service. Defense counsel frequently accept service in our cases, and the 20-day clock starts to run when they do. Further, because his acceptance was "postdated" to April 8, the 20-day period really turned into one month (from late March to late April).

More to the point, what is the real issue here? I was in private practice for 15 years, and it would take me 30 minutes to draft an answer to this complaint. All you are going to do is deny everything and perhaps raise a few boilerplate defenses. Our offer of May 12 would really mean six weeks after Ned officially accepted service. Why isn't that enough? Frank

7/14/2010

LJ-B-000004

Sent from BlackBerry Wireless Handheld.

From: Walsh, Kenneth J.
To: Huntington, Frank
Cc: Pomfret, Scott; Sevilla, Naomi
Sent: Mon Apr 20 12:04:14 2009
Subject: RE: SEC vs. Locke Capital Management, Inc. and Leila C. Jenkins - USDC RI #1:09-CV-00100

Frank,

Thank you for our conversation. I understand that you had to run to a family obligation. We can talk further tomorrow AM. Without attempting to belabor the point, my sense is that the defendants are entitled to the 60 days that the Rule provides regardless of whether the Rule was discussed or not discussed. Certainly, Ned didn't waive the Rule and his acceptance of service facilitated the Plaintiff's service and demonstrated cooperativeness rather than the opposite. So, I am pitching again for a stipulated June 8, 2009 answer date (rather than May 12, 2009).

Thank you, Ken

From: Huntington, Frank [mailto:HuntingtonF@SEC.gov]
Sent: Monday, April 20, 2009 11:29 AM
To: Walsh, Kenneth J.
Cc: Pomfret, Scott; Sevilla, Naomi
Subject: RE: SEC vs. Locke Capital Management, Inc. and Leila C. Jenkins - USDC RI #1:09-CV-00100

Ken – I have tried several times this morning to reach you by phone, but to no avail. I am very troubled by your suggestion that Ned intended to arrange a waiver of service under Rule 4(d). Back in late March, I specifically asked him if his agreement to "accept service as of April 8" meant anything other than the fact that the answer would be due on April 28. Ned said that the only other significance of the phrase "as of April 8" was that, in case the SEC went into court for some emergency relief before April 8, Locke would take the position that it had not yet been served. In other words, Ned's statements to me during that call made clear that (1) he was accepting service, not agreeing to waive it, and (2) the answer would be due on April 28. The subject of waiving service under Rule 4(d) never came up, and for Ned to suggest now that he was really talking about Rule 4(d) is completely inconsistent with his prior statements to me.

In any event, the SEC will assent to a 2-week extension from April 28 – i.e., until May 12. If you want more time than that, you can file a motion, and the SEC will oppose it.

Sincerely, Frank

From: Walsh, Kenneth J. [mailto:kwash@mcdonaldhopkins.com]
Sent: Friday, April 17, 2009 2:37 PM
To: Huntington, Frank
Cc: Pomfret, Scott; Giard Draeger, Michelle
Subject: RE: SEC vs. Locke Capital Management, Inc. and Leila C. Jenkins - USDC RI #1:09-CV-00100

Frank:

I left you a phone message this afternoon, essentially to the effect that our clients' agreed waiver of service was intended to be given under the waiver of service rule which, on its own accord, affords a party who timely responds to a waiver request (within 30 days) a period of 60 days after the request was sent to file an answer. FRCP 4(d)(3) I am unaware as to whether you ever attempted to send a letter. So, my message was to the effect that even if the 60 day period were not discussed explicitly between you and Ned, that's what we expected and what I believe that the defendants should be entitled to under the rule.

Can we agree to June 8, 2009 as my earlier message of yesterday requested? I'd like to avoid motion

7/14/2010

LJ-B-000005

proceedings to obtain an extension. I am not in the office this afternoon, but will be available to resolve this on Monday morning. Have a good weekend. Thank you, Ken Walsh

Kenneth J. Walsh, Esq.

McDonald Hopkins LLC | 600 Superior Avenue, E. | Suite 2100 | Cleveland, OH 44114-2653

direct 216.348.5736 | fax 216.348.5474 | <mailto:kwalsh@mcdonaldhopkins.com> |

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From: Huntington, Frank [<mailto:HuntingtonF@SEC.gov>]

Sent: Thursday, April 16, 2009 5:34 PM

To: Walsh, Kenneth J.

Cc: Pomfret, Scott; Giard Draeger, Michelle

Subject: RE: SEC vs. Locke Capital Management, Inc. and Leila C. Jenkins - USDC RI #1:09-CV-00100

Ken – I do not recall any discussion about a waiver of service under Rule 4(d). On the contrary, Ned specifically said that he would accept service as of 4/8, which he agreed would mean that the defendants' answers would be due on 4/28. We have already filed a return of service with the Court, and the clerk has made a docket entry that the answers are due on 4/28.

Given that your firm has had a copy of the Complaint since it was filed in early March, the SEC is not inclined to assent to an extension beyond 4/28. Please call me at 617-573-8960 or email me if you have any questions.

Thanks, Frank

From: Walsh, Kenneth J. [<mailto:kwalsh@mcdonaldhopkins.com>]

Sent: Thursday, April 16, 2009 5:27 PM

To: Huntington, Frank

Cc: Pomfret, Scott; Searby, Edmund

Subject: SEC vs. Locke Capital Management, Inc. and Leila C. Jenkins - USDC RI #1:09-CV-00100

Dear Frank Huntington:

I am working as co-counsel for the defendants Locke Capital Management, Inc. and Leila C. Jenkins in the captioned lawsuit together with Ned Searby of this Firm. I understand that you are lead counsel for the SEC.

My understanding from Ned, who is currently unavailable, is that he had arranged to have Locke Capital Management, Inc. and Ms. Jenkins accept service effective April 8, 2009 and to execute an appropriate waiver of service suitable for filing with the Court pursuant to FRCP 4(d). If you have prepared or will prepare appropriate waiver forms and email them to me, I will coordinate having them executed in originals suitable for filing or for compliance with FRCP 4(d). Would you please advise.

Also, my understanding is that the SEC has consented to a 60 day⁷ leave to plead which would extend until on or before Sunday June 7, 2009 which would therefore be extended until Monday, June 8, 2009. Would you please confirm the extension as to both defendants and prepare and forward to me an appropriate stipulated leave to plead for review. My understanding is that FRCP 4(d)(3) would allow a 60 day period for an answer to be filed after a waiver. However Local Rule CV 29 of the Rhode Island District Court would appear to require submission of a stipulation to the court for its approval since the answer date as extended would be more than 30 day after the date when originally due. I calculate the extended answer date to be June 8, 2009, as above.

7/14/2010

LJ-B-000006

Would you please advise. I trust that I am accurate in the above. Mr. Searby and I are also coordinating a formal entry of appearance.

Thank you, Ken Walsh

Kenneth J. Walsh, Esq.
Direct: 216.348.5736 | Fax: 216.348.5474
kwalsh@mcdonaldhopkins.com

McDonald
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7/14/2010

Affidavit of Jenkins' Attorney

*Marciano re.
Lack of Service*

II

COMMONWEALTH OF MASSACHUSETTS)

) SS. AFFIDAVIT

COUNTY OF PLYMOUTH)

Michael A. Marciano, being first duly sworn to law, deposes and states as follows:

1. I am an attorney at law licensed to practice in the State of Rhode Island and the Commonwealth of Massachusetts and a registered member of the Bars of both the State of Rhode Island and the Commonwealth of Massachusetts in good standing.
2. During relevant times hereto, I worked as an attorney representing Locke Capital Management, Inc., (Locke) its offices at 25 Walnut Street, Newport, RI 02840.
3. As indicated in the official case docket of SEC v. Locke Capital Management, Inc. and Leila C. Jenkins, Case No. 1:09-CV-00100-8-DLM, I entered an appearance for both Locke Capital Management, Inc. and Leila C. Jenkins, and subsequently withdrew my appearances, as permitted by the United States District Court for the District of Rhode Island.
4. I have personal knowledge of the scope of a certain investigation initiated by the Securities and Exchange Commission (SEC) as B-02423, involving both Locke and Jenkins which was coordinated by the SEC through Scott Pomfret, Esq. and Naomi Sevilla, Esq. of the SEC Division of Enforcement at Boston Regional Office; 33 Arch Street, 23rd floor, Boston, MA, 02110.
5. To the best of my personal knowledge, Locke and Jenkins did not receive the Complaint and Summons in Case No. 1:090-cv-00100-S-DLM by any form of communication at any time after its filing on or after March 9, 2009.
6. When I accepted the role of attorney for Locke and Jenkins, I was told that the Case had never been served on either Defendant.

7. When I attended the Scheduling Conference on October 1, 2009, I was instructed to raise the issue of service and that it had not yet been effected.
8. I was informed by SEC Attorney Huntington that service had been effected and that proof of service would be made available to me.
9. Such proof of service was never forthcoming.
10. By providing this Affidavit for use by Locke or Jenkins, I have not been asked for nor accepted any benefit or remuneration from either and have not resumed or re-entered into a new attorney-client relationship or provided any legal advice; nor has Locke or Jenkins waived the work product or attorney client privilege.

Dated: July 19th, 2010



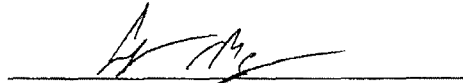
Michael A. Marciano (R.I. Bar #6486)

2799 Pawtucket Avenue #4
East Providence, RI 02914
(401) 447-9812; (401) 728-5840
marcemm98@yahoo.com

Certification

Sworn to before me and subscribed in my Presence before a Notary Public licensed in the Commonwealth of Massachusetts

This 19th day of July, 2010

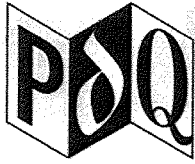


NOTARY PUBLIC

MY COMMISSION EXPIRES 11/16/12



SETH G. MATTHEWS
Notary Public
Commonwealth of Massachusetts
My Commission Expires
November 16, 2012



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8-7

INVOICE
08 216801

THIS IS YOUR BILL - PLEASE PAY BY THIS INVOICE
Include invoice number(s) with your payment.

Date: 7-21-08 Sales Clerk 18
Name: Jenkins, Lela
Address: _____
Zip: _____
E-mail: _____

ORDER NEEDED BY _____
Attn: Lela
Phone: 849-5597 Ext. _____
Fax: _____
Customer P.O. _____

PRESS	UP	FINISH	DESCRIPTION	SHEETS	SIDES	8.5X11	8.5X14	11X17	STOCK	UNIT	AMOUNT
1	X	=	1 of everything						20*white	12	1087 910
2	X	=		5,733							
3	X	=									
4	X	=									
5	X	=									
6	X	=									
7	X	=									
8	X	=									
9	X	=									

STOCK ORDERED _____
 ORIGINALS FILED _____
 ORIGINALS RETURNED TO CUSTOMER _____
 PROOF NEEDED DATE _____
PLEASE READ YOUR PROOF CAREFULLY FOR TYPOGRAPHICAL ERRORS. WE CANNOT BE HELD RESPONSIBLE FOR WORK THAT HAS BEEN PROOFREAD AND APPROVED BY CUSTOMER.

SIGNATURE _____

PMS REFLEX BLACK
CUTTING
NUMBERING
PERFORATING SCORING
DRILL
OF PADS SHEETS PER PAD PAD
 IN OUT Z-FOLD 1/2 1/2 1/3) FOLD
1 UPPER LEFT SIDE BOOKLET STAPLE 16 16
COLLATE
PLATES
RIP
STUDIO TIME

Special instructions:
* slip sheet copies
re-staple originals
mc → 5588 3300 1985 7508
code → 744
ep 03/12
10022

DPM CREO
 HARD COPY DOC12
 4110
FILE UNDER
 CUSTOMER'S OWN FILE
 GENERAL FILE
 LARGE DRAWER

DEPOSIT TAKEN DATE 7-21-08
 CASH CARD CHECK # _____
DEPOSIT \$ 50.00
BALANCE \$ _____
BALANCE PAID _____ DATE _____

CASH
 CHECK # _____
 VISA M/C AMEX
REFERENCE NO. _____

PLEASE CHECK YOUR ORDER. RETURNS WILL NOT BE ACCEPTED AFTER 10 BUSINESS DAYS.
RECEIVED BY _____ DATE _____

handling	35	00
slip sheets	10	70
SUB TOTAL	749	82
NET SUB TOTAL		
SALES TAX/RESALE NO.	52	49
SHIPPING CHARGE		
TOTAL DUE	802	31

COD Bal. 752.31

PDQ PRINTING & COPYING
176 BROADWAY
NEWPORT, RI 02840
401-849-3820
27310023089801

08/08/2008 13:42:09

Sale:

Transaction # 2
Card Type: MasterCard
Acc: *****7508
Entry: Manual
Invoice # 539
Order # 216801
Amount: 752.31

Reference No.: 0002
Auth.Code: 369688
Response: AP
AUS Response: Z
Five-digit ZIP code
matches, Address does not
CUC2 Code M
CUU2/CUC2 matches with
system data.

I AGREE TO PAY ABOVE
TOTAL AMOUNT ACCORDING
TO CARD ISSUER AGREEMENT
(MERCHANT AGREEMENT IF
CREDIT VOUCHER)

X.....
SIGNATURE

MERCHANT COPY

THANK YOU!
PLEASE COME AGAIN!

Day John.txt

9 performance, although I can't recall a time where
10 I did run performance and -- and use those prices
11 or numbers to report to any database.

12 Q. Prior to Mr. Rosenblum joining
13 Locke, do you know who did run performance?

14 A. Devon Bathia.

15 Q. During your tenure at Locke, were
16 you aware of anyone else who ran performance?

17 A. Dennis Harkin.

18 Q. Why would he do that?

19 A. Because there was days upon days, I

20 -- I believe it was hundred of days that we're

21 missing prices for a lot of the accounts,

22 especially the wrap accounts, and Leila hired

23 Dennis to come in, put those prices into Axys,

24 and then with those prices, run performance.

00050

1 without pricing the securities, you can't run an
2 accurate performance.

3 Q. Understanding that you didn't --
4 doesn't sound like you had a lot of involvement
5 in performance, do you understand what was done
6 after performance was run?

7 A. Yes, the numbers were used to
8 populate the databases, so we could explain our
9 performance to potential clients.

10 Q. How do you know that, that that
11 occurred?

12 A. It was a job that Mark had done. I
13 think Erica Ruchwald did it temporarily, I
14 believe Jillian Ezra did it as well. And since
15 they were new, they were always asking for help
16 or a background about the accounts, so they could
17 populate either RFPS or the databases correctly.

18 Q. And they asked you specifically for
19 help?

20 A. Yes, I -- both Mark and I, yes.

21 Q. Did you personally have any regular
22 responsibility with respect to submitting
23 information to the databases that you described?

24 A. I don't believe so, no, no.

00051

1 Q. Understanding that -- you indicated
2 you initially were told by Ms. Hudson not to ask
3 about the confidential accounts, did you at any
4 later point learn anything more about the
5 confidential accounts, other than what you've
6 already testified to?

7 A. Yes, there were questionable things
8 that had always going on, such as never having a
9 break in the accounts, such as Leila asking that
10 they be staged with beginning of day prices, and
11 then I would notice sometimes those prices
12 wouldn't be updated. The one issue that went
13 from questionable to highly suspicious was when I
14 noticed a trade in APPA, which is AP Pharma. The
15 accounts, to get in line with the percentage
16 weight that they needed to be in -- in the
17 portfolio, were to buy 1.9 million shares and
18 sell 1.9 million shares. And it was a very
19 liquid stock. And we had had a hard time getting

Page 21

Day John.txt

20 shares for a much smaller share amount. So when
21 Leila sent an execution back for 1.9 million in
22 shares, I crossed checked the volume for the day.
23 And 1.9 million was more than the entire trading
24 volume for both entry and exit dates. And that

00052

1 is the real warning sign that -- regarding those
2 accounts.

3 Q. The trade in APPA that you mentioned
4 that you noticed, was that only a trade that had
5 occurred in the confidential accounts as opposed
6 to other client accounts?

7 A. No, I believe it occurred in the
8 hedge fund as well.

9 Q. Did you have any discussions with
10 Ms. Jenkins about that trade?

11 A. I sent an e-mail because Mark had --
12 let me remember this. I sent an e-mail, pointing
13 out that the volume was larger than the day's
14 volume. I attached a spreadsheet with the
15 corresponding volume for the entire month, and I
16 received a response that it was a capital
17 transaction, I believe, which I had never heard
18 of.

19 Q. Did you have any further discussions
20 with Ms. Jenkins after you received the e-mail
21 that you described from her?

22 A. I don't recall.

23 Q. Did Ms. Jenkins or anyone else at
24 Locke ever indicate to you who the underlying

00053

1 client -- underlying client was for the
2 confidential account?

3 A. No.

4 Q. Did you ever learn in any other way
5 who the underlying client was?

6 A. No.

7 Q. Did you ever personally communicate
8 with any representative --

9 A. No.

10 Q. -- with a client underlying the
11 confidential account?

12 A. No.

13 Q. Are you aware of anyone else at
14 Locke who ever communicated with any
15 representative of the client of confidential
16 account?

17 A. Besides Leila, supposedly, no.

18 Q. Did you ever see any written
19 communications between anyone at Locke and anyone
20 representing the confidential account?

21 A. I did not.

22 Q. Do you know where the client was
23 located geographically?

24 A. In Switzerland, I would assume,

00054

1 since the SPB acronym was for Swiss Private Bank.

2 Q. How do you know that that's what the
3 acronym stands for?

4 A. I can't recall the specific instance

Day John.txt

1 A. As best as I can recall, the only
2 other issue which would shed light on this was
3 that Mark was terminated around this time for --
4 this was one of the things that, I believe, led
5 to Mark's termination.
6 Q. What do you mean "this"?
7 A. The performance numbers and the APPA
8 trade, questioning Leila about it. And this also
9 references Leila's request to book the trades a
10 day after they had supposedly been made.
11 Q. And when you say "this," do you mean
12 the remainder of Exhibit 14?
13 A. I do.
14 Q. Just looking at Exhibit 14, it
15 appears the first several series of e-mail
16 exchanges do not all copy you, some of them do,
17 and some of them don't; is that fair?
18 A. It is, although I was aware of these
19 since Mark sits across from me, and he had shown
20 me these e-mails.
21 Q. So what did you know about this
22 issue of the date on which to book the trade?
23 Could you just describe your knowledge at the
24 time, as best you remember it?

00060

1 A. As best I can recall, I was of the
2 same opinion as Mark, in that the trades were
3 supposed to be booked at the end of 9/30, and she
4 had asked him to book them after, and when Mark
5 showed me the performance numbers, this
6 drastically changed them.
7 Q. I guess -- can you just start from
8 scratch and describe the entire issue as you came
9 to learn of it and understand it?
10 A. As best I can recall, Leila sent
11 Mark an execution report with -- with trades to
12 book on 10/1, using the prices from the day
13 earlier, the closing prices from the day earlier.
14 Mark objecting to it because --
15 Q. And this is just for the SPB
16 account, sorry to interrupt you?
17 A. Yes, yes.
18 Q. Go on. I'm sorry.
19 A. Mark had objected because it changed
20 performance, and I believe that these numbers had
21 been calculated and -- and were already set.
22 Q. Since you pause, let me just ask:
23 when you say that Mark objected because it
24 changed the performance, what did you mean by

00061

1 that?
2 A. I think it would have changed the
3 performance. If you had booked them the day
4 after, it would have changed the value of the
5 composite.
6 Q. For what period?
7 A. Ending 9/30.
8 Q. So would that be the month ending or
9 quarter ending?
10 A. The quarter, which made the
11 circumstances more suspicious because it was the

Page 25

12 end of the quarter, and that's when performance
13 would be calculated.

14 Q. And you mentioned a few times the
15 booking of the trade, what do you mean by "book"?

16 A. Integrated into the accounting
17 system and then running performance based on
18 those prices for the end of the quarter. Booking
19 in itself though is just entering the trade into
20 the accounting system.

21 Q. With respect to this particular
22 transaction that you've been telling us about,
23 the APPA trade, did you ever come to have an
24 understanding of how booking the trade on a

00062

1 different date would affect performance over
2 different periods?

3 A. From what I recall, it would have
4 changed one of the SPB accounts significantly for
5 quarter end to benefit the SPB accounts.

6 Q. Can you quantify that at all,
7 quantify that --

8 A. Approximately, a ten percent change,
9 something like that.

10 Q. And do you know how you determined
11 it or how anyone else determined that percentage
12 change?

13 A. Well, that number is in my head from
14 what Mark had mentioned that the trade would have
15 impacted the -- the account. I did not run that
16 performance myself. So it's what I -- from what
17 I recall from, you know, our conversation.

18 Q. And I think you characterized these
19 events that we've been looking at in Exhibits 14
20 and 15 as leading to Mr. Rosenblum's termination;
21 is that your testimony?

22 A. Yes.

23 Q. Could you describe what you mean by
24 that?

00063

1 A. When Mark ultimately refused to book
2 the trades at the date and price that Leila had
3 asked him to, he had asked for custodial
4 statements to verify this. And since she would
5 not produce a custodial statement, Mark would not
6 book the trades or change the performance, and he
7 was fired that morning for refusing to do so
8 until he received the custodial statement.

9 Q. With respect to what you just
10 testified to, how do you know all that?

11 A. Because Mark was on the phone with
12 Leila, and I was sitting across from Mark. And
13 after -- this all didn't happen one day; it did
14 happen, I believe, the day before, and it was a
15 discussion he had with Leila when he put his foot
16 down, saying I won't do this anymore, in which he
17 was fired. After he was fired, Leila wanted to
18 speak to me, and she wanted me to escort him out
19 of the building, and that's all I know.

20 Q. Do you recall what date that was
21 that you had the conversation with Ms. Jenkins
22 where she asked you to escort Mr. Rosenblum out

24 prices, you want to book them on October 1st. Is

00173

1 it your testimony that you felt that way because
2 he didn't want to impact performance?

3 A. Can you just repeat the question?

4 Q. Is it your testimony that Mark
5 didn't want to book trades traded on October 1st
6 with September 30th prices because it would
7 impact performance?

8 A. No, I don't think that's the primary
9 reason.

10 Q. Oh, well, then can you tell me what
11 it was?

12 A. I believe the information he had
13 was, you asked him to change the initial entries,
14 and because changing those initial entries -- I
15 mean, it would change performance, but I think
16 the issue was more changing the initial entries,
17 and the change in performance was incidental to
18 that.

19 Q. Can we clarify this: Are you saying
20 that Mark entered the trades on September 30th
21 and didn't want to change them to October 1st?

22 A. From my understanding, Mark's
23 instructions to enter the trades were changed.
24 After he had his initial instruction, another set

00174

1 came out, is how I understood it.

2 Q. If you don't mind, we won't bother
3 going over it because we did it in Mark's
4 deposition, but he -- the discussion was all
5 about when to book the trade and not that he had
6 done so when he was told to change them, but it
7 would be -- like I said, we covered it with Mark,
8 so we don't need to waste your time on it.

9 We've got something I would like to
10 get back to that's slightly related. You said in
11 your testimony earlier, when we got on to the
12 APPA trade, that you found it to be highly
13 suspicious. How did the APPA trade get into the
14 HFACF account?

15 A. I believe I modeled and staged it
16 since it was a trade that went in to the hedge
17 fund, and the HFACF, without other instruction,
18 is to be traded as was the GLSEF account. So a
19 position going in to the GLSEF account would also
20 go into the AP -- or would also go in to the
21 HFACF account. And the trade was staged, a
22 hypothetical price was entered, and you were sent
23 the potential trade.

24 Q. And how did trades come out of the

00175

1 account?

2 A. I don't understand what that means.

3 Q. You just said the trade went in to
4 the account because you modeled the trade, put it
5 in to the spreadsheet that went to the client.
6 And my question is: How did the trade come out,
7 did it come out the same way, you modeled it in a
8 spreadsheet to take it out?

Day John.txt

9 A. I don't recall how it came out of
10 the portfolio. I don't recall the circumstances
11 of when the position was closed. I do recall,
12 when I saw the execution data, that the volume
13 for that stock was much higher than it showed the
14 -- or the volume of our position was much higher
15 than the entire volume of the trading day, which
16 is what made the trade stand out.
17 Q. Do you remember when you became
18 highly suspicious about this trade?
19 A. I don't recall exactly.
20 Q. I think I have a note here that --
21 Exhibit 15, the SEC Exhibit 15, about the --
22 about the trade, if you could look at that. And
23 there's a -- well, why don't you tell me when you
24 get to it.

00176

1 A. Okay. I'm -- I'm there.
2 Q. Okay. There's an e-mail from you on
3 November 8th where you talk about how Mark has
4 brought it to your attention that he's got
5 difficulty reconciling this, and you go in to
6 your discussion about the trading volume. And in
7 the end, you said, please tell me the group that
8 it comes from. Did you think I was dealing with
9 brokers for this account?
10 A. I assume you're asking about the
11 HFACF account?
12 Q. Right.
13 A. Yes, as far as I understood, when we
14 would submit a sheet to you, you would forward
15 that on to a confidential broker who would
16 execute them and send the prices back to you,
17 which you would then, in turn, send back to us.
18 Q. Did you understand that we were the
19 sub-advisor on these accounts?
20 A. No.
21 Q. So that means you never knew that
22 these accounts were traded just like Reliance was
23 traded, same modeling, same Excel spreadsheet,
24 and send the information to the client, and they

00177

1 execute it. You don't recall our talking about
2 how the client was doing the execution, as did
3 about a half dozen other of our clients; you
4 don't recall that?
5 A. No.
6 Q. I want to go -- if you'd just hold
7 that exhibit there, if you would, please, and if
8 you would go to the LCM Exhibit B.
9 MS. SEVILLA: All right. Ms.
10 Jenkins, hang on while I get that. What
11 letter was that again?
12 MS. JENKINS: B, as in bravo.
13 MS. SEVILLA: Okay. I'm handing B
14 to Mr. Day. (Handing.)
15 A. Okay. I have B in front of me.
16 Q. We'll get into it. Well, are you
17 dealing with paper or electronic?
18 A. Paper.
19 Q. Okay. Well, it's -- it's a file

Day John.txt

20 titled -- anyhow, it's the September price and
21 volume attachment you sent to me with that e-mail
22 on November 11th.

23 A. Okay.

24 Q. And your e-mail on November 11th

00178

1 talks about they're buying the 1.9 million
2 September 2nd, and they're selling it on October
3 1st, and the total volume on September 2nd, and
4 the total volume from the 2nd to the 29th, being
5 still less than a million, and the total volume
6 on the 1st being 316. And the tone of your
7 e-mail is just -- you know, this just couldn't
8 possibly have happened; correct?

9 A. I wouldn't speak as to the tone, but
10 the numbers you gave were accurate.

11 Q. Well, the numbers you give, John.

12 A. Well, the numbers you read, yes.

13 Q. I'm reading your e-mail, and we're
14 reading the chart. Anyhow, I didn't open this
15 chart until recently where all of a sudden
16 4-and-a-half million shares in one day, the day
17 before the trade, jumps off the page. So I
18 thought it was rather gross misrepresentation
19 that you write the way you write. But my
20 question is: why is it November 11th that you're
21 all of a sudden getting highly suspicious about
22 trades purportedly done in September?

23 A. Right now, I can't recall the
24 details. Potentially, that was the first time

00179

1 that was brought to my attention, but again, I
2 don't recall.

3 Q. Right, but we did agree earlier that
4 the major points of your job were to maintain
5 consistency, client guidelines, and portfolio
6 construction. And you had the primary
7 responsibility of putting the trades together,
8 and yet you put the buy in for this stock and the
9 sell in for this stock when they were extensive
10 liquidity problems, and it never came to your
11 attention.

12 A. What exactly is the question?

13 Q. The question is: why did it take
14 until the 11th of November for you to get
15 concerned when it's your primary responsibility
16 to be putting these portfolios together properly
17 and use the liquidity risk settlements to have
18 gotten by you?

19 I mean, I'm sure you will be pleased
20 to know that the trade was never done because you
21 were right, it couldn't be done. But I just -- I
22 just don't understand why it takes so long for
23 you to get highly suspicious when all the
24 information was right in front of you the whole

00180

1 time, and you would have brought it to my
2 attention at any time. But as we found out, they
3 -- they received so many mistakes, they ended up
4 staying in cash, which was pretty good for them.

Day John.txt

5 we talked earlier about my
6 explanation for this trade. When you brought it
7 to my attention, I think you saw in the e-mails
8 that I said, well, it must have been a private
9 transaction because they've done that in the
10 past, and you seemed to get confused about the
11 difference between a private transaction and a
12 programmer basket trade; am I right? Are those
13 confusing to you, or did I get that wrong?

14 A. Is the difference between a private
15 transaction and a program trade confusing? I
16 don't know what a private transaction is, so the
17 difference, I guess, would be confusing.

18 Q. Do you know how a program or a
19 basket trade works?

20 A. I do.

21 Q. Excuse me?

22 A. I -- I do.

23 Q. Can you tell me how you think it
24 works?

00181

1 A. Through principal risk bids where
2 the broker will give you a price on what they --
3 the premium it will cost to execute that basket.

4 Q. Is it possible to call up a broker
5 and say I would like to trade this basket on
6 today's closing prices?

7 A. I -- I honestly -- is it possible?
8 I guess it would be possible, there are orders
9 like market and close orders which would
10 accomplish that. I -- I don't see -- I don't see
11 -- I guess it would be possible to execute things
12 on the last print of the day through the use of
13 market on close orders.

14 Q. Do you have any --

15 A. Highly, highly advised against,
16 but --

17 Q. Do you have any experience with
18 these kinds of trades?

19 A. Market on close orders, I have lots
20 of experience with them.

21 Q. So would you have experience with
22 large baskets, you know, like a \$500 million
23 basket of stocks being traded on market close?

24 A. No, I do not have any experience

00182

1 with a basket being traded on the market close.

2 Q. Would you know when that trade
3 executed or not?

4 A. I don't understand the question,
5 when -- what trade?

6 Q. If a client calls a broker, wants to
7 execute a large basket on market closing prices,
8 would you know at what time of day that trade
9 might be traded?

10 A. I don't see -- am I the person
11 requesting this? I don't see the hypothetical.
12 What do you mean, as a third party, would I know?
13 I don't understand the question.

14 Q. No, no, do you think it's possible
15 for that trade to be executed from the market

Day John.txt

2 A. Because there were positions that I
3 had entered that were placed on the first tick of
4 the day, so maybe a hundred shares had been
5 executed or maybe a premarket print that still
6 remained in the books which were never updated
7 with the actual execution.
8 Q. would it have been the close from
9 the day before?
10 A. No, I said the first tick or
11 sometimes a premarket trade, there's a
12 placeholder to get a price to model the trades
13 for that day.
14 Q. would that same number have been a
15 tick away from the close the day before?
16 A. Could have been.
17 Q. And if you were so suspicious about
18 this, why didn't you ever bring it up?
19 A. I did bring it up, I brought it up
20 to Derrick, I called FINRA about it and spoke
21 with an analyst there. I called other trading
22 professionals to ask if they had ever heard of
23 anything like that, guys who run shops that do
24 hundreds of millions of transactions a day. And

00232

1 other industry professionals had never heard of
2 the transaction that you were describing.
3 Q. You said earlier that you called
4 FINRA to check out the APPA trade. Were you
5 regularly calling FINRA to check out these
6 trading prices?
7 A. I was not.
8 Q. I guess I don't understand, if
9 you've got any issues, why -- I mean, I never
10 heard a word about it and --
11 A. Again, the --
12 Q. Did you -- did you have a lot of
13 conversations with Derrick about it?
14 A. No.
15 Q. No. You said earlier that you
16 thought you couldn't discuss this because you
17 might lose your job; is that right?
18 A. No, I don't remember saying that.
19 Q. You said when you were talking to
20 Derrick, you didn't bring up your concerns
21 because you might get fired like Mark did, I
22 think, is what you said?
23 A. I don't remember saying that.
24 Q. Am I right or -- maybe I got it

00233

1 wrong.
2 A. I believe I did not say that.
3 Q. And can you tell me the time horizon
4 of these concerns? Were you concerned in October
5 of '07 when you just started?
6 A. No, I did not understand the
7 accounts, nor had I had the experience with them
8 to be suspicious.
9 Q. And when did you first become
10 concerned?
11 A. I can't put a date on it, small
12 items started to concern me when I noticed prices

Day John.txt

13 would not be updated for placeholder prices I
14 had put. And the first time an issue which I
15 could point to with some conviction that I knew
16 was not right was the APPA trade, and it was that
17 time where I was certain that that transaction
18 could not be done and not reported to any source,
19 where I called FINRA and other industry
20 professionals to ask for background on it.
21 Q. we established earlier you didn't
22 get concerned about that until six to eight weeks
23 after it happened, and I just find it
24 extraordinary that you're calling up regulators

00234

1 without even mentioning this level of concern to
2 me. I got one e-mail. And I certainly
3 understand there's a liquidity problem with the
4 trade, I didn't look at the numbers, but I
5 figured if the client reports they did it, the
6 client reports they did it. And clearly, you
7 know, by the time we got to December and I had
8 taken over the reconciling and settling up of
9 with all the accounts, we discovered it hadn't
10 been done, but wouldn't it have been an awful lot
11 easier to discuss it with me and say, hey, I
12 mean, you -- you've already said you understood
13 that I'm just passing the trades to the client,
14 and the client's passing the execution back to
15 me, so I'm certainly not going to be sensitive to
16 any of the ticks on the market, open or not,
17 because I'm not sitting in front of a trading
18 machine. And we established that it's a major
19 part of your job description to be doing this
20 work, reviewing the portfolios, where your first
21 port of call with any problem was supposed to be
22 me.
23 Do you have any explanation for why
24 the trades and the confidential accounts deviate

00235

1 so significantly in October, which seems to be
2 about the same time as all this concern is
3 developing?
4 A. I can't speak for those numbers and,
5 therefore, I have no explanation. I can't verify
6 that they're accurate or that the data from which
7 they had been created is accurate; therefore, I
8 can't answer that.
9 Q. Did you agree earlier that you
10 remember Mark talking about the active accounts
11 are down six and the SPB accounts are down 16?
12 A. Yes, I remember Mark had mentioned
13 -- or -- or some part of the conversation where
14 the changes would have made a discrepancy in the
15 performance.
16 Q. But you have no explanation for how
17 that will happen, is that correct, when you've
18 got the instructions to trade the same for all of
19 them, in fact, you do that quite successfully for
20 five out of six months, and the whole thing falls
21 apart in October. So is your final comment is
22 you just have no explanation for it?
23 A. I can't speak to the data that you

Day John.txt

16 Hudson. I had heard many offhand comments, one
17 from even Leila's brother Ted, saying that I
18 wished she would just end that relationship
19 because it's going to cause her more grief or
20 trouble than good. The manner in which they were
21 traded, I had asked other industry professionals,
22 and no one had heard anything like it. There
23 were prices that were never updated, placeholder
24 prices, which were never updated. volume

00246

1 concerns, this would be stocks that would be
2 extremely hard to get, shares of which this
3 confidential broker seemed to get shares
4 effortlessly. And then when I would be impressed
5 with that they were able to get so many shares in
6 that time frame, I would review the charts to see
7 what impact, if any, they had, and they never had
8 any impact, especially on a big position in a
9 liquid stock.

10 Q. Impact on what?

11 A. On the price, usually if you had a
12 lot of shares to buy in liquid stock, you move
13 the price. The timing in which we would get
14 executions back seemed awkward, we wouldn't get
15 executions back for sometime several days or
16 weeks. Those are the ones that come to mind
17 right now.

18 Q. During your tenure at Locke, did you
19 draw any conclusions in your mind concerning the
20 SPB accounts?

21 A. Towards the end where I had a -- a --
22 trade that I couldn't explain, and as I said
23 earlier, I could have some conviction about it
24 being a false trade, that's when I drew the

00247

1 conclusion that the trade did not happen or the
2 accounts weren't real.

3 Q. And the basis for that conclusion
4 was the APPA trade that you talked about earlier?

5 A. Yes, because it was a definitive
6 quantifiable piece of evidence to me.

7 Q. Did anything else contribute to that
8 conclusion?

9 A. Well, all of the smaller misgivings
10 that I had had earlier; when I first started, I
11 just had assumed that I didn't know enough about
12 the relationship to have any right to be
13 suspicious about it, but as I learned more and
14 more about the way everything worked at the
15 company, it became more and more suspicious, and
16 it climaxed at the point where that trade where I
17 can point to a volume number and say that there's
18 no way that that trade was executed in this stock
19 during that time.

20 MS. SEVILLA: Okay. Thank you, Mr.
21 Day, those are all my questions. Before
22 we go --

23 MS. JENKINS: I have --

24 MS. SEVILLA: Before we go off the

00248

Day John.txt

1 record -- just one minute, I'm not done
2 yet. Before we go off the record, I just
3 want to register an objection to Locke
4 Exhibits -- any questions Ms. Jenkins
5 asked concerning or relating to Locke
6 Exhibits, including Locke Exhibits A, B,
7 F, H, and K; that's A as in Apple, B as in
8 boy, F as in forest, H as in horse, and K
9 as in kite. And the basis for that
10 objection is lack of foundation.

11 Ms. Jenkins, do you have anything
12 further?

13 MS. JENKINS: Just quickly.
14

15 FURTHER EXAMINATION

16 BY MS. JENKINS:

17 Q. John, while I was away, I don't
18 know, September, October, something, the SEC, the
19 -- one of the examiners from June, sent a copy of
20 the confidential account contract back to the New
21 York office, which when I returned was open and
22 on my desk. Do you remember seeing that?

23 A. I don't remember seeing it.

24 Q. Well, it's unfortunate, but -- you

00249

1 know, we called them confidential. Did you get
2 the impression that they were extremely
3 confidential accounts?

4 A. I did.

5 Q. So that it's entirely possible that
6 other people in the company didn't know about
7 them because I wasn't permitted to share that
8 information?

9 A. I guess that's possible, I wouldn't
10 know.

11 Q. You said the timing of executions
12 coming back seemed awkward, but even though we're
13 on record all over the place for having very
14 large confidential sub-advisory accounts, you
15 seemed to have just learned today that we were a
16 sub-advisor and not dealing with a broker. But
17 did you ever see executions coming back from
18 Reliance or MyVest or Clarke or Lockwood or any
19 of the other sub-advised accounts?

20 A. Yes.

21 Q. Can you tell me about some of the
22 executions you saw coming back from MyVest?

23 A. I did not see executions from
24 MyVest.

00250

1 Q. So you did or did not?

2 A. I did not.

3 Q. What about Reliance?

4 A. I did not see executions for
5 Reliance.

6 Q. I'm sorry. I didn't -- you said did
7 not or you did?

8 A. I did not.

9 Q. Okay. So the fact that we got them
10 at all makes them more reliable than those
11 accounts.

1 A I was placing orders on behalf of Locke Capital on
2 behalf of them.

3 Q Okay. And then they would go ahead and execute them?

4 A That's right.

5 Q Well, let me back up for a second.

6 Did that accounting software have any particular
7 name?

8 A It was Advent Axys; A-X-Y-S.

9 Q A-X-Y-S?

10 A Right.

11 Q Okay. Now, during your first period of time at
12 Locke Capital, who else worked there besides yourself and
13 Ms. Jenkins?

14 A Cindy LaFay, Cynthia LaFay.

15 Q Okay. And what was Ms. LaFay's job?

16 A The same as mine.

17 Q And I believe you said earlier that you left
18 Locke Capital the first time in -- sometime in 2000; is
19 that right?

20 A It would have been '02.

21 Q Oh, no, I misspoke, 2002?

22 A Right.

23 Q Sorry. And do you recall when in 2002?

24 A Not exactly. I'm going to say May or -- May-ish.

25 Q Close enough. Now, when you left in -- Locke Capital

1 in 2002, was that a voluntary departure?

2 A There were no clients, paying clients. It was after
3 the 2000 -- it was after 9/11 and the market was pretty
4 devastated.

5 Q So was it your understanding, at the time that you
6 left, that there were no more paying clients at Locke
7 Capital?

8 A That's right.

9 Q Okay. Now, I think you said earlier that you started
10 working at Locke Capital again in approximately late 2005?

11 A I believe that's correct. It might have been early
12 '06, but I believe it was 2005.

13 Q Okay. And how did it come to be that you went back
14 to Locke Capital?

15 A Leila just called me one afternoon and asked what I
16 was doing, if I would be available to work part time.

17 Q And you agreed to do that?

18 A Absolutely. I was unemployed.

19 Q Okay. And at the time that you started working at
20 Locke Capital again, where were the company's offices?

21 A At that time she was working out of Rhode Island and
22 I worked from home, which was in West Palm Beach.

23 Q And when you returned to Locke Capital, did you have
24 a job title?

25 A Job titles -- the company was very small. If I had a

1 be able to tell Mr. Huntington that you were working there
2 through '03, not '02.

3 A Okay.

4 Q Because it was -- I just want to make sure you agree
5 with that because that was the year we started to lose
6 those accounts and we actually ended up with the -- only
7 with the Swiss accounts in November of '03.

8 Would you agree with that?

9 A November does not sound right, but it's possible,
10 Leila. I'm sorry, I don't have any Locke Capital records.
11 I would have done a little more research to see, you know,
12 what number of clients we had at what time, but I don't
13 have any reason to disagree with you on that. I really --
14 I really thought it was '02 and I really thought it was
15 summer and -- but it could be '03.

16 Q Do you remember when -- after Cindy left, saying to
17 me that you were mostly in the office by yourself and how
18 you really didn't much want to go to work there by
19 yourself anymore?

20 A Yes, and I was working from home.

21 Q We got rid of that office in May of '03.

22 A Okay.

23 Q And you were working from home.

24 A Okay. Well --

25 Q It would have been -- September, October is when I

1 ran out of enough money to keep paying you.

2 A Okay.

3 Q And then other things I wanted to have on the record:

4 Do you remember all the filing cabinets in that office in

5 West Palm Beach?

6 A Yeah, I brought it all with me to Little Rock.

7 Q Well, you brought your files, but do you remember the

8 big files in the front of the office, when that --

9 A Oh, yeah. Yes.

10 Q I mean, today Locke Capital Management still has all

11 those files with your handwriting and what they are, are

12 all the custodial statements that were organized --

13 A Right, where I balanced monthly --

14 Q -- by client, month by month, year by year?

15 A Right.

16 Q So you say you remember doing all that?

17 A Absolutely, yes.

18 Q And that was -- and I think Cindy did some of it,

19 too, I thought.

20 Well, do you remember when we got new clients, that

21 you would interact with the custodian and set up the

22 attempt to trade with brokers and custodians and --

23 A Yes.

24 Q -- get them?

25 And what I remember, is that those custodians sent us

1 remain available to work part time should there be work to
2 do and money with which to pay you.

3 Do you remember that?

4 A Well, yeah. Yeah, I think verbally we agreed that,
5 you know, if you needed me, I would be there for you.

6 Q And I mean, obviously you were trying to do other
7 things?

8 A Yeah, I got another job and I tried to run my own
9 company, and quickly learned I couldn't do that and --

10 Q You bought some software to do something with that?

11 A Right.

12 Q But we were in touch from time to time, where I
13 explained that we weren't making much money, but
14 ultimately, in -- in the fall of '05, I was summarily
15 dismissed from my London situation and had decided that,
16 since I hadn't been able to find additional clients -- and
17 do you remember my saying that it was difficult to get new
18 clients because we only had a handful of clients onboard?

19 A Yes, I do.

20 Q Because -- do you remember my going to a presentation
21 in Illinois -- I think it was for the University of
22 Illinois --

23 A Yes.

24 Q -- where we were looking for emerging money managers
25 and I flew -- I remember thinking there was some talk

1 about you coming because it wasn't so far from Little
2 Rock --

3 A Right.

4 Q -- but we came second. We didn't get that account.
5 But do you remember that at all?

6 A I do.

7 Q Yes. And they were amongst the people that would
8 have asked us to come to present and they would say, you
9 know, "great practice, great performance, come back when
10 you've got more accounts." Which made it difficult if we
11 didn't get more accounts, we couldn't come back when we
12 got more accounts.

13 A Right.

14 Q But in '05, I started to learn about we had been
15 running a long-short account since January of '04 and I
16 thought that -- I'd learned that that's a support system
17 for hedge funds, which include -- included prime brokers
18 and they included a capital raising aspect to that, so I
19 spent -- well, I spent a couple of weeks in New York
20 heading up a hedge fund. And it was at that time that I
21 called you and asked if you could come back part time,
22 which you did because you weren't doing something else at
23 the time and you seemed quite happy to come back.

24 Is that your recollection?

25 A Yes.

17

1 clients. So it was really up to any individual
 2 institution and how they went about their business as to
 3 which databases they might use.
 4 Q. Okay. I guess my question was probably not as
 5 clear as it could have been. Who did you understand
 6 would be looking at the data that you had submitted to
 7 those various databases?
 8 A. In the first instance the consultants look at
 9 it, and secondarily their clients. So I would say, you
 10 know, none other than institutional investors,
 11 sophisticated large investors.
 12 Q. Now, did Locke Capital also prepare marketing
 13 materials of some kind?
 14 A. I would say rather badly.
 15 Q. Okay. What kind of marketing materials did
 16 Locke Capital prepare?
 17 A. We just about always had a brochure going.
 18 Q. How did you use the brochures?
 19 A. Somebody called up and said, "Could we please
 20 have some information". We'd go, "We'll send you our
 21 brochure".
 22 Q. And who at Locke Capital prepared the
 23 brochures?
 24 A. Quite a few people. Usually the junior person.
 25 Q. Did you look at the brochures before they were

18

1 sent out to a client, or anyone who happened to ask?
 2 A. Not usually.
 3 Q. Well, generally speaking, did you -- had you
 4 looked at the current version of the brochure at any
 5 particular point in time so you knew what it said?
 6 A. It didn't change very much. So it usually, I
 7 would say, once a quarter the performance would be
 8 updated.
 9 Q. Did you have an understanding of what kind of
 10 information clients who would be looking for investment
 11 advisory would consider important information?
 12 A. I have an understanding of what they say is
 13 important to them.
 14 Q. Okay. What did you understand the clients were
 15 typically looking for when they were out comparing and
 16 potentially hiring an investment adviser?
 17 A. They -- I guess I found, because we were really
 18 only talking to very sophisticated investors, I found
 19 that they were most interested in our risk
 20 characteristics.
 21 Q. And what -- did you have a sense of what else
 22 they were interested in?
 23 A. Investment process.
 24 Q. Anything else?
 25 A. Control systems.

19

1 Q. Anything else?
 2 A. They -- I suppose this is why I smiled -- they
 3 usually said that performance wasn't particularly
 4 important, but I don't think you got the phone call
 5 unless you were in the top half of the database.
 6 Q. Did you understand that clients considered an
 7 adviser's assets under management as something they were
 8 looking at?
 9 A. That seemed to matter less and less. They
 10 pretty much -- you know, sort of the hurdle was once you
 11 have a hundred million they didn't really care. They -- they
 12 were much more interested in your process. They -- they
 13 normally had rules, such as, the State of California, for
 14 instance were -- I haven't personally managed money for
 15 them -- I don't think hands out accounts of less than
 16 five hundred million dollars. So, they're not going to
 17 give a money manager with a hundred million five hundred
 18 million.
 19 Q. Sure.
 20 A. So that's why I said they -- it didn't really
 21 matter to us, because we wouldn't be talking to somebody
 22 like that.
 23 Q. Now, I take it from some of the communications
 24 we've had in the past, is it your position that Locke
 25 Capital had a client that was based in Switzerland?

20

1 A. My position as -- well, we had, over the years,
 2 several clients in Switzerland.
 3 Q. Can you name them for me?
 4 A. Probably not all of them.
 5 Q. I'm sorry?
 6 A. Probably not all of them. I mean, if you're
 7 particularly interested in the confidential one, the name
 8 on that contract was AMAG. And we -- I'm just trying to
 9 -- I worked a lot more in Switzerland in the eighties and
 10 the nineties than I did in the recent years.
 11 Q. Well, for the eighties that would have
 12 certainly been before Locke Capital was created, right?
 13 A. Right.
 14 Q. How about in the nineties?
 15 A. We had a lot of overlap between our
 16 broker-dealer and the money manager.
 17 Q. When did AMAG become a client of Locke Capital?
 18 A. I say -- I guess -- well, one of the things I
 19 was going to say earlier, when I asked if I could make a
 20 statement, is that I have -- I have to make a lot of
 21 statements that are without prejudice to my case because,
 22 as we've discussed, I don't have access to Locke's
 23 official critical data any more. Haven't had it since
 24 the middle of March. So, I say without prejudice my
 25 recollection is '97.

21

1 Q. Where was the AMAG located?

2 A. Zurich.

3 Q. Can you tell me what kind of business AMAG was?

4 A. I don't know for certain. I assume them to be

5 a family office or independent asset manager, or a small

6 investment advisory company. I never -- I would not have

7 known exactly how they were classified in Switzerland.

8 Q. You said, do not know what form of organization

9 the company was, for example, a partnership or a

10 corporation?

11 A. I don't know. No.

12 Q. Is AMAG the client that was sometimes referred

13 to within Locke Capital as "the SPB"?

14 A. They labelled accounts we have with them as SPB

15 accounts.

16 Q. And how did AMAG label those accounts as SPB?

17 How did you know that that's what they were labelling

18 them?

19 A. Just what they told me. That's how they

20 referred to them.

21 Q. Did you have an understanding of what SP --

22 strike that. Did the letters "SPB" mean anything, as far

23 as you knew?

24 A. No.

25 Q. As an acronym for something?

22

1 A. I don't know.

2 Q. Did you ever meet anyone from AMAG?

3 A. I understood that I met people from AMAG.

4 Q. Well, do you have some doubt as to -- first of

5 all, who were the people you were referring?

6 A. Mr. Hoffman and Mr. Hoffman.

7 Q. There were two "Mr. Hoffmans"?

8 A. There were two Mr. Hoffmans.

9 Q. Do they have first names?

10 A. I understood the young male to be Peter.

11 Q. And was there an older -- I gather there was

12 also an older Hoffman?

13 A. Yes.

14 Q. You don't know his first name?

15 A. No.

16 Q. Did you understand there was a family

17 connection between the two?

18 A. I believed there to be, but I don't know what

19 it was.

20 Q. When did you meet -- you met both of the

21 Hoffmans, I take it?

22 A. Yes.

23 Q. How many times?

24 A. The younger man I met just once. The senior

25 Mr. Hoffman I don't know whether it was three to six,

23

1 something like that.

2 Q. Three to six times?

3 A. Yeah, roughly.

4 Q. Where did the meetings take place?

5 A. In Zurich.

6 (11:54 a.m.)

7 (Off the record)

8 (11:55 a.m.)

9 Q. All the meetings were in Zurich with both

10 Hoffmans; is that what you just said?

11 A. Yes.

12 Q. When was the first one, the first meeting?

13 A. I'm not exactly sure. But I believe in the

14 mid-nineties.

15 Q. Did you keep any notes of any of your meetings

16 with the Hoffmans?

17 A. I might have.

18 Q. Do you still have them?

19 A. Probably.

20 Q. Where would they be?

21 A. In the files.

22 Q. And when you say "the files", what do you mean?

23 A. The Locke Capital files in the office in Rhode

24 Island.

25 Q. Are the Hoffmans the only two people from AMAG

24

1 that you ever met?

2 A. I think so.

3 Q. When I first asked you if you met anyone from

4 the Swiss client it sounded like you had some

5 qualification to the answer. Do you actually -- or do

6 you actually have some doubts as to whether the Hoffmans

7 really were affiliated with a company called AMAG?

8 A. It's difficult to know, in that when you arrive

9 at the building, as I found in many places in Europe,

10 there are multiple names listed next to all the offices.

11 And when I was last there it seems that they were

12 subtenants of another firm that I had initially been

13 introduced to. So I don't know whether they were -- I

14 don't know how many companies were being managed from the

15 office space where I met them.

16 Q. Did they give you business cards at any of

17 those meetings?

18 A. I don't remember.

19 Q. Now I take it, were you ever at, in front of a

20 building in Zurich that you understood to be the offices

21 of AMAG?

22 A. Yes.

23 Q. Okay, what was that location? Do you recall

24 the address?

25 A. Dufourstrasse 107.

29

1 Q. Yes.

2 A. Just notes.

3 Q. What email address did you use for AMAG once

4 you started using email?

5 A. The -- I set up an email that they were not

6 happy about, at the suggestion of SEC staff in June of

7 2008.

8 Q. What was that email address?

9 A. It had to do with subadvising trading or

10 something. I'd have to go back to the data.

11 Q. We may see it in a document later. I take it

12 did AMAG not have its own email address at all?

13 A. I don't know.

14 Q. Did you keep the emails that you sent to AMAG

15 once you had set up the address that we just talked

16 about?

17 A. Sure.

18 Q. In a Locke Capital computer somewhere?

19 A. Yeah, yeah.

20 Q. Now, how did you go about setting up that email

21 address?

22 A. You get on the internet and you set it up.

23 Q. And how did -- did you have an understanding of

24 how someone from AMAG could access the emails?

25 A. Yeah, they have the email address and a user

30

1 name and a password and they use the email address.

2 Q. So you could -- you would send an email to that

3 address from your email to them and then they would be

4 able to access it, is that how you understood it worked?

5 A. Mmm-hmm.

6 Q. Did Locke Capital have custody of AMAG's

7 assets?

8 A. No.

9 Q. Who did?

10 A. I always believed it to be Chase.

11 Q. And when you say "Chase", do you mean the

12 JP Morgan Chase institution or not?

13 A. Well, it is now. I think it was just "Chase"

14 when it started.

15 Q. And how did you get an understanding that the

16 AMAG's assets were at Chase?

17 A. Because they sent me documents that had "Chase"

18 on it.

19 Q. What documents did they send you?

20 A. They sent me documents in response to my

21 request for custodial statements.

22 Q. How often did you request custodial statements

23 for the accounts at Chase?

24 A. I don't know. You know, I -- I ended up with

25 more over time.

31

1 Q. Well, did you need -- did you need to get the

2 custodial statements on a quarterly basis in order to do

3 whatever Locke Capital was doing?

4 A. It would have been helpful.

5 Q. Did you get them on a quarterly basis?

6 A. No.

7 Q. Did you ever contact Chase directly to get the

8 statements?

9 A. No.

10 Q. Did you ever speak to anyone at Chase about the

11 accounts for AMAG?

12 A. No.

13 Q. Did the performance calculations that Locke

14 Capital did for its various strategies include results

15 for AMAG?

16 A. Some of them.

17 Q. Which ones?

18 A. Depended on which strategies and which time

19 frames and what the request was for. So if somebody

20 wanted our international composite, when we had an

21 account from them it was in -- I could refer you to the

22 GIPS rules -- that's G-I-P-S, for Global Investment

23 Performance Standards -- which talk about, you know, when

24 you have an account and when it's in a composite and when

25 it's out of a composite.

32

1 So, for instance, once those confidential

2 accounts were significantly interfered with or violated,

3 or sabotaged, whatever you want to call it, in the fourth

4 quarter of 2008 we had to take those accounts out of the

5 composite.

6 Q. I should have asked you this before -- which

7 investment strategies of Locke Capital's did AMAG

8 participate in?

9 A. They had -- by the end they had global long,

10 international long, US long and global long/short.

11 Q. Is that all four of the strategies that Locke

12 was offering?

13 A. Well, we also had international ADR only and

14 global ADR only.

15 Q. And they didn't sell them?

16 A. They didn't do that.

17 Q. Now, did any of -- anyone at Locke Capital,

18 other than yourself, ever speak with anyone at AMAG, as

19 far as you know?

20 A. As far as I know not, with one exception. I

21 was told my former husband spoke to them.

22 Q. Well --

23 A. And I don't know whether he would ever rate as

24 a Locke employee or not.

25 Q. What's the name of your former -- the former

37

1 exhibit 1. It's just a couple of excerpts from her
 2 deposition. In particular I point you to page 67, which
 3 is the lower left of the sheet that I've handed to you.
 4 A. Mmm-hmm.
 5 (Exhibit 1 marked for identification.)
 6 BY MR. HUNTINGTON:
 7 Q. And if you'll notice on line 6 and 7, this is
 8 you asking question to Ms. Hudson?
 9 A. Right.
 10 Q. And in lines 6 and 7 you said at the time that
 11 "we actually ended up with the -- only the Swiss accounts
 12 in November of '03"; do you see that?
 13 A. That's entirely possible.
 14 Q. Well, in fact, is that not the case?
 15 A. Well, I think it's -- what I'm trying to think
 16 of is when we had other accounts -- and without being
 17 able to look at the data -- so I could probably go back
 18 to the data and tell you that yes, in November those were
 19 -- we didn't have other accounts. But I'm not sure right
 20 now.
 21 Q. Did you have the data in front of you when you
 22 made that statement during Ms. Hudson's deposition?
 23 A. You'd have to tell me when the deposition was.
 24 Q. Sure.
 25 A. Or its on here.

38

1 Q. It's on the front page. That deposition was on
 2 February 17th, 2010.
 3 A. Yes.
 4 Q. Did you look at the data before making that
 5 statement?
 6 A. Probably.
 7 Q. Are you sure?
 8 A. No.
 9 Q. After November 2003 for what period of time did
 10 Locke Capital only have the AMAG accounts?
 11 A. I'd have to look at the data.
 12 Q. Can you make no estimate at all, sitting here
 13 today, without the data?
 14 A. I don't think so.
 15 Q. When did you re-hire Ms. Hudson?
 16 A. Early '06.
 17 Q. And did Locke Capital at early '06 start to get
 18 other clients?
 19 A. Yes. But a lot of other clients.
 20 Q. Would it be fair to say that Locke Capital was
 21 inactive during 2004 and 2005?
 22 A. No.
 23 Q. Okay. I'd like to show you a document we've
 24 had marked as exhibit 2. This is an excerpt from the
 25 document. Have you seen exhibit 2 before?

39

1 A. It looks like something from my divorce
 2 solicitor in the UK.
 3 (Exhibit 2 marked for identification.)
 4 Q. Is this a financial statement that was
 5 submitted on your behalf in the divorce proceedings in
 6 the United Kingdom?
 7 A. I don't know. It could be but --
 8 Q. Do you recall submitting -- having your
 9 solicitor submit a financial statement on your behalf in
 10 that case?
 11 A. I certainly asked her to. It turned out she
 12 didn't.
 13 Q. If you look at page -- well, the form itself is
 14 not numbered, but there is a handwritten "88" on the
 15 bottom part of the second page of the exhibit.
 16 A. Right.
 17 Q. And on that page it contains information about
 18 Locke Capital. And toward the lower part of the page
 19 there is an estimate for the current value of Locke
 20 Capital, and that estimate is zero; do you see that?
 21 A. You're down here, on this box?
 22 Q. Yes.
 23 A. Right.
 24 Q. Was that accurate as of the time that this
 25 statement was submitted to the Court in the United

40

1 Kingdom?
 2 A. It was probably accurate a lot of the time.
 3 Q. Okay. And --
 4 A. But, you know, it depends on how and why you're
 5 asking.
 6 Q. Do you mean Locke Capital's value might or
 7 might not be zero depending on why I'm asking?
 8 A. Yes.
 9 Q. How could the company have value or not have
 10 value depending on the purpose of the question?
 11 A. Well, does it have revenues? Does it have
 12 losses? Does it have retained earnings? Does it --
 13 Q. Okay.
 14 A. You know all that stuff. But primarily Locke
 15 Capital's expenses exceeded their income. So while I
 16 think the UK divorce court decided Locke Capital
 17 management had value, but it didn't have any value to me
 18 if it was losing money.
 19 Q. Could you flip to the next page of exhibit 2,
 20 please. And if you look at the top, it says that you
 21 have been unemployed since October 2003 due to your move
 22 to the United Kingdom and a resulting illness; do you see
 23 that?
 24 A. Correct.
 25 Q. Was that accurate?

41	<p>1 A. Those were the words my attorney told me to</p> <p>2 use.</p> <p>3 Q. Were they -- were the words accurate?</p> <p>4 A. It turned out that the UK divorce court didn't</p> <p>5 view them to be accurate. And the financial instrument</p> <p>6 that -- information that was filed was in, I think, maybe</p> <p>7 February of '05, and the barrister withdrew this</p> <p>8 statement. So it became officially no longer a position.</p> <p>9 You have to excuse me, I didn't -- really</p> <p>10 didn't understand what was going on in this UK court.</p> <p>11 But --</p> <p>12 Q. Okay. And --</p> <p>13 A. -- my position was that I hadn't made any</p> <p>14 income and I'd been quite ill since '03.</p> <p>15 Q. Had you -- at the time of the statement had you</p> <p>16 been unemployed since October 2003, as it says here?</p> <p>17 A. I had no income.</p> <p>18 Q. Were you doing any work?</p> <p>19 A. I worked all the time.</p> <p>20 Q. At what?</p> <p>21 A. Managing money.</p> <p>22 Q. As on behalf of Locke Capital?</p> <p>23 A. Sure. Yeah.</p> <p>24 Q. And that's true from -- say after October 2003</p> <p>25 all the way to the present, or at least until the filing</p>	43	<p>1 my attorney to file was -- well, I was told by the final</p> <p>2 judge it was never filed, although a previous judge had</p> <p>3 made decisions based on the information that I understood</p> <p>4 to be filed. But in the end the judge told me it wasn't</p> <p>5 filed, so I really couldn't tell you the provenance of</p> <p>6 this exhibit.</p> <p>7 Q. All I've been doing is asking you whether</p> <p>8 certain statements in the document are correct.</p> <p>9 A. And I -- and what I can -- I can't say for</p> <p>10 sure, because I can't say whether I put this data</p> <p>11 together or whether it's stuff that was filed or wasn't</p> <p>12 filed. Or, you know, I don't know where you got it.</p> <p>13 But, I mean, I don't know if you got it from the UK court</p> <p>14 system or where you found it from. So I wouldn't -- I'd</p> <p>15 have to go back to my data to verify whether that stuff's</p> <p>16 correct.</p> <p>17 Q. So just to wrap it up, so sitting here today</p> <p>18 are you not sure whether Locke Capital had any net income</p> <p>19 in 2005?</p> <p>20 A. Correct.</p> <p>21 (12:25 a.m.)</p> <p>22 (Off the record)</p> <p>23 (12:26 a.m.)</p> <p>24 BY MR. HUNTINGTON:</p> <p>25 Q. Ms. Jenkins, I would like to show you a</p>
42	<p>1 of this case?</p> <p>2 A. Well, I'm a net creditor to Locke. So over the</p> <p>3 years, I mean, there was -- there was maybe only, I don't</p> <p>4 even know. I don't even know if there was a period as</p> <p>5 long as a year that I actually took a salary. But I was</p> <p>6 a net creditor.</p> <p>7 Q. If you could flip to the next page of exhibit</p> <p>8 2, please. Would you do that? And on that page it</p> <p>9 indicates that Locke Capital had no net income for the</p> <p>10 year 2005; do you see that?</p> <p>11 A. That's what it says.</p> <p>12 Q. Was that true?</p> <p>13 A. I don't remember.</p> <p>14 Q. Did Locke Capital have any clients in 2005?</p> <p>15 A. Sure.</p> <p>16 Q. Who were they?</p> <p>17 A. We were certainly managing money for the</p> <p>18 confidential client. And I think there were, you know, a</p> <p>19 couple of other smaller ones that bounced in and out.</p> <p>20 Q. Did any of those clients pay any money to Locke</p> <p>21 Capital in 2005?</p> <p>22 A. I'd have to go look at the financials. I'd --</p> <p>23 I mean, I'd certainly like it on the record that we were</p> <p>24 using this particular piece of paper without prejudice,</p> <p>25 because what I learned is that the bulk of what I'd asked</p>	44	<p>1 document we've had marked as exhibit 3. And can you tell</p> <p>2 me what this is?</p> <p>3 A. It says it's the Locke Capital Management Due</p> <p>4 Diligence Questionnaire.</p> <p>5 (Exhibit 3 marked for identification.)</p> <p>6 BY MR. HUNTINGTON:</p> <p>7 Q. Do you recall seeing this document before?</p> <p>8 A. I recall seeing something like it.</p> <p>9 Q. If you could flip to page 13, just for a second</p> <p>10 here. Is that your signature on page 13 as the Chief</p> <p>11 Investment Officer of Locke Capital?</p> <p>12 A. It's my electronic signature.</p> <p>13 Q. And did you put your electronic signature on</p> <p>14 this document?</p> <p>15 A. I don't know.</p> <p>16 Q. Is it possible somebody else did?</p> <p>17 A. Sure.</p> <p>18 Q. What was the document used for?</p> <p>19 A. I believe this is something that the sales</p> <p>20 people in London wanted to have from us.</p> <p>21 Q. Who were those sales people in London?</p> <p>22 A. EWM.</p> <p>23 Q. And what does "EWM" stand for?</p> <p>24 A. I don't know. I think it was EWM Global, or</p> <p>25 something like that.</p>

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1 middle of June 2008?

2 A. We had an SEC exam.

3 Q. Exactly.

4 A. So you think this was produced for that?

5 Q. Well, I'm asking you. You said you wouldn't

6 have had any reason to prepare it, and I am just

7 suggesting perhaps you did because it was in the middle

8 of the SEC examination.

9 A. I don't think so cause I don't -- I don't

10 remember producing any documents at that time, because

11 only Mark and John did -- they didn't do all of them.

12 They did 99 per cent of them.

13 Q. I'm sorry, what is the "them"?

14 A. Mark and John.

15 Q. Yes. So what are the "them" that you said they

16 did 99 per cent of?

17 A. All the documents that were produced in June of

18 2008. So if this was produced for the exam it would have

19 been produced by one of them.

20 Q. No. I didn't mean to suggest that. It was

21 produced to the Commission by your former counsel in

22 early 2009, but the information embedded in it suggests

23 that you created it in the middle of June 2008. Just so

24 we're clear.

25 A. But can you tell me how you figure out I

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1 created it?

2 Q. Yes. Because if you look at the page you are

3 on right -- go to the third page of the exhibit.

4 According to the Locke Capital computer system you were

5 listed as the author of the document. And the date that

6 it was created is listed as June 15, 2008.

7 A. But do you know how do you get to the author of

8 the -- does that mean it was done on my computer or it

9 was done under my password or --

10 Q. I'm asking you. I don't know. I wasn't there.

11 A. Well, I don't know either. I don't have any

12 idea where this came from.

13 Q. All right. Let me show you what has been

14 marked as exhibit 21. Same kind of thing. This is what

15 appears to be the cash-flow for the first half -- strike

16 that -- for the first four months of 2008.

17 A. Mmm-hmm.

18 (Exhibit 21 marked for identification.)

19 BY MR. HUNTINGTON:

20 Q. Same series of questions. Did you prepare this

21 cash-flow statement for the first part of 2008?

22 A. I don't have any idea. But I take it you're

23 going to tell me my computer was the author.

24 Q. Yes, I am.

25 A. Okay.

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1 Q. Same thing.

2 A. Well, could be.

3 Q. Now, looking at the exhibits, I will just go

4 back to 20 first, for a second. It's a list of deposits

5 into various accounts. Do you see that?

6 A. That's what it says.

7 Q. Did Locke Capital have accounts at the banks

8 listed on this page?

9 A. Yeah.

10 Q. Did Locke Capital receive money in fees from

11 the clients listed under the column name?

12 A. If it's assigned properly they did.

13 Q. "CCM" would be "Clark Capital Management"?

14 A. Yep.

15 Q. "HF" would be "hedge fund"; is that right?

16 A. Perhaps.

17 Q. "MyVest", was that a client?

18 A. Yeah.

19 Q. M-y-V-e-s-t?

20 A. Yeah.

21 Q. As far as you know, is this an accurate list of

22 income that Locke Capital received for its advisory

23 services in 2007?

24 A. Well, it looks like it's from our financial

25 system. But do we know when this was -- is this one you

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1 said was produced in June?

2 Q. It was produced by your counsel in 2009. But

3 it was apparently prepared, created in June 2008.

4 A. Anyway, I -- we had significant mistakes made

5 with all the accounts with Dominic Mingione, which is why

6 he didn't hang around very well. So if it's classified

7 incorrectly it wouldn't be right.

8 Q. Well, let me ask this: when Locke Capital

9 received a check from a client for its advisory services

10 who was in charge of depositing the check somewhere?

11 A. It was either me or Dominic when he was around,

12 or Margaret Jone.

13 Q. What kind of record keep -- strike that. What

14 kind of accounting did Locke Capital have to kind of keep

15 track of how much money it was taking in and how much

16 money it was spending?

17 A. Quick books.

18 Q. And who handled the quick books?

19 A. Myself and any of the people we hired to work

20 in the finances.

21 Q. Well, did you hire John Day or Mark Rosenblum

22 to work on finances?

23 A. No, but I wouldn't be surprized if they did

24 some of the input.

25 Q. Who used the term "SPB" within Locke Capital?

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1 A. Everybody.

2 Q. Looking at this list -- and I'll represent to

3 you, Ma'am, that I checked the deposits here against all

4 the bank statements I've seen and all these deposits are

5 accurate.

6 A. Mmm-mm.

7 Q. In terms of real dollars that were deposited

8 somewhere.

9 A. Mmm-mm.

10 Q. And I haven't found any deposits that I've seen

11 in any bank statements that aren't listed here in 2007.

12 Okay?

13 A. So you're saying it might be right?

14 Q. Yes.

15 A. Okay.

16 Q. With respect to the dollar amounts, yes, I am.

17 My question is: who would have assigned the label "SPB"

18 for the second payment?

19 A. Oh, I didn't even see that.

20 Q. I'm looking at exhibit 20, so I hope you are

21 too, otherwise we'd get badly confused.

22 A. Are these -- are these -- I didn't even see it.

23 So, well who -- whoever input the transaction would have

24 assigned it.

25 Q. Well, you'll notice there's a \$50 -- strike

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1 that. I'm sorry. A \$50,000 deposit in both 2007 and

2 2008 that are listed on these cashflow statements as

3 coming from SPB; do you see that?

4 A. I do.

5 Q. Is that accurate?

6 A. I have no idea.

7 Q. Sitting here today do you know whether or not

8 -- whether AMAG paid Locke Capital anything in 2007?

9 A. I don't. My recollection is primarily the

10 payments came in earlier and I don't recall getting any

11 straight in to any of these accounts.

12 Q. Maybe you just answered this but I'm sorry,

13 let's try again. Do you recall whether AMAG paid anything

14 to Locke Capital in 2007?

15 A. I don't.

16 Q. And for 2008?

17 A. I don't.

18 Q. How much time was devoted to dealing with

19 AMAG's matters?

20 A. I mean, they certainly got far less than anyone

21 else. So they got -- well, they didn't take any more

22 time than anyone else on trading execution, because that

23 was -- you know, if you're trading with one account or 20

24 accounts it didn't matter. It's all the same amount of

25 time. And I would say they took significantly less time

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1 -- they didn't have any particular peculiar risk

2 characteristics. They didn't have any "don't buy Advent"

3 or "stay out of the UK" or -- what are those things we

4 got? -- stay out of stocks that do business in the Sudan,

5 or, you know, didn't have any of that weird stuff. So

6 they would have taken less time than anyone's.

7 Q. Now, did you send bills to AMAG?

8 A. I don't recall sending them bills.

9 Q. Is it possible you never sent them a bill?

10 A. I would doubt that.

11 Q. Did you ever ask them for money -- I mean, ask

12 them to pay you something?

13 A. Frequently. I set up a whole another

14 broker-dealer just to get paid by them. And I joined a

15 whole another broker-dealer. I joined two broker dealers

16 just to get paid by them.

17 Q. What time frame was that, though?

18 A. Oh, boy, '01, '02, I think '04, '05 and -- oh,

19 no, it must have been '05. And then end of '08.

20 Q. So with respect let's just limit ourselves to

21 the advisory services that Locke Capital was providing to

22 AMAG. It sounds like -- is it correct to say you did not

23 submit regular bills to them?

24 A. I said earlier that I don't know if they every

25 paid hard dollars. So they -- they were accustomed to

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1 paying soft dollars.

2 Q. That wasn't what --

3 A. Did I -- did I ever send bills? I don't

4 recall.

5 Q. And I think then I said -- I asked you a minute

6 ago did you ever ask them to pay you something and you

7 said "frequently"; is that correct?

8 A. Well, I wouldn't say that frequently. But I

9 didn't, I mean, I took the trip there in '03 to sit them

10 down and say, "Listen Characters. Let's see some more

11 money here." And the result of that was setting up

12 another broker-dealer.

13 Q. And how did they pay you for the broker-dealer?

14 A. Well, I -- to be paid in soft dollars. I mean,

15 to have a broker-dealer affiliation.

16 Q. Well, did Locke Capital ever receive any

17 financial benefit from AMAG apart from soft dollars?

18 A. As in cash coming in, financial benefit?

19 Q. Yes.

20 A. I don't remember.

21 Q. Well, let's take the word "financial" out of

22 it. Did Locke Capital receive any benefit from AMAG

23 apart from soft dollars?

24 A. I would say that Locke Capital benefitted by

25 having live discretionary portfolios going as opposed to

<p style="text-align: right;">165</p> <p>1 correct. But the staff, if I'm -- I hope I'm roughly 2 correct. But what I recall is they asked for data for 3 the US and the international composites for the years 4 something like 1990 or '91 -- I think it was '90, '95 and 5 then the two years -- maybe '01 and '06 -- something like 6 that.</p> <p>7 So we were asked to produce stuff. And I think 8 we're on the performance calculation rule -- does that 9 sound right? Oh, you're not sure. Anyhow, the reason I 10 say '90 is that we had found our website hacked into 11 during the June exam. And Mark had verified that he had 12 checked it when he come to work for the firm in early 13 April, and what was up in June didn't look like anything 14 he'd seen in April. But it apparently included 15 performance for 1990.</p> <p>16 And neither Locke nor White Horn were in 17 existence in 1990. So what I don't know, is I'm not sure 18 whether this is why I got a call in 2006 -- but I know at 19 some point I changed our website where it showed 20 performance before Locke was in business to attribute it 21 properly to White Horn. But I believe our response with 22 regard to data to the SEC from the -- this time period 23 during the summer was that we didn't have proper 24 performance data for 1990 and we didn't have all the 25 account statements for '95. But what we had decided back</p>	<p style="text-align: right;">167</p> <p>1 was in that system.</p> <p>2 Q. Well, hadn't it arisen during the examination 3 that the staff looked at brochures that had data back to 4 1995 and asked questions about those?</p> <p>5 A. Yeah. And we sent the data back-up. But back 6 in '95 it was on Excel spreadsheets. So what I learnt -- 7 this was my first ever exam, so what I learned was that 8 the data we had backing up '95 wasn't acceptable. So 9 that we should no longer show that data.</p> <p>10 Q. Weren't you also saying in this letter that the 11 brochures that the staff had looked at with data back to 12 1995 were only drafts and had not been sent out?</p> <p>13 A. That's right. That's true.</p> <p>14 Q. Weren't you telling the staff that Locke 15 Capital hadn't been sending out performance data back to 16 1995 so it really wasn't something to worry about?</p> <p>17 A. I don't recall making that representation.</p> <p>18 Q. Well --</p> <p>19 A. Say that again?</p> <p>20 Q. Well, I'm afraid the last part of my question 21 was a bit of my interpretation. But in reading this I 22 understood this letter to be saying the brochures that 23 the staff looked at that had data back to 1995 were only 24 drafts that Locke hadn't sent out data --</p> <p>25 A. That's correct. I know that --</p>
<p style="text-align: right;">166</p> <p>1 in '06, when we hired Ashland to do the audit, was that 2 we weren't going to go back further than '99 because we 3 bought the AXYS system and started using it as of 4 June 30, '99.</p> <p>5 So that as I didn't have time to do all the 6 number crunching in '06 and into '07 so that we were 7 finally hiring people to get -- make some progress on the 8 audit, that's why it says here Dechert said, you know, if 9 you don't have the right data for '95 you've got to start 10 from '97. And I'm surprized it's here, because it should 11 have been '99 by the time we were working on this, 12 because we were -- certainly going through '07 and '08 we 13 weren't trying to come up with all the required data or 14 do anything with verifying the performance track record 15 prior to the middle of '99.</p> <p>16 Well, one of the main reasons was that Ashland 17 Partners uses a direct data grab from the AXYS system, so 18 to get your track record verified they count on the 19 Advent Systems. And it, you know, all the data's in the 20 Advent System. That's a third-party system. So I'm 21 surprized that '97 is here. But we obviously agreed it 22 with Decherts to put it here and I'm not sure why.</p> <p>23 Q. Well --</p> <p>24 A. Because we're -- you know, I've only been 25 interested in using the track record since '99 when it</p>	<p style="text-align: right;">168</p> <p>1 Q. -- up till 1995?</p> <p>2 A. I know that the two brochures they asked me for 3 were both in draft. They hadn't been sent out.</p> <p>4 Q. Were you intending to tell the staff that Locke 5 had not been using brochures with data back to 1995?</p> <p>6 A. No. Because we had been.</p> <p>7 Q. All right.</p> <p>8 A. But the ones they asked for were in draft. But 9 I remember the discussion focusing not so much on the '95 10 issue because we -- it was July in the exit interview 11 that we found out that we couldn't use the '95 data. But 12 I thought the conversation more had to do with GIPS 13 compliance.</p> <p>14 Q. Why don't you flip over the reference to 15 page 4, of that exhibit. Didn't an issue arise during 16 the examination as to whether it was appropriate for 17 Locke Capital to include results for AMAG within its 18 performance and its assets under management?</p> <p>19 A. I'm looking at the disclosure as to the 20 benchmark. Are you there?</p> <p>21 Q. No, I'm right above that actually.</p> <p>22 A. You're above that. Okay. Hang on a sec. So 23 what was your question?</p> <p>24 Q. It would help you, ma'am, if you want to flip 25 back to the very bottom of page 3 you will see the</p>

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1 heading for that section we were just reading --

2 A. Oh, okay.

3 Q. -- at the very bottom there.

4 A. Right.

5 Q. Does that help kind of put it in context for

6 you?

7 A. I don't remember how it was worded, but there

8 apparently was information in the discrepancy letter

9 where I don't remember what the staff said, but they were

10 suggesting that the data related to the confidential

11 accounts should not be included.

12 Q. And why was that?

13 A. I don't know. But I know it was Dechert's

14 position that the only -- what's the word? --

15 qualification needed to use accounts in your composites

16 was that you have discretion. Unless the contract

17 clearly says we had discretion it was Dechert's strong

18 opinion that those accounts needed to be in and that it

19 would be misrepresentative to leave them out.

20 Q. Now, if you look at the second paragraph on

21 page 4 you wrote, starting on the third line, "It is not

22 the case that 'recommendations are phoned to the

23 client'; do you see first that part?

24 A. Yeah.

25 Q. Now, wasn't it in fact true, as you told me

170

1 earlier, that you phoned recommendations to AMAG until

2 you set up the email account?

3 A. Right. But I think it's the way it's phrased

4 where, you know, a sell side broker might call client Joe

5 Smith and said, "Hey, Joe, you really ought to buy some

6 IBM this week", but the sell side broker doesn't have

7 discretion, and Joe sits there and decides whether he

8 will or will not do that trade, as opposed to a money

9 management firm that has full discretion over which

10 trades are done.

11 So when -- I think the phrase comes from the

12 SEC letter "recommendations are phoned to the client"

13 with the implication that the client could choose to make

14 them or not.

15 Q. Well, AMAG could choose to make your

16 recommendations, couldn't they?

17 A. Well, they could have, but they didn't, because

18 what would be the point?

19 Q. But they could have, correct? They could have

20 chosen not to enter -- make any of those trades; couldn't

21 they?

22 A. Then that would be true of all of our clients

23 that had that kind of trading relationship.

24 Q. Well, not when you are placing orders directly

25 to the broker, isn't it, which you did for many of your

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1 clients?

2 A. No. But we -- about a third of our clients

3 worked like AMAG, where we sent them an Excel spreadsheet

4 or put it into their systems. MyVest we had full

5 discretion over the clients, but they had a tax screen in

6 there, so our trades went through but on some of the

7 accounts they had hit the individual tax screen and not

8 get executed.

9 Q. But was that something deliberate on the part

10 of MyVest?

11 A. Yeah. That was one of the services they

12 offered.

13 Q. Did they have someone actively deciding whether

14 or not to process trades that you had submitted?

15 A. It did it electronically.

16 Q. So they weren't exercising their discretion

17 over whether or not to place those trades, were they?

18 A. The system could choose not to place our

19 instructions. But we were still considered to have

20 discretion over the accounts.

21 Q. At AMAG it's an actual human being who will

22 decide whether or not to place the trades; right?

23 A. And Reliance and a couple of the others

24 where -- I guess RBC, they came in and they were reviewed

25 by human beings as to whether they got punched to the

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1 next step.

2 Q. Okay. Let's continue reading. So first of

3 all, it was true that recommendations were phoned to the

4 client; that just is a true statement, isn't it, as you

5 said earlier today?

6 A. Well, the way it -- as I said, the way it

7 reads, it looks like the client had the choice to trade

8 them or not. And you can argue -- well, of course they

9 didn't have to take the instruction. But what's the

10 point of hiring someone and giving them full discretion

11 if you are not going to?

12 Q. Well, they hadn't exactly hired you, had they?

13 A. We had a contract.

14 Q. They weren't paying you any money?

15 A. They weren't necessarily not paying us any

16 money.

17 Q. I'm sorry, what in the world does that mean?

18 A. Well, they had paid. They are not

19 contractually obligated to pay.

20 Q. The only thing you ever said they paid was soft

21 dollars, right? You told me that earlier. You couldn't

22 identify any time when they actually paid real money to

23 Locke Capital?

24 A. But soft dollars are real money. It's just how

25 it came to us. It eventually ended up cash in the

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1 account.

2 Q. How did they do that? Where did you get the

3 soft dollar benefit from AMAG?

4 A. Through our broker network.

5 Q. So if we sent a subpoena to the brokers would

6 they be able to identify the soft dollars you got from

7 AMAG?

8 A. Probably not, because of the stops it went

9 through.

10 Q. Excuse me, what does that mean?

11 A. I'm wonder if I've confused you all together.

12 You meaning the SEC? There are two uses of the term

13 "soft dollar" to my mind, where one is the standard money

14 management soft dollars, safe harbour, when Locke Capital

15 Management is allocating their brokerage for research, at

16 client direction, for execution, that's -- would you

17 agree that's "soft dollars"?

18 Q. It doesn't matter whether I agree.

19 A. I know. But is that what you know --

20 Q. I don't care. It's a -- you define it however

21 you want to define it. My question has been: you said

22 that Locke Capital got a benefit from AMAG in the form of

23 soft dollars. I just want to understand how would I ever

24 find out if that was true? So could I subpoena a

25 brokerage firm to find out if that was true? And if you

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1 say no, then is there any way to prove that it's true?

2 A. Well, we got the money.

3 Q. How did you get the money? You didn't get it

4 in a bank account, right?

5 A. Yes. We did.

6 Q. I asked you. You said you didn't get any money

7 deposited in your bank accounts from them?

8 A. I don't know if we have any money that ever

9 actually came to Locke's bank accounts. When I said it,

10 we got the soft dollars, I was referring through the

11 broker-dealer.

12 Q. Well, presumably the broker-dealer would need

13 to account for money that came in and went out, wouldn't

14 it?

15 A. Correct.

16 Q. So if the Commission sent a subpoena to the

17 brokerage firms they should be able to verify whether

18 AMAG paid any soft dollars to Locke Capital, couldn't

19 they?

20 A. Probably not.

21 Q. And why not?

22 A. Because if you take -- let me see if I can do

23 this. I'm ultimately going to have to do this for our

24 trial, but let's see if I can do it now. If we've got

25 White Horn & Company, US broker-dealer. And I don't know

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1 if you're aware of clearing firms -- does that name ring

2 a bell?

3 Q. Yes. But -- maybe can we just keep this a

4 little bit simpler. Why wouldn't a brokerage firm be

5 able to verify if Locke Capital or some other company

6 you're affiliated with was credited with soft dollars

7 that came from AMAG?

8 A. Okay.

9 Q. It doesn't seem like you need to explain that

10 part of the securities industry to answer that question.

11 A. Well, I do.

12 Q. Well --

13 A. Because --

14 Q. Try it without.

15 A. In 2008 if AMAG placed a trade through whatever

16 organisation they're using for trading, which then placed

17 a trade with, let's say, Goldman, Sachs -- we'll pick a

18 global broker, they can buy stocks in any country in the

19 world -- and if White Horn & Company had a clearing

20 arrangement with Goldman there would be a trail from

21 AMAG, or whatever company they are trading from, to their

22 trading vehicle to a Goldman, who can trade globally to

23 an allocation to a White Horn.

24 Q. How does the information come along with that

25 trade that says at some point somebody has to allocate

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1 something to White Horn?

2 A. I'm just saying that's how that would happen

3 today, but I'm going to take you back to the nineties.

4 Q. No. No, don't. We don't need to be in the

5 'nineties. This case is about Locke Capital in the

6 2000s. Let's stick with that. Were you getting soft

7 dollar benefits from AMAG in 2007?

8 A. No, because I wasn't affiliated with a

9 broker-dealer.

10 Q. Were you getting soft dollar benefits in any

11 form from AMAG in 2008?

12 A. No, but that --

13 Q. When was the last time you got soft dollar

14 benefits from AMAG?

15 A. I'd have to go look. But it is why I joined

16 the broker-dealer in the end of '08, was so I could get

17 paid again.

18 Q. But it didn't happen, I take it?

19 A. It didn't happen because I joined the

20 broker-dealer in December and the business went out the

21 window a few weeks later.

22 Q. All right. So ignoring 2008, when was the last

23 -- what approximately, what year was the last time you

24 got soft dollar payments from AMAG?

25 A. I'd have to go back to the books.

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1 Q. Is it in the 2000s?
 2 A. Probably. But I -- I'd have to go back and
 3 look.
 4 Q. All right. So you --
 5 A. Most of it came when I still owned White Horn.
 6 Q. When did you get --
 7 A. The first White Horn.
 8 Q. When did you get rid of or stop owning the
 9 first White Horn?
 10 A. Some time towards the end of '99.
 11 Q. So it appears that through the entire first
 12 decade of 2000 you weren't getting any soft dollar
 13 benefits from AMAG; correct?
 14 A. No. I just said I have to go back and look.
 15 Q. All right. So, what does AMAG have to do on
 16 its end in order that when it places a trade that somehow
 17 you get some kind of soft dollar benefit for? Because
 18 they are placing trades all the time, right, with Locke,
 19 through advisers other than you, related to advisers
 20 other than Locke Capital, right?
 21 A. Probably.
 22 Q. So they'd have to do something deliberate to
 23 make sure you got a benefit for a trade that they --
 24 A. Sure. They do it for the credit of.
 25 Q. So information for the credit of Locke Capital

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1 that could execute trades anywhere in the world, or have
 2 affiliates.
 3 Back in 1991 when I set up White Horn,
 4 specifically because of the international expertise I
 5 could bring, which was far less usual, I had 15 clearing
 6 arrangements.
 7 Q. Fine. But --
 8 A. And the trades went -- all these 15 guys sent
 9 money in here. One of them had about six or eight
 10 clearing arrangements, because there were very few global
 11 firms. So it went back -- I mean, for instance, I had
 12 fixed income trades come in and --
 13 Q. Ms. Jenkins, that has nothing to do with any
 14 question I just asked you. Can you stop?
 15 A. You were asking me if --
 16 Q. No. No. You are not answering --
 17 A. -- I could explain whether we could follow the
 18 trail back.
 19 Q. But not in the timeframe that we're talking
 20 about. No. Can we move on, please? Do you want to be
 21 here all day?
 22 A. I just would like to object, for the record.
 23 Q. Fine. Fine.
 24 A. For you asking the question and not listening
 25 to the response.

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1 has to get entered in with the order; right?
 2 A. Mmm-hmm.
 3 Q. You've got to think that the next broker in the
 4 chain has to keep a record of who the benefit -- who's
 5 supposed to get the benefit; right?
 6 A. Right. But we don't know which company they
 7 are trading out of.
 8 Q. And then the next one -- well, you could work
 9 backwards from how you got the benefit, couldn't you?
 10 A. That's why I was going to explain the way it
 11 used to work, because today I think you could.
 12 Q. But back then -- okay. But none of that was
 13 happening in at least the last -- from 2005 to 2008,
 14 would that be fair to say?
 15 A. Well, I can't remember when I sold the second
 16 broker-dealer. Well, now, somewhere -- I don't know
 17 whether it's '04 or '05 somewhere, '06.
 18 Q. So from the point you sold the second
 19 broker-dealer you weren't getting any soft dollar
 20 benefits from AMAG, were you?
 21 A. Well, as I said, I'd have to -- I'd have to go
 22 back and figure out which broker-dealers I was with, when
 23 and where the income came from. But the reason I was
 24 going to explain this to you is today, if I set up a
 25 broker-dealer, I would probably have one clearing firm

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1 Q. No. My question -- okay, say everything you
 2 want.
 3 A. I was just trying to explain how it actually
 4 worked, because I thought you were interested in how it
 5 worked. But that's all right. You don't have to know.
 6 Q. Now, if you could go back to exhibit 29.
 7 A. Is that this one?
 8 Q. Yes, it is. So the sentence that we were
 9 working on began -- we had the part about the
 10 recommendations phoned to the client, all right. Do you
 11 see that part, that we talked about a minute ago?
 12 A. Right.
 13 Q. And then you were -- "Locke has arranged with
 14 the client to place trades through the client's trading
 15 desk"; do you see that?
 16 A. That's what it says.
 17 Q. Is that referring to your sending emails to the
 18 subadvtrades email account?
 19 A. I'm not exactly sure. It's not -- "the
 20 recommendations are phoned to the client" looks like it's
 21 from the SEC letter. And the rest of that sentence is
 22 Dechert language.
 23 Q. Right. That you signed and sent to -- and
 24 submitted -- it was submitted with your signature on it?
 25 A. Well, I -- I'm not sure I would have chosen

1

M. Rosenblum

SEE PAGE 5 (OR 261) WHERE THE "LOCKING" OF AXYS FILES IS DISCUSSED

2 A would that be the same as the files
3 that are on the server? If you made a change to
4 them would that change be reflected on the
5 server, as well?

6 Q No because it was only going one
7 way and I did not change them.

8 A Do you remember locking the files?

9 A what do you mean by locking?

10 Q After you reconciled them and I
11 forget what the word was, but I know I tried to
12 open one once and I could not get into it.

13 A I do recall putting a performance or
14 a reconciliation close date on it, and in order
15 to access the file you would just have to click
16 the option to change that reconciliation close
17 date. There's no password or anything like
18 that.

19 Q But you would have had to know about
20 that feature, right?

21 A You would have had to know about
22 that feature, yes, in order to use it.

23 Q One of the reasons I had to hire an
24 Advent consultant after you left was to figure
25 out how we could change the files when Maryann

1 M. Rosenblum
2 came to us so she could clean them up and
3 -- in any event, this e-mail, did it make it
4 clear to you how much I wanted the Axys files?
5 A I was confused by this e-mail
6 because on the bottom you also said that you have
7 to maintain an office, an apartment in New York
8 just so we have a place to work, and then I have
9 to come to New York as often as possible and
10 try to manage the business. I was under the
11 impression that I applied for a job in New
12 York and that New York was the only place that
13 I was interested in working, so I thought some
14 of the items in this e-mails were confusing.
15 I was actually concerned about this.
16 Q We are not talking about the office
17 location. It was always clear that headquarters
18 was Rhode Island, but if I had not kept an
19 office in New York you would not have been
20 living there and working there. You knew
21 that I did not live and work there so my point
22 is I came to New York because you guys were
23 there and as a result of having a second
24 office with people in it, we have doubled the
25 security and data backup risk. You mentioned

1 M. Rosenblum
2 earlier that you had some security and data
3 backup risk, and did you say that as far as you
4 knew there were only two servers and that all
5 the data was located in one place. Did you say
6 that earlier?

7 A Yes.

8 Q Do you recall that a part of our
9 security data backup was sending me the Axys
10 files every day so I had them, not only for
11 my portfolio management uses, but for security
12 and data backup?

13 A I think I recall having a
14 discussion where I think I voiced my concern
15 that e-mailing files to your laptop, I didn't
16 believe constituted an effective system for
17 an off site backup plan.

18 Q Did you know that there was a
19 server, another server in Rhode Island that
20 was a copy of the New York server?

21 A I did not know that.

22 Q Didn't you know that the server
23 data was backed up every day in New York and
24 then taken off site?

25 A No, I did not know that.

1 M. Rosenblum

2 Q The first thing was the copy of
3 the server, external hard drives every week,
4 one in New York and another in Rhode Island
5 and then Rhode Island would come back to
6 New York and it just went around and around.
7 In addition there was a remote backup so there
8 was an extraordinary amount of backup and
9 sending files to me was a, so I could have
10 them. I manage the money off the Axys file
11 day by day.

12 would you agree that if you were
13 not getting monthly custodial statements on all
14 of your accounts that it makes it many times
15 more important that you or your internal
16 Axys files are correct?

17 A On the server the internal Axys
18 files were correct.

19 Q But if you did not have monthly
20 custodial data to back it up to wouldn't it
21 make it even more important that that
22 data was correct?

23 A I'm not sure I understand your
24 question.

25 Q If the data in the Axys file was

1 M. Rosenblum
2 not correct and all of a sudden we wanted to buy
3 three stocks across the board and then sell
4 two stocks across the board, would you think it
5 would be difficult if you did not know what
6 stocks you owned and what you were buying and
7 selling and how much cash you had?

8 A I'm just confused. I believe the
9 data on the server was correct, on the Locke
10 Capital server.

11 Q Was there any reason for that
12 data to be different if you e-mailed it to
13 me?

14 A Yes. If you made a change on
15 your side then that change would not be
16 reflected on that server. That's the risk.
17 If I made a change on my side then it would not
18 be reflected on your side either.

19 Q That's right. That's why I wanted
20 them every day. I was not changing them because
21 as far as I knew they were locked and I did not
22 enter trades in any of those files since 2005
23 when I worked on them myself.

24 MS. SEVILLA: Ms. Jenkins, I just
25 feel obligated to interject very quickly

12/30

Call /

Boston - enforcement questions

Voluntary call

1661, 1662 show w/ govts

Dechert says must tell the truth - no problem!
ave taking notes

Enforcement: Scott Pomtret

custodial statements from
client w/ Chase name

If whited out > anything? No!
changed

- ⁱⁿ RI? Bank STS showing 07 & 08 wires Ming problem?

- CPST - UIM contact
Yolanda email & tel

- Jill - temp - worked in
bad copy of customer

- list of contacts @ custodian

- Adviso Agree w/ HF

in 2008 - all sales prospects
emails

all/2

- all marketing brochures
 - provided to staff
 - that exist

→ on my laptop

- not in New York
- want versions of all sent in 2008

currently in NY - A Washington

DW LJ BK - in RI

? Spouting Rock Cap.

- no contract yet
- LJ reg. position

meet Angela trader? exist?

~~trader (jo) → LJ~~ → trades → Angela →
executions back to me - MR/DH

PWC audit report email
any PWC correspondence

cust statements = for HF

Frank Watson tel #5

gave Dennis Harkin tel #

Decker - call -
105 minutes

→ send some
Chase statements

B - Org chart is available
30 minutes editing

decide later; tell about

LCM UK - going away
? other LCMs

C - list of emp. OK
offer up timing etc.

D - NONE

E - admit Rosenblum
disgruntled
generally describe
touched on SPB assets

add
statements
Duty to package
\$ 00ms into

F - generic on laptop

G - They already have

H - in Form ADV

I - None

J - have current
a few recent
rest in RT

K- have provided trading notes
otherwise in RI

L- trading emails since June
any SPB emails

M - come back to them
on this

O - get DW report

2: A in RI
B in RI
C in RI

Kathy, Mike, Jane Deebert

Enforce

Scott

Niami Fivilla

Frank Humbert

Sylvester Fontez

Not the people
in office

Dorothy Eskew
Linda Sheaphy
Jim Cappazutto
Kathleen Fury

David Saby

~~Mike~~

Garnity

Joe Mick

Examiners

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

LOCKE CAPITAL MANAGEMENT, INC.
and
LEILA C. JENKINS,

Defendants

Defendants.

CASE NO.: 1:09-CV-00100-8-DLM

JUDGE WILLIAM E. SMITH

MAGISTRATE JUDGE DAVID L. MARTIN

**AFFIDAVIT OF DERRICK WEBSTER, FORMER CONSULTING CHIEF OPERATING
OFFICER AND CHIEF COMPLIANCE OFFICER OF DEFENDANT LOCKE CAPITAL
MANAGEMENT, INC.**

NOW COMES Derrick Webster (“Webster”), former consulting COO and CCO of Defendant Locke Capital Management, Inc. (“Locke”), who hereby respectfully submits the following affidavit to the United States District Court, District of Rhode Island, presided over by the Honorable William E. Smith, and Magistrate Judge David L. Martin.

Derrick Webster hereby affirms that the following is true and correct:

1. I was retained by Locke Capital Management in September 2006 as a part time Management Consultant.
2. In brief, I was responsible for services and systems and all activities necessary to support the firm towards providing customer service and investment performance, whilst making a profit in accordance with the Corporate Strategic Plan.
3. Strategically the company adopted technologically advanced systems such as AXYS (which it has used since 1999) and as well as Moxy and others. Using a technical systems engineering approach to integrate the systems, an automated seamless trading system without recourse to paper and minimal human interaction in the loop was achieved. By

this means risk of human error is mitigated whilst proving real time reconciliation and minimizing the incidence of failed trades.

4. My brief was to build a company structure that could transition from four of us up to about 15 people, maximizing the use of technology in accordance with para 3 above, whilst providing a Quality Compliance and Management System that was measurable and reportable.
5. An objective of management was to respond to customer feedback and concerns that provided a succession plan to Leila Jenkins (“Jenkins”). This was to be done by adopting a systems approach that permitted Locke to function without, in extremis, the presence of Jenkins within the Company, whilst providing the performance that customers had become to expect of Locke.
6. My credentials for undertaking the brief, amongst others, are that I have piloted three other companies, including one providing services, another design and lastly, software engineering to the International Standards Organization (ISO) 9000-2000 and ISO 9000-2008 accreditation standards
7. In these endeavors I was assisted by the Trader and Assistant Trader for the implementation of the Trading Systems and the QCMS respectively. The most recent duty statements, evolved with the Quality Compliance and Management Systems (QCMS), for the Trader and Assistant Trader are available for review and were used as Exhibits from the SEC for Day and Rosenblum’s depositions. Initially these duties were performed by Diane Hudson, followed by John Day, Deven Bathia, and Mark Rosenblum, eventually evolving to MaryAnn Doyle and Alisha Washington.
8. I will address the Trading Systems implementation later which was under definition in the last quarter of 2007. A contract was let for its implementation in April 2008. At the outset both the QCMS and Trading System integration require lengthy (9months -16months) investments in time and money. It is the case, that regrettably, the complete system was not implemented because of regulatory intervention by the SEC from mid 2008 onwards, which first stunted, and then ultimately destroyed the implementation.

9. Similarly I will discuss the Sales and Marketing effort for which I had coordination responsibilities in the distribution of marketing material prepared by the Trading and Operations desk for the internal and external uses.
10. The implementation of the task was to adopt the International Standards Organization (ISO) 9001=2000 series architecture for Quality Management of Products and Services. As the process evolved the Quality Management System at Locke became the Quality Compliance and Management System (QCMS).
11. ISO was chosen because it is internationally adopted by some 157 countries including the USA. There some 170,000 standards including for the finance and securities sector such as ISO's 10022.10383 and 10962.
12. The requirement was for a Management System comprising of Policies, Procedures and Instructions to be developed mirroring the manner in which a Company Operates which is repeatable and measured. The Policy Procedures and Instructions are validated over time, normally over about 8-12 months. Typically a specialist consultant was then engaged for a pre-accreditation qualification before attempting accreditation through a third party accreditation organization such as BSI . On achieving Accreditation BSI audits an accredited company annually. Similarly another company can report to BSI if it believes the quality of the service or product supplied by a vendor company is below that claimed for the specific ISO accredited company. LCM operated in conformance with but is not accredited to ISO 9000. The last formal review was recorded in the Minutes of Meeting of the QCMS half year review held in August, 2008.
13. The Commercial Benefit of ISO 9000 is best illustrated in the LCM context by mentioning a European Client, contracted but not funded where LCM was, initially, awarded advisory status by the administrator. In discussions with the consultant related to the Quality Management and Compliance System (QCMS), the Consultant understood the system including the QCMS distinction between Investment and Operations and internal audit. LCM status was then upgraded to an outsourced subcontracted Money Manager without restriction.
14. The Mott Foundation similarly found the QCMS systems approach to risk mitigation most interesting and was the main driver in their decision to invest with Locke. In their case, it

was the succession plan set up to take over upon the demise of or accident to the Chief Investment Officer (Jenkins).

15. Thus it was for Commercial and Business reasons that LCM appointed me to undertake the role of Chief Compliance Officer in September, 2008.
16. LCM was assisted by a consultant specializing in the SEC compliance. The consultant, Fairview (Mr. Frank Watson) was on a pay as you go basis. It was planned that Fairview was retained so as to be available for the next QCMS review.
17. A selection of procedures from the QCMS are available for review and consist of: the QCMS Manual, Locke Code of Ethics, Personnel Manual, Privacy Policy, Risk Management, and Control of Documentation and Data.
18. AXYS Specification is at EXHIBIT W1.
19. MOXY Specification at EXHIBIT W2.
20. The Advent Rules Manager was the next purchase planned for the final module of the systems and its specifications are found in EXHIBIT W3.
21. The implementation of the QCMS in conjunction with the QCMS has satisfied the issues raised in the exit interview on Monday 7th July 2008 with the SEC and formalized in a letter from Decherts Counsel assisting Locke in November 2008.
22. As an informed practitioner in Software Systems Engineering and the accreditation of companies to ISO 9000, I consider that LCM was well advanced towards achieving accreditation to BSI or a similar Quality Management Systems Accreditation House for its Quality Compliance and Management System. Because the US Government is a signatory to ISO standards, progress toward such an accreditation should be regarded by the SEC that Locke is operating a compliant system in accordance with SEC rules, regulations and requirements in a way that is easily measureable.
23. Similarly the Advent systems (AXYS and MOXY) integrated with Info Systems provides a technologically compliant Trading System in accordance with SEC Rule 204-2. The combination of the Technically Compliant Trading System, integrated with the QCMS, provided Locke with the information processing normally associated with much larger money management corporations.

24. The result is that Locke was a state of the art money management company, with a Risk averse culture underscored by mitigating management of Corporate and Investment Risks, whilst yet proving sustainable financial returns for its clients, when also making prudent and responsible returns on its own corporate return on investment.

Break and Entering Events at the Locke office, Newport, RI 2006 - 2009

25. The office of Locke at 25 Walnut Street, Newport, RI, which has a part time residential capability, was broken into to my knowledge at least three times since I first used it as an office, starting in August 2006. I did not report the unauthorized Break and Entry to the Police but was present on three occasions when the police attended 25 Walnut Street and interviewed Leila Jenkins (“Jenkins”).
26. During the autumn of 2006 whilst in Rhode Island and specifically for one social event Jenkins mentioned to me that she appeared to be missing items of jewelry and a fur coat. She expressed the view that it may be in the Florida Condominium.
27. In October of 2006, Jenkins and I were in London. Jenkins made a visit to the Police to report problems with her husband and to seek their protective assistance. She was advised by the Detective on duty at the Charing Cross police station to make her representations to the then Commissioner of Metropolitan Police Sir Ian Blair, given her husband’s position as a Politician in the House of Lords. She was advocating a reopening of the case of the investigation of the Earl of Caithness in the death of his first wife. She sought my assistance to draft a letter to Sir Ian Blair which I did and passed the draft to her electronically.
28. Significantly the letter and other soft copies of relevant documents were “removed or deleted” from the drives of Jenkins’ computer and my laptop computer (An ASUS, V6000 serial number 58NP005559) at the office at 25 Walnut Street. The laptop had a defective battery and I kept it at the office when travelling as an information backup using main power only.
29. In November of 2006 Jenkins and I were in Florida at her then apartment/condominium. She was unable to find any of the missing items and also could not find the key to the one

locked closet. We returned to RI and Jenkins did a further search of the property there, also to no avail. On a second trip to Florida, Jenkins organized a locksmith to open the locked closet where she considered that she may have stored the fur coat and possibly the jewelry. None of the items were found.

30. I departed for Asia and Australia on business in mid December 2006.
31. Jenkins and I were in Europe in early February 2007. On return to RI, Jenkins discovered that more items were missing and remembered that a key which had always been hidden in the entrance to the basement outside had gone missing in July 2006. At that time Jenkins reported to the Newport Police Department the theft of all of the property previously referred to, which had gone missing over time between July 2006 and February 2007. I was in the office at 25 Walnut Street when the report was made and a Police Officer came to interview Jenkins.
32. After the Police visit, Jenkins advised me that the locks had been changed to the office and issued me a replacement key. She also indicated that we would need to use the security system in the future.
33. In autumn of 2007, during a visit to the UK in connection with business and for Jenkins, attending divorce proceedings with her former husband, I accompanied her part time, including one Court appearance.
34. I spent much of the first half of 2008 traveling and was in Singapore with Jenkins in early June when personnel in the NY office informed us of a fax from the SEC indicating that they would like to conduct a routine exam in a few days time. Jenkins departed Singapore immediately and returned to NY. I concluded other business engagements and returned three days later.
35. The exam resulted in the production of much hard and soft copy data for SEC review. I was preparing for departure to Asia and Australia in mid July 2008. Before leaving, I was reviewing materials in the course of preparation for the SEC in the basement of the office at 25 Walnut Street. The last file crate I reviewed was about three quarters full of documentation in file folders.
36. Specifically I asked Jenkins about the confidential accounts information including the custodial statements. Jenkins pointed to and retrieved a brown envelope where she

showed me the custodial statements. She then showed me another folder in an adjacent crate which had a contract signed by Pieter Hofmann in it, including the confidentiality clause, signed by Jenkins dated March 1997. She added "that is more than anyone else at Locke has seen and that is all you will see" She took the confidentiality provisions very seriously. As a former Naval Officer familiar with intelligence and security and the "need to know" principles, as well as being very familiar with European business practices and the culture of privacy that pervades, I had no reason to doubt and still have no reason to doubt the integrity of the information showed to me.

37. The second B&E event that I was aware of at the office was in August 2008. On 14th August 2008 I returned to USA from Australia. Jenkins met and drove me to the office from Boston Logan Airport to Newport, Rhode Island. On arrival at the house I observed the back or kitchen door open. Jenkins responded to my question that she had left it open so the cat could exit and re-enter as required. I also observed a soft material bag hanging on a hook behind the back door. I thought it unusual but believed it had been left by Jenkins for a reason. The next morning 15th August whilst in the kitchen adjacent to the back door which was shut, Jenkins entered and asked whether I had seen the bag behind the door. I stated that I had seen it the previous evening. Jenkins responded that the bag was the one in which she kept her jewelry. On inspection the bag did contain some of the jewelry given to her by her husband that I was aware had previously been reported missing.
38. Subsequently I witnessed Jenkins reporting by telephone the recovery of these pieces of jewelry to the Newport Police, Detective Hayes.
39. On January 9th 2009 I was in the office with the SEC officers who were looking for amongst other things the custodial statements of the confidential accounts outlined in para 11 above. For part of the time I was in the basement mainly with Mr. Scott Pomfret Esq from the SEC Enforcement Agency.
40. I indicated to him the spot where the file crate with the envelope of custodial statements had been situated, prior to being shipped to the SEC in Boston. The other custodial statements and copies of those shipped for the accounts were nowhere to be found either. I

assisted Mr. Pomfret and others in removing the crates from the basement for further examination by SEC staff including Ms Naomi Sevilla Esq upstairs.

41. In a constructive and amiable discussion, Mr. Pomfret enquired as to where I thought the documents would be. I said I simply did not know. I knew and believed that the documents did exist. I had sighted some if not all of the documents. I went on to say that the only other place I could contemplate them being was in Jenkins's former matrimonial home in London. I drew this conclusion because I was aware from Jenkins and other acquaintances in London who assisted her in removing some of her belongings, exclusively clothing and a bicycle, in haste from the matrimonial home. Moreover I was aware that the Internal Revenue Service (IRS) had investigated Jenkins for alleged unpaid taxes during 2008. The ruling, which I read, by the IRS was that the tax return submitted allegedly by Jenkins was in fact a fraudulent return submitted by Jenkins's husband the Earl of Caithness. Caithness could have only achieved the wherewithal to implement such an act with access to extensive personal and business information of Jenkins, then known as The Countess of Caithness or Lady Caithness. Given the haste of departure from the home and in discussions with a Mr. John Leighton in particular it was obvious to conclude that much of Jenkins personal and business documents had been stored in the matrimonial home in London. Thus they were known to Caithness and more could and might have been "acquired" from the office at 25 Walnut Street where he knew the rest of such material was stored.
42. Mr. Pomfret said "if only I could have the account numbers that would be a big help"
43. I said to Mr. Pomfret "Would it assist if we could show the Advent AXYS system with its unalterable audit trail? Decherts lawyers acting for Locke at the time had been given a run through it using live data in Washington and felt it was most compelling, advising Locke to display it to the SEC" (Mr. Dennis Lawson from Decherts was on the speaker phone in Jenkins office at the time).
44. Mr. Pomfret responded "No I do not consider that important now, but maybe at a later date. You must do what you have to do to try and recover the custodial statements. Please help produce the brochures and other materials that I have asked Ms Jenkins for.

45. Mr. Pomfret went on to say "I'm sorry but I looked at the material sent to Boston and I could not find the custodial statements"
46. On January 10 Jenkins reported the missing documents to the Newport Police. I was present when the Police Officer came to the office and interviewed Jenkins
47. I left the USA on business in February, 2009 returning in April 2009. I left again in July, 2009 and returned in August 2009.
48. On return to Newport in August, 2009 I became aware that computing equipment and cables had been tampered with, moved or otherwise interfered with, specifically the aforementioned ASUS laptop. Jenkins reported that much of the computing equipment had been disturbed and moved to different floors in the building. It appeared that some third party had entered the building and had been copying the hard drives because nothing material or any hardware appeared to be missing.
49. In October 2009 I was in the office and witnessed the installation by a contractor of a new alarm system. I witnessed the testing of the new alarm and was introduced to its features by the contractor. In conversation with the contractor I enquired as to the fidelity and integrity of the system. Was it difficult to breach?
50. "For an honest person yes quite difficult" was his response. "But to a professional in the breaking and entering business the alarm presented only a minor challenge" he said.
51. I then asked how this was the case? He responded that "the professionals have detectors that determine the secure code combination. It was then just a matter of identifying where the security box was positioned to permit the intruder to deactivate the alarm in the normal way".
52. I understand that the SEC has provided excerpts of, amongst other things, the Newport, RI Police Reports but not the complete reports. The full report is attached here in ExWeb1.

The Swiss client:

53. As part of the investigation by the SEC into the Swiss Clients, I have had access to the company archives and that of Whitehorne & Company (WH) in the basement of the office at 25 Walnut Street.

54. I have ascertained that Jenkins met Mr. Hirzel (now deceased) who was the principal of a money management company and an investment consultant at 107 Dufourstrasse, Zurich in or about 1994.
55. On a visit to Zurich to meet Hirzel in or about 1995 it transpires that Jenkins met an individual known as Mr. Hofmann and sometime later, a second Mr. Pieter Hofmann (junior to but blood relationship with the senior Mr. Hofmann not established)
56. At that time Jenkins was the principal of WH, a broker dealer.
57. WH undertook research projects for Mr. Hirzel and Mr. Hofmann (Sr) separately, potentially in return for soft dollar commission fees.
58. By this time Jenkins had founded Locke Capital Management (LCM).
59. Beginning in early 1997, Hofmann had asked Jenkins to invest their clients (or their own) money for an initial amount of about USD\$30m in a Global account. Other product accounts were anticipated. This is reflected in the records as at December 1997 and underscored by a contract executed at 107 Dufourstrasse between LCM, Jenkins and Hofmann for AMAG. The contract at **EXHIBIT W4** contains the confidentiality provisions.
60. The Hofmann's wished to have a confidential entity through which the funds could be invested.
61. As is normal when dealing through consultants in the money management business, the contract between LCM and AMAG was facilitated at the consultant's (Hirzel) address and letterhead and executed by the principal of AMAG, Mr. Hofmann Sr.
62. In autumn, 1997 in Zurich Mr. Hofmann (Sr), who appears to have or have had a relationship with Bank Hofmann, AG, with offices at Talstrasse, 27, CH-8001 Zurich

Switzerland, because in their discussions, he frequently quoted the procedures and investment processes there. He met Jenkins in Zurich, again at 107 Dufourstrasse. The other accounts came in at about USD10m for the international ex-US product and USD15m for the US only product.

63. Was AMAG required to be registered with any regulatory body in 1997? It is not known even what country AMAG is incorporated in, if it is at all. At that time LCM was neither concerned nor was it part of its due diligence requirement as existing in 1997. Jenkins felt she “knew her client” well enough as he had exhibited all of the usual characteristics inherent in setting up an investment management account in Switzerland. There were a number of corporate names on the door. Like some other accounts at Locke, even in 2008, LCM does not know the actual client entity name until the contract arrives. While a contract had been executed for LCM, the accounts were managed from WH, since the fees were set up as soft dollar commission fees. Today in 2010 LCM is still none the wiser of requirements that may have existed in Switzerland in 1997.
64. By 1999 through organic growth the original funds had grown to about USD\$90m. Screen shots from the AXYS system, acquired by LCM in 1999 shows as at 30 June 1999. Screen Shots show contributions to and withdrawals from the accounts, highlighted in blue is displayed as **EXHIBIT W5**. Note that the initiation of the Long/Short Account in 2004 is also recorded and highlighted. The compliance specifications of AXYS are relevant, see **EXHIBIT W1**.
65. By the end of 2002, the accounts had lost money due to the bear market but were still worth about USD65m, well ahead of where they had started. Hofmann decided that he would move more money to LCM and invested a further USD220m. Jenkins visited Switzerland again in September of 2003 and met Mr. Pieter Hofmann for the first time. It appeared that Pieter was picking up the main management role. Further screen shots from Axys are highlighted in blue, **EXHIBIT W5** continues to refer.

66. Perusal of Family Court Papers in the Divorce proceedings in the property settlement/divorce proceedings from the UK will reveal that the former husband of Jenkins, The Earl of Caithness, was aware of and proved the existence of the Swiss clients for the purposes of minimising any settlement from him and justifying why he should not repay any of the monies owing to Jenkins. The SEC Form ADV filed in 2006 was submitted as part of the testimony. Surely Jenkins would never have disclosed the management of about USD900m to this Court if it was not true. It appears to be the reason why decisions were taken against her and she was ordered to make payments to Caithness over several following years, even though she had not been earning any personal income from the money management mandate.
67. Some of the Family Court proceedings completed in 2007. Significantly the Swiss Client redeemed \$300m in December 2007. Screen shots toward the end of **EXHIBIT W5** refer. I understood that in a conversation with Pieter Hofmann, Jenkins was advised they did this because they were concerned at the breach of confidentiality reported from the UK Court proceedings. However, excellent performance also has a tendency to cause investors to diversify away from managers that have done particularly well.
68. Commonly, high net worth families in Europe have Private funds invested on a confidential basis through an independent consultant, in this case Hirzel. Why confidential? Because it is in the European culture, France and Switzerland especially, as is well documented, that the culture of discretion and privacy pervades.
69. A further example of the European high net worth family is another former client. The client was a family in Italy, whose business was registered in Luxembourg. The banking was operated in Lichtenstein, the custodian in Switzerland and the investing client appeared on the LCM contract as a British Virgin Islands entity and the family office running the investments was in Monaco. LCM has had a number of complex international relationships, many of which date back to research work started at WH.

70. While the connection to Bank Hofmann was never made explicit by Mr. Hofmann (Sr), that bank was acquired by Bank Clariden and subsequently merged with Bank Leu, also of Switzerland. Mr. Alex Hofmann was CEO of Clariden Bank before his retirement, which seemingly happened at about the time of the merger. Several years after that, the conglomerate of these banks was acquired by Credit Suisse First Boston and remains part of that group today.
71. The Clariden Leu Bank website illustrates in the narrative and graphically, the investment architecture LCM had with the group known to LCM as "AMAG". It includes private labeled products and external sub advisors. LCM is unaware of any linkage, corporate or otherwise between AMAG and Bank Clariden Leu. It is thought unlikely because such linkages are normally implemented by Teaming Agreements or protocols which do not require any formal registration necessarily between the investor and the contracting authority. Exhibit J of the Motion to Dismiss refers.
72. Evidence of the high performance returns to AMAG from LCM investment operations over the 11 year period of the business relationship is in abundance in the LCM systems and remains available for SEC review. Communication was maintained almost exclusively by telephone for the greater part of the period. None of the European clients prior to 2000 would ever permit use of emails in their communications with either WH or LCM. It was a struggle to switch this group to the informal email set up by Jenkins at the request of Hagelstein during the 2008 SEC exam.
73. The growth in the assets in the spb accounts (AMAG) were predominantly attributable to performance, not the investment of the further funds.
74. A copy of my report of visit to Zurich and the last known offices of AMAG is attached at **EXHIBIT J** of the Motion to Dismiss.

75. The termination letter to LCM from AMAG is attached at **EXHIBIT 5**.

This Affidavit has been prepared voluntarily by me of my own free will, without duress, inducement or subjugation or threat from any third party whatsoever.

Executed under the pains and penalties of perjury this 13th day of July 2010 at Newport, Rhode Island.

Respectfully submitted,

/s/ Derrick Webster

Derrick Webster
Endeavour House
2 Captain Cook Crescent
Manuka, ACT 2603
Australia
Tel: +61 420 533990
July 13, 2010



MICROSOFT CORPORATION
ONE MICROSOFT WAY
REDMOND, WA 98052-6399
UNITED STATES OF AMERICA

PHONE: (425) 882-8080
FAX: (425) 936-7329
TELEX: 160520 MSFT BVUE

MS FACSIMILE TRANSMITTAL FORM

TO: Leila Jenkins
COMPANY:
CC:
PHONE:
FAX: 800-243-9211

FROM: Bryan Hutton
BLDG/ROOM: 8/2081
PHONE: 425-421-7024
DATE & TIME: 8/26/09
QTY OF PAGES: 2

- Urgent For Review Please Comment Please Reply Please Recycle

RE: subadvtrades@hotmail.com

CONFIDENTIALITY STATEMENT: The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the addressee listed on this coversheet. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this telecopy is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone at the number listed on this coversheet and return the original message to us at the above address via the postal service. We will reimburse any costs you incur in notifying us and returning the message to us. Thank you.

Microsoft Corporation
One Microsoft Way
Redmond, WA 98052-6399

Tel 425 882 8080
Fax 425 936 7329
<http://www.microsoft.com/>



VIA FACSIMILE & U.S. MAIL

August 26, 2009

Leila Jenkins
Locke Capital Management
25 Walnut St
Newport, RI 02840

RE: subadvtrades@hotmail.com

Dear Ms. Jenkins:

Per our telephone conversation earlier this week, this letter is to notify you that the account: subadvtrades@hotmail.com was inactive as of January 8, 2009. Below is an explanation of the inactive status.

Typically all email content and Internet Protocol Log data associated with accounts that are affirmatively closed by their account holders, or with accounts that are left inactive for approximately 30 days, are permanently deleted. The remaining "shell" account containing only the registration information provided by the subscriber is labeled "inactive." After an additional 60 days, the shell account is also permanently deleted and the email address returned to the pool of available addresses—resulting in an "NSU" or "no such user" user record search result.

If you have any further questions, please call me at 425-421-7024.

Sincerely,

MICROSOFT CORPORATION


Bryan Hutton
Custodian of Records

Microsoft Corporation
One Microsoft Way
Redmond, WA 98052-6399

Tel 425 882 8080
Fax 425 936 7329
<http://www.microsoft.com/>



CERTIFICATION OF AUTHENTICITY

I, Bryan Hutton, state as follows:

1. I am over the age of 18, I am competent to testify regarding the matters set forth below and I make this declaration based upon personal knowledge.

2. I am one of the records custodians for Microsoft Corporation, including its Hotmail service(s) (the "Service"). I am familiar with the electronic filing system for maintaining subscriber information for the Service.

3. When a new subscriber registers for the Service, the subscriber is required to enter certain information, including the name and address of the subscriber ("Subscriber Information").

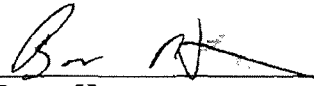
4. In the ordinary course of the Service's business, the Service maintains an electronic record of the Subscriber Information ("Subscriber Information Record"). Subscriber Information Records are made at the time that a new subscriber registers for the Service.

5. In the ordinary course of the Service's business, the Service maintains an electronic record of certain data with respect to subscriber accounts, including: registration information provided by the user and Internet Protocol Logs which list the date, time and Internet Protocol address for each account session log-in (collectively, "Subscriber Logs"). Subscriber Logs are made contemporaneously with the events that they document. Subscriber Logs are kept for a limited time and may not be available as they are deleted in the course of routine document storage maintenance.

6. In the regular course of my duties as custodian of records, I obtained a copy of the Subscriber Information Record and Subscriber Logs for the Service account(s): subadvtrades@hotmail.com. These records included the information in the pages labeled MS/SUB 0001 -0002, which have been requested by civil subpoena in: *In the Matter of Locke Capital Management*.

I declare, under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED January 14, 2009, in Redmond, Washington.



Bryan Hutton
Custodian of Records, Microsoft Corporation

WINDOWS LIVE ID RECORDS

The Windows Live ID service is formerly known as the "Passport" service.

The below records are provided either because:

- 1) Windows Live ID ("WLID") records have been specifically sought; or
- 2) Only WLID records exist because the associated e-mail account has become inactive. WLID permits sign-on activity to other services even when the e-mail account has become inactive; or
- 3) The account name was originally created as a "WLID only" account to allow sign-on to services using WLID for authentication and was not used as an e-mail account.

Registration Records for: subadvtrades@hotmail.com

First Name:	sub adv
Last Name:	trades
Gender:	Female
Birthdate:	::1954
Country:	United States
Region/State:	New York
Postal Code:	10022
Time Zone:	Indiana - EST
Language:	English

[Format for birth date record listed above is DD:MM:YY]

Available IP Connection Records

Last Modified	Entry Created	Action	Value	IP Address
2009/01/06 14:44:59	2008/07/01 21:23:01	Site/IP/Time History	Mail 69.201.148.212 Jan 6 2009 2:44PM; Mail 208.105.78.123 Aug 20 2008 11:41PM; account.live.com 208.105.78.123 Aug 19 2008 11:03PM; Mail 64.223.47.174 Aug 13 2008 1:15PM; Unified Signup INT 208.105.78.123 Jul 1 2008 9:23PM;	69.201.148.212
2009/01/06 14:44:59	2008/07/01 21:23:01	Current State (login failed)		208.105.78.123
2009/01/06 14:44:59	2009/01/06 14:44:59	Login Failure	1	69.201.148.212
2008/08/20 23:41:30	2008/07/01 21:23:01	Login Success		208.105.78.123
2008/07/01 21:23:01	2008/07/01 21:23:01	Create Credential	P8	208.105.78.123

MS/SUB
Confidential 0001

**FORM ADV
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION**

Primary Business Name: LOCKE CAPITAL MANAGEMENT INC CRD Number: 106742

Rev. 02/2005

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ADV Part 1A, Page 1

WARNING: Complete this form truthfully. False statements or omissions may result in denial of your application, revocation of your registration, or criminal prosecution. You must keep this form updated by filing periodic amendments. See Form ADV General Instruction 3.

Item 1 Identifying Information

Responses to this Item tell us who you are, where you are doing business, and how we can contact you.

- A. Your full legal name (if you are a sole proprietor, your last, first, and middle names):
LOCKE CAPITAL MANAGEMENT INC
- B. Name under which you primarily conduct your advisory business, if different from Item 1.A.
LOCKE CAPITAL MANAGEMENT INC
List on Section 1.B. of Schedule D any additional names under which you conduct your advisory business.
- C. If this filing is reporting a change in your legal name (Item 1.A.) or primary business name (Item 1.B.), enter the new name and specify whether the name change is of
 your legal name or your primary business name:
- D. If you are registered with the SEC as an investment adviser, your SEC file number: 801-54078
- E. If you have a number ("CRD Number") assigned by the NASD's CRD system or by the IARD system, your CRD number: 106742
If your firm does not have a CRD number, skip this Item 1.E. Do not provide the CRD number of one of your officers, employees, or affiliates.

**FORM ADV
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION**

Primary Business Name: LOCKE CAPITAL MANAGEMENT INC CRD Number: 106742

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ADV - Amendment, Page 2

Item 1 Identifying Information (Continued)

- F. *Principal Office and Place of Business*
(1) Address (do not use a P.O. Box):

Number and Street 1: 25 WALNUT STREET	Number and Street 2:	City:	State:	Country:	ZIP+4/Postal Code:
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NEWPORT RI USA 02840

If this address is a private residence, check this box:

List on Section 1.F. of Schedule D any office, other than your principal office and place of business, at which you conduct investment advisory business. If you are applying for registration, or are registered, with one or more state securities authorities, you must list all of your offices in the state or states to which you are applying for registration or with whom you are registered. If you are applying for registration, or are registered only, with the SEC, list the largest five offices in terms of numbers of employees.

(2) Days of week that you normally conduct business at your principal office and place of business:

Monday-Friday Other: VARIES AROUND BUSINESS TRAVEL DATES

Normal business hours at this location:
10AM - 5PM

(3) Telephone number at this location:
401-849-8540

(4) Facsimile number at this location:
401-849-8555

G. Mailing address, if different from your principal office and place of business address:

Number and Street 1: Number and Street 2:

City: State: Country: ZIP+4/Postal Code:

If this address is a private residence, check this box:

H. If you are a sole proprietor, state your full residence address, if different from your principal office and place of business address in Item 1.F.:

Number and Street 1: Number and Street 2:

City: State: Country: ZIP+4/Postal Code:

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: LOCKE CAPITAL MANAGEMENT INC CRD Number: 106742

Rev. 02/2005

ADV - Amendment, Page 3

Item 1 Identifying Information (Continued)

I. Do you have World Wide Web site addresses? YES NO

If "yes," list these addresses on Section 1.I. of Schedule D. If a web address serves as a portal through which to access other information you have published on the World Wide Web, you may list the portal without listing addresses for all of the other information. Some advisers may need to list more than one portal address. Do not provide individual electronic mail addresses in response to this item.

J. Contact Employee:
Name: Title:

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JENKINS,LEILA C	PRESIDENT		
Telephone Number: 401-849-8540	Facsimile Number: 401-849-8555		
Number and Street 1: 25 WALNUT STREET	Number and Street 2:		
City: NEWPORT	State: RI	Country: USA	ZIP+4/Postal Code: 02840
Electronic mail (e-mail) address, if contact employee has one: LJENKINS@LOCKECAPITAL.COM			
<i>The contact employee should be an employee whom you have authorized to receive information and respond to questions about this Form ADV.</i>			
			YES NO
K. Do you maintain some or all of the books and records you are required to keep under Section 204 of the Advisers Act, or similar state law, somewhere other than your principal office and place of business? <i>If "yes," complete Section 1.K. of Schedule D.</i>			
			YES NO
L. Are you registered with a foreign financial regulatory authority? <i>Answer "no" if you are not registered with a foreign financial regulatory authority, even if you have an affiliate that is registered with a foreign financial regulatory authority. If "yes", complete Section 1.L. of Schedule D.</i>			

FORM ADV
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: LOCKE CAPITAL MANAGEMENT INC	CRD Number: 106742
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Item 2 SEC Registration
Responses to this Item help us (and you) determine whether you are eligible to register with the SEC. Complete this Item 2 only if you are applying for SEC registration or submitting an <i>annual updating amendment</i> to your SEC registration.
A. To register (or remain registered) with the SEC, you must check at least one of the Items 2.A(1) through 2.A(11), below. If you are submitting an <i>annual updating amendment</i> to your SEC registration and you are no longer eligible to register with the SEC, check Item 2.A(12). You:
<input checked="" type="checkbox"/> (1) have assets under management of \$25 million (in U.S. dollars) or more;
<i>See Part 1A Instruction 2.a. to determine whether you should check this box.</i>
<input type="checkbox"/> (2) have your principal office and place of business in the U.S. Virgin Islands or Wyoming;
<input type="checkbox"/> (3) have your principal office and place of business outside the United States;
<input type="checkbox"/> (4) are an investment adviser (or sub-adviser) to an investment company registered under the Investment Company Act of 1940;
<i>See Part 1A Instruction 2.b. to determine whether you should check this box.</i>

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(5) have been designated as a nationally recognized statistical rating organization;

See Part 1A Instruction 2.c. to determine whether you should check this box.

(6) are a pension consultant that qualifies for the exemption in rule 203A-2(b);

See Part 1A Instruction 2.d. to determine whether you should check this box.

(7) are relying on rule 203A-2(c) because you are an investment adviser that *controls*, is *controlled* by, or is under common control with, an investment adviser that is registered with the SEC, and your *principal office and place of business* is the same as the registered adviser;

See Part 1A Instruction 2.e. to determine whether you should check this box. If you check this box, complete Section 2.A(7) of Schedule D.

(8) are a newly formed adviser relying on rule 203A-2(d) because you expect to be eligible for SEC registration within 120 days;

See Part 1A Instruction 2.f. to determine whether you should check this box. If you check this box, complete Section 2.A(8) of Schedule D.

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: LOCKE CAPITAL MANAGEMENT INC CRD Number: 106742

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Item 2 SEC Registration (Continued)

(9) are a multi-state adviser relying on rule 203A-2(e);

See Part 1A Instruction 2.g. to determine whether you should check this box. If you check this box, complete Section 2.A(9) of Schedule D.

(10) are an Internet investment adviser relying on rule 203A-2(f);

See Part 1A Instructions 2.h. to determine whether you should check this box.

(11) have received an SEC order exempting you from the prohibition against registration with the SEC;

If you checked this box, complete Section 2.A(11) of Schedule D.

(12) are no longer eligible to remain registered with the SEC.

See Part 1A Instructions 2.i. to determine whether you should check this box.

B. Under state laws, SEC-registered advisers may be required to provide to state securities

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authorities a copy of the Form ADV and any amendments they file with the SEC. These are called *notice filings*. If this is an initial application, check the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings you submit to the SEC. If this is an amendment to direct your *notice filings* to additional state(s), check the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings you submit to the SEC. If this is an amendment to your registration to stop your *notice filings* from going to state(s) that currently receive them, uncheck the box(es) next to those state(s).

<input type="checkbox"/> AL	<input type="checkbox"/> ID	<input type="checkbox"/> MO	<input type="checkbox"/> PA
<input type="checkbox"/> AK	<input type="checkbox"/> IL	<input type="checkbox"/> MT	<input type="checkbox"/> PR
<input type="checkbox"/> AZ	<input type="checkbox"/> IN	<input type="checkbox"/> NE	<input checked="" type="checkbox"/> RI
<input type="checkbox"/> AR	<input type="checkbox"/> IA	<input type="checkbox"/> NV	<input type="checkbox"/> SC
<input type="checkbox"/> CA	<input type="checkbox"/> KS	<input type="checkbox"/> NH	<input type="checkbox"/> SD
<input type="checkbox"/> CO	<input type="checkbox"/> KY	<input type="checkbox"/> NJ	<input type="checkbox"/> TN
<input type="checkbox"/> CT	<input type="checkbox"/> LA	<input type="checkbox"/> NM	<input type="checkbox"/> TX
<input type="checkbox"/> DE	<input type="checkbox"/> ME	<input type="checkbox"/> NY	<input type="checkbox"/> UT
<input type="checkbox"/> DC	<input type="checkbox"/> MD	<input type="checkbox"/> NC	<input type="checkbox"/> VT
<input checked="" type="checkbox"/> FL	<input type="checkbox"/> MA	<input type="checkbox"/> ND	<input type="checkbox"/> VA
<input type="checkbox"/> GA	<input type="checkbox"/> MI	<input type="checkbox"/> OH	<input type="checkbox"/> WA
<input type="checkbox"/> GU	<input type="checkbox"/> MN	<input type="checkbox"/> OK	<input type="checkbox"/> WV
<input type="checkbox"/> HI	<input type="checkbox"/> MS	<input type="checkbox"/> OR	<input type="checkbox"/> WI

If you are amending your registration to stop your notice filings from going to a state that currently receives them and you do not want to pay that state's notice filing fee for the coming year, your amendment must be filed before the end of the year (December 31).

Item 3 Form Of Organization

A. How are you organized?

- Corporation
 Sole Proprietorship
 Limited Liability Partnership (LLP)
 Partnership
 Limited Liability Company (LLC)
 Other (specify):

If you are changing your response to this Item, see Part 1A Instruction 4.

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: **LOCKE CAPITAL MANAGEMENT INC** CRD Number: **106742**

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Item 3 Form Of Organization (Continued)

B. In what month does your fiscal year end each year?
December

C. Under the laws of what state or country are you organized?
RHODE ISLAND

If you are a partnership, provide the name of the state or country under whose laws your partnership was formed. If you are a sole proprietor, provide the name of the state or country where you reside.

If you are changing your response to this Item, see Part 1A Instruction 4.

Item 4 Successions

YES NO

A. Are you, at the time of this filing, succeeding to the business of a registered investment adviser? YES NO

If "yes," complete Item 4.B. and Section 4 of Schedule D.

B. Date of Succession: (MM/DD/YYYY)

If you have already reported this succession on a previous Form ADV filing, do not report the succession again. Instead, check "No." See Part 1A Instruction 4.

Item 5 Information About Your Advisory Business

Responses to this Item help us understand your business, assist us in preparing for on-site examinations, and provide us with data we use when making regulatory policy. Part 1A Instruction 5.a. provides additional guidance to newly-formed advisers for completing this Item 5.

Employees

A. Approximately how many employees do you have? Include full and part-time employees but do not include any clerical workers.

- 1-5 6-10 11-50 51-250 251-500
 501-1,000 More than 1,000 If more than 1,000, how many? (round to the nearest 1,000)

B.

(1) Approximately how many of these employees perform investment advisory functions (including research)?

- 0 1-5 6-10 11-50 51-250
 251-500 501-1,000 More than 1,000 If more than 1,000, how many? (round to the nearest 1,000)

(2) Approximately how many of these employees are registered representatives of a broker-dealer?

- 0 1-5 6-10 11-50 51-250
 251-500 501-1,000 More than 1,000 If more than 1,000, how many? (round to the nearest 1,000)

If you are organized as a sole proprietorship, include yourself as an employee in your responses to Items 5.A(1) and 5.B(2). If an employee performs more than one function, you should count that employee in each of your responses to Item 5.B(1) and 5.B(2).

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: **LOCKE CAPITAL MANAGEMENT INC** CRD Number: **106742**

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Item 5 Information About Your Advisory Business (Continued)

- (3) Approximately how many firms or other persons solicit advisory clients on your behalf?
- 0
 1-5
 6-10
 11-50
 51-250
 251-500
 501-1,000
 More than 1,000
 If more than 1,000, how many?
 (round to the nearest 1,000)

In your response to Item 5.B(3), do not count any of your employees and count a firm only once -- do not count each of the firm's employees that solicit on your behalf.

Clients

- C. To approximately how many clients did you provide investment advisory services during your most-recently completed fiscal year?
- 0
 1-10
 11-25
 26-100
 101-250
 251-500
 More than 500
 If more than 500, how many?
 (round to the nearest 500)

- D. What types of clients do you have? Indicate the approximate percentage that each type of client comprises of your total number of clients.
- | | None
to
10% | Up
to
25% | 11-
25% | 26-
50% | 51-
75% | More
Than
75% |
|---|----------------------------------|----------------------------------|----------------------------------|----------------------------------|-----------------------|-----------------------|
| (1) Individuals (other than high net worth individuals) | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| (2) High net worth individuals | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| (3) Banking or thrift institutions | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| (4) Investment companies (including mutual funds) | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| (5) Pension and profit sharing plans (other than plan participants) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| (6) Other pooled investment vehicles (e.g., hedge funds) | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| (7) Charitable organizations | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

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(8) Corporations or other businesses not listed above

(9) State or municipal government entities

(10) Other:

The category "Individuals" includes trusts, estates, 401(k) plans and IRAs of individuals and their family members, but does not include businesses organized as sole proprietorships.

Unless you provide advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940, check "None" in response to Item 5.D(4).

FORM ADV
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: **LOCKE CAPITAL MANAGEMENT INC** CRD Number: **106742**

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Item 5 Information About Your Advisory Business (Continued)

Compensation Arrangements

E. You are compensated for your investment advisory services by (check all that apply):

- (1) A percentage of assets under your management
- (2) Hourly charges
- (3) Subscription fees (for a newsletter or periodical)
- (4) Fixed fees (other than subscription fees)
- (5) Commissions
- (6) Performance-based fees
- (7) Other (specify):

Assets Under Management

	YES	NO
F. (1) Do you provide continuous and regular supervisory or management services to securities portfolios?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(2) If yes, what is the amount of your assets under management and total number of accounts?		
	U.S. Dollar Amount	Total Number of Accounts
Discretionary:	(a) \$ 893179244 .00	(d) 4
Non-Discretionary:	(b) \$ 0 .00	(e) 0
Total:	(c) \$ 893179244 .00	(f) 4

Part 1A Instruction 5.b. explains how to calculate your assets under management. You must follow these instructions carefully when completing this Item.

Advisory Activities

G. What type(s) of advisory services do you provide? Check all that apply.

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- (1) Financial planning services
- (2) Portfolio management for individuals and/or small businesses
- (3) Portfolio management for investment companies
- (4) Portfolio management for businesses or institutional *clients* (other than investment companies)
- (5) Pension consulting services
- (6) Selection of other advisers
- (7) Publication of periodicals or newsletters
- (8) Security ratings or pricing services
- (9) Market timing services
- (10) Other (specify):

Do not check Item 5.G(3) unless you provide advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940.

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Item 5 Information About Your Advisory Business (Continued)

H. If you provide financial planning services, to how many *clients* did you provide these services during your last fiscal year?

- 0 1-10 11-25 26-50 51-100
- 101-250 251-500 More than 500 If more than 500, how many?
(round to the nearest 500)

I. If you participate in a *wrap fee program*, do you (check all that apply):

- (1) *sponsor* the *wrap fee program*?
- (2) act as a portfolio manager for the *wrap fee program*?

If you are a portfolio manager for a wrap fee program, list the names of the programs and their sponsors in Section 5.I(2) of Schedule D.

If your involvement in a wrap fee program is limited to recommending wrap fee programs to your clients, or you advise a mutual fund that is offered through a wrap fee program, do not check either Item 5.I(1) or 5.I(2).

Item 6 Other Business Activities

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In this Item, we request information about your other business activities.

A. You are actively engaged in business as a (check all that apply):

- (1) Broker-dealer
- (2) Registered representative of a broker-dealer
- (3) Futures commission merchant, commodity pool operator, or commodity trading advisor
- (4) Real estate broker, dealer, or agent
- (5) Insurance broker or agent
- (6) Bank (including a separately identifiable department or division of a bank)
- (7) Other financial product salesperson (specify):

YES NO

B. (1) Are you actively engaged in any other business not listed in Item 6.A. (other than giving investment advice)?

YES NO

(2) If yes, is this other business your primary business?

YES NO

If "yes," describe this other business on Section 6.B. of Schedule D.

YES NO

(3) Do you sell products or provide services other than investment advice to your advisory clients?

YES NO

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Item 7 Financial Industry Affiliations

In this Item, we request information about your financial industry affiliations and activities. This information identifies areas in which conflicts of interest may occur between you and your clients.

Item 7 requires you to provide information about you and your *related persons*. Your *related persons* are all of your *advisory affiliates* and any *person* that is under common control with you.

A. You have a *related person* that is a (check all that apply):

- (1) broker-dealer, municipal securities dealer, or government securities broker or dealer
- (2) investment company (including mutual funds)
- (3) other investment adviser (including financial planners)
- (4) futures commission merchant, commodity pool operator, or commodity trading advisor
- (5) banking or thrift institution
- (6) accountant or accounting firm
- (7) lawyer or law firm
- (8) insurance company or agency
- (9) pension consultant

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- (10) real estate broker or dealer
- (11) sponsor or syndicator of limited partnerships

If you checked Item 7.A(3), you must list on Section 7.A. of Schedule D all your related persons that are investment advisers. If you checked Item 7.A(1), you may elect to list on Section 7.A. of Schedule D all your related persons that are broker-dealers. If you choose to list a related broker-dealer, the IARD will accept a single Form U-4 to register an investment adviser representative who also is a broker-dealer agent ("registered rep") of that related broker-dealer.

YES NO

B. Are you or any related person a general partner in an investment-related limited partnership or manager of an investment-related limited liability company, or do you advise any other "private fund" as defined under SEC rule 203(b)(3)-1?

If "yes," for each limited partnership or limited liability company, or (if applicable) private fund, complete Section 7.B. of Schedule D. If, however, you are an SEC-registered adviser and you have related persons that are SEC-registered advisers who are the general partners of limited partnerships or the managers of limited liability companies, you do not have to complete Section 7.B. of Schedule D with respect to those related advisers' limited partnerships or limited liability companies.

To use this alternative procedure, you must state in the Miscellaneous Section of Schedule D: (1) that you have related SEC-registered investment advisers that manage limited partnerships or limited liability companies that are not listed in Section 7.B. of your Schedule D; (2) that complete and accurate information about those limited partnerships or limited liability companies is available in Section 7.B. of Schedule D of the Form ADVs of your related SEC-registered advisers; and (3) whether your clients are solicited to invest in any of those limited partnerships or limited liability companies.

Item 8 Participation or Interest in Client Transactions

In this Item, we request information about your participation and interest in your clients' transactions. Like Item 7, this information identifies areas in which conflicts of interest may occur between you and your clients.

Like Item 7, Item 8 requires you to provide information about you and your related persons.

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Item 8 Participation or Interest in Client Transactions (Continued)

Proprietary Interest in Client Transactions

A. Do you or any related person:

Yes No

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(1) buy securities for yourself from advisory *clients*, or sell securities you own to advisory *clients* (principal transactions)?

(2) buy or sell for yourself securities (other than shares of mutual funds) that you also recommend to advisory *clients*?

(3) recommend securities (or other investment products) to advisory *clients* in which you or any *related person* has some other proprietary (ownership) interest (other than those mentioned in Items 8.A(1) or (2))?

Sales Interest in Client Transactions

B. Do you or any *related person*: Yes No

(1) as a broker-dealer or registered representative of a broker-dealer, execute securities trades for brokerage customers in which advisory *client* securities are sold to or bought from the brokerage customer (agency cross transactions)?

(2) recommend purchase of securities to advisory *clients* for which you or any *related person* serves as underwriter, general or managing partner, or purchaser representative?

(3) recommend purchase or sale of securities to advisory *clients* for which you or any *related person* has any other sales interest (other than the receipt of sales commissions as a broker or registered representative of a broker-dealer)?

Investment or Brokerage Discretion

C. Do you or any *related person* have *discretionary authority* to determine the: Yes No

(1) securities to be bought or sold for a *client's* account?

(2) amount of securities to be bought or sold for a *client's* account?

(3) broker or dealer to be used for a purchase or sale of securities for a *client's* account?

(4) commission rates to be paid to a broker or dealer for a *client's* securities transactions?

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Item 8 Participation or Interest in Client Transactions (Continued)

D. Do you or any *related person* recommend brokers or dealers to *clients*?

E. Do you or any *related person* receive research or other products or services other than execution from a broker-dealer or a third party in connection with *client* securities transactions?

F. Do you or any *related person*, directly or indirectly, compensate any person for *client* referrals?

In responding to this Item 8.F., consider in your response all cash and non-cash compensation that you or a related person gave any person in exchange for client referrals, including any bonus that is based, at least in part, on the number or amount of client referrals.

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Item 9 Custody

In this Item, we ask you whether you or a *related person* has *custody* of *client* assets. If you are registering or registered with the SEC and you deduct your advisory fees directly from your *clients'* accounts but you do not otherwise have *custody* of your *clients'* funds or securities, you may answer "no" to Item 9A.(1) and 9A.(2).

- | | | |
|---|-----------------------|----------------------------------|
| A. Do you have <i>custody</i> of any advisory <i>clients'</i> : | Yes | No |
| (1) cash or bank accounts? | <input type="radio"/> | <input checked="" type="radio"/> |
| (2) securities? | <input type="radio"/> | <input checked="" type="radio"/> |
| B. Do any of your <i>related persons</i> have <i>custody</i> of any of your advisory <i>clients'</i> : | | |
| (1) cash or bank accounts? | <input type="radio"/> | <input checked="" type="radio"/> |
| (2) securities? | <input type="radio"/> | <input checked="" type="radio"/> |
| C. If you answered "yes" to either Item 9.B(1) or 9.B(2), is that <i>related person</i> a broker-dealer registered under Section 15 of the Securities Exchange Act of 1934? | <input type="radio"/> | <input checked="" type="radio"/> |

Item 10 Control Persons

In this Item, we ask you to identify every *person* that, directly or indirectly, *controls* you. If you are submitting an initial application, you must complete Schedule A and Schedule B. Schedule A asks for information about your direct owners and executive officers. Schedule B asks for information about your indirect owners. If this is an amendment and you are updating information you reported on either Schedule A or Schedule B (or both) that you filed with your initial application, you must complete Schedule C.

- | | | |
|--|-----------------------|----------------------------------|
| | YES | NO |
| Does any <i>person</i> not named in Item 1.A. or Schedules A, B, or C, directly or indirectly, <i>control</i> your management or policies? | <input type="radio"/> | <input checked="" type="radio"/> |
- If yes, complete Section 10 of Schedule D.

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Item 11 Disclosure Information

In this Item, we ask for information about your disciplinary history and the disciplinary history of all your *advisory affiliates*. We use this information to determine whether to grant your application for registration, to decide whether to revoke your registration or to place limitations on your activities as an investment adviser, and to identify potential problem areas to focus on during our on-site examinations. One event may result in "yes" answers to more than one of the questions below.

Your *advisory affiliates* are: (1) all of your current *employees* (other than *employees* performing only clerical, administrative, support or similar functions); (2) all of your officers, partners, or directors (or any *person* performing similar functions); and (3) all *persons* directly or indirectly *controlling* you or *controlled* by you. If you are a "separately identifiable department or division" (SID) of a bank, see the Glossary of Terms to determine who your *advisory affiliates* are.

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If you are registered or registering with the SEC, you may limit your disclosure of any event listed in Item 11 to ten years following the date of the event. If you are registered or registering with a state, you must respond to the questions as posed; you may, therefore, limit your disclosure to ten years following the date of an event only in responding to Items 11.A(1), 11.A(2), 11.B(1), 11.B(2), 11.D(4), and 11.H(1)(a). For purposes of calculating this ten-year period, the date of an event is the date the final order, judgment, or decree was entered, or the date any rights of appeal from preliminary orders, judgments, or decrees lapsed.

You must complete the appropriate Disclosure Reporting Page ("DRP") for "yes" answers to the questions in this Item 11.

For "yes" answers to the following questions, complete a Criminal Action DRP:

- | A. In the past ten years, have you or any advisory affiliate: | YES | NO |
|--|--------------------------|-------------------------------------|
| (1) been convicted of or plead guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any felony? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| (2) been charged with any felony? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

If you are registered or registering with the SEC, you may limit your response to Item 11.A(2) to charges that are currently pending.

- | B. In the past ten years, have you or any advisory affiliate: | YES | NO |
|--|--------------------------|-------------------------------------|
| (1) been convicted of or plead guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to a misdemeanor involving: investments or an investment-related business, or any fraud, false statements, or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| (2) been charged with a misdemeanor listed in 11.B(1)? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

If you are registered or registering with the SEC, you may limit your response to Item 11.B(2) to charges that are currently pending.

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Item 11 Disclosure Information (Continued)

For "yes" answers to the following questions, complete a Regulatory Action DRP:

- | C. Has the SEC or the Commodity Futures Trading Commission (CFTC) ever: | YES | NO |
|---|--------------------------|-------------------------------------|
| (1) found you or any advisory affiliate to have made a false statement or omission? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| (2) found you or any advisory affiliate to have been involved in a violation of SEC | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

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or CFTC regulations or statutes?

(3) *found* you or any *advisory affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?

(4) entered an *order* against you or any *advisory affiliate* in connection with *investment-related* activity?

(5) imposed a civil money penalty on you or any *advisory affiliate*, or *ordered* you or any *advisory affiliate* to cease and desist from any activity?

D. Has any other federal regulatory agency, any state regulatory agency, or any foreign financial regulatory authority:

(1) ever *found* you or any *advisory affiliate* to have made a false statement or omission, or been dishonest, unfair, or unethical?

(2) ever *found* you or any *advisory affiliate* to have been *involved* in a violation of *investment-related* regulations or statutes?

(3) ever *found* you or any *advisory affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?

(4) in the past ten years, entered an *order* against you or any *advisory affiliate* in connection with an *investment-related* activity?

(5) ever denied, suspended, or revoked your or any *advisory affiliate's* registration or license, or otherwise prevented you or any *advisory affiliate*, by *order*, from associating with an *investment-related* business or restricted your or any *advisory affiliate's* activity?

E. Has any *self-regulatory organization* or commodities exchange ever:

(1) *found* you or any *advisory affiliate* to have made a false statement or omission?

(2) *found* you or any *advisory affiliate* to have been *involved* in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the SEC)?

(3) *found* you or any *advisory affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?

(4) disciplined you or any *advisory affiliate* by expelling or suspending you or the *advisory affiliate* from membership, barring or suspending you or the *advisory affiliate* from association with other members, or otherwise restricting your or the *advisory affiliate's* activities?

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Item 11 Disclosure Information (Continued)

F. Has an authorization to act as an attorney, accountant, or federal contractor

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granted to you or any *advisory affiliate* ever been revoked or suspended?

G. Are you or any *advisory affiliate* now the subject of any regulatory proceeding that could result in a "yes" answer to any part of Item 11.C., 11.D., or 11.E.?

For "yes" answers to the following questions, complete a Civil Judicial Action DRP:

H. (1) Has any domestic or foreign court:	YES	NO
(a) in the past ten years, enjoined you or any <i>advisory affiliate</i> in connection with any <i>investment-related</i> activity?	<input type="radio"/>	<input checked="" type="radio"/>
(b) ever found that you or any <i>advisory affiliate</i> were involved in a violation of <i>investment-related</i> statutes or regulations?	<input type="radio"/>	<input checked="" type="radio"/>
(c) ever dismissed, pursuant to a settlement agreement, an <i>investment-related</i> civil action brought against you or any <i>advisory affiliate</i> by a state or foreign financial regulatory authority?	<input type="radio"/>	<input checked="" type="radio"/>
(2) Are you or any <i>advisory affiliate</i> now the subject of any civil proceeding that could result in a "yes" answer to any part of Item 11.H(1)?	<input type="radio"/>	<input checked="" type="radio"/>

Item 12 Small Businesses

The SEC is required by the Regulatory Flexibility Act to consider the effect of its regulations on small entities. In order to do this, we need to determine whether you meet the definition of "small business" or "small organization" under rule 0-7.

Answer this Item 12 only if you are registered or registering with the SEC and you indicated in response to Item 5.F(2)(c) that you have assets under management of less than \$25 million. You are not required to answer this Item 12 if you are filing for initial registration as a state adviser, amending a current state registration, or switching from SEC to state registration.

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Item 12 Small Businesses (Continued)

For purposes of this Item 12 only:

- Total Assets refers to the total assets of a firm, rather than the assets managed on behalf of *clients*. In determining your or another *person's* total assets, you may use the total assets shown on a current balance sheet (but use total assets reported on a consolidated balance sheet with subsidiaries included, if that amount is larger).
- Control means the power to direct or cause the direction of the management or policies of a *person*, whether through ownership of securities, by contract, or otherwise. Any *person* that directly or indirectly has the right to vote 25 percent or more of the voting securities, or is entitled to 25 percent or more of the profits, of another *person* is presumed to control the other *person*.

YES NO

A. Did you have total assets of \$5 million or more on the last day of your most recent

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fiscal year?

If "yes," you do not need to answer Items 12.B. and 12.C.

B. Do you:

(1) control another investment adviser that had assets under management of \$25 million or more on the last day of its most recent fiscal year?

(2) control another person (other than a natural person) that had total assets of \$5 million or more on the last day of its most recent fiscal year?

C. Are you:

(1) controlled by or under common control with another investment adviser that had assets under management of \$25 million or more on the last day of its most recent fiscal year?

(2) controlled by or under common control with another person (other than a natural person) that had total assets of \$5 million or more on the last day of its most recent fiscal year?

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You must complete this Part 1B only if you are applying for registration, or are registered, as an investment adviser with any of the state securities authorities.

Part 1B Item 1 - State Registration

Complete this Item 1 if you are submitting an initial application for state registration or requesting additional state registration(s). Check the boxes next to the states to which you are submitting this application. If you are already registered with at least one state and are applying for registration with an additional state or states, check the boxes next to the states in which you are applying for registration. Do not check the boxes next to the states in which you are currently registered or where you have an application for registration pending.

<input type="checkbox"/> AL	<input type="checkbox"/> ID	<input type="checkbox"/> MO	<input type="checkbox"/> PA
<input type="checkbox"/> AK	<input type="checkbox"/> IL	<input type="checkbox"/> MT	<input type="checkbox"/> PR
<input type="checkbox"/> AZ	<input type="checkbox"/> IN	<input type="checkbox"/> NE	<input type="checkbox"/> RI
<input type="checkbox"/> AR	<input type="checkbox"/> IA	<input type="checkbox"/> NV	<input type="checkbox"/> SC
<input type="checkbox"/> CA	<input type="checkbox"/> KS	<input type="checkbox"/> NH	<input type="checkbox"/> SD
<input type="checkbox"/> CO	<input type="checkbox"/> KY	<input type="checkbox"/> NJ	<input type="checkbox"/> TN
<input type="checkbox"/> CT	<input type="checkbox"/> LA	<input type="checkbox"/> NM	<input type="checkbox"/> TX
<input type="checkbox"/> DE	<input type="checkbox"/> ME	<input type="checkbox"/> NY	<input type="checkbox"/> UT
<input type="checkbox"/> DC	<input type="checkbox"/> MD	<input type="checkbox"/> NC	<input type="checkbox"/> VT

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<input type="checkbox"/> FL	<input type="checkbox"/> MA	<input type="checkbox"/> ND	<input type="checkbox"/> VA
<input type="checkbox"/> GA	<input type="checkbox"/> MI	<input type="checkbox"/> OH	<input type="checkbox"/> WA
<input type="checkbox"/> GU	<input type="checkbox"/> MN	<input type="checkbox"/> OK	<input type="checkbox"/> WV
<input type="checkbox"/> HI	<input type="checkbox"/> MS	<input type="checkbox"/> OR	<input type="checkbox"/> WI

Part 1B Item 2 - Additional Information

A. Person responsible for supervision and compliance:

Name:

Title:

Telephone:

Fax:

Number and Street 1:

Number and Street 2:

City:

State:

Country:

ZIP+4/Postal Code:

Email address, if available:

If this address is a private residence, check this box:

B. Bond/Capital Information, if required by your home state.

(1) Name of Issuing Insurance Company:

(2) Amount of Bond:

\$.00

(3) Bond Policy Number:

Yes No

(4) If required by your home state, are you in compliance with your home state's minimum capital requirements?

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Part 1B Item 2 - Additional Information (Continued)

Yes No

For "yes" answers to the following question, complete a Bond DRP.

C. Has a bonding company ever denied, paid out on, or revoked a bond for you?

For "yes" answers to the following question, complete a Judgment/Lien DRP:

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D. Do you have any unsatisfied judgements or liens against you?

For "yes" answers to the following questions, complete an Arbitration DRP:

E. Are you, any *advisory affiliate*, or any *management person* currently the subject of, or have you, any *advisory affiliate*, or any *management person* been the subject of, an arbitration claim alleging damages in excess of \$2,500, involving any of the following:

(1) any investment or an *investment-related* business of activity?

(2) fraud, false statement, or omission?

(3) theft, embezzlement, or other wrongful taking of property?

(4) bribery, forgery, counterfeiting, or extortion?

(5) dishonest, unfair, or unethical practices?

For "yes" answers to the following questions, complete a Civil Judicial Action DRP:

F. Are you, any *advisory affiliate*, or any *management person* currently subject to, or have you, any *advisory affiliate*, or any *management person* been found liable in, a civil, *self-regulatory organization*, or administrative proceeding involving any of the following:

(1) an investment or *investment-related* business or activity?

(2) fraud, false statement, or omission?

(3) theft, embezzlement, or other wrongful taking of property?

(4) bribery, forgery, counterfeiting, or extortion?

(5) dishonest, unfair, or unethical practices?

G. Other Business Activities

(1) You are actively engaged in business as a(n) (check all that apply):

Attorney

Certified Public Accountant

Tax Preparer

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Part 1B Item 2 - Additional Information (Continued)

(2) If you are actively engaged in any business other than those listed in Item 6.A of Part 1A or Item 2.G(1) of Part 1B, describe the business and the approximate amount of time spent on that business:

H. If you provide financial planning services, the investments made based on those services at the end of your last fiscal year totaled:

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	Securities Investments	Non-Securities Investments
Under \$100,000	<input type="checkbox"/>	<input type="checkbox"/>
\$100,001 to \$500,000	<input type="checkbox"/>	<input type="checkbox"/>
\$500,001 to \$1,000,000	<input type="checkbox"/>	<input type="checkbox"/>
\$1,000,001 to \$2,500,000	<input type="checkbox"/>	<input type="checkbox"/>
\$2,500,001 to \$5,000,000	<input type="checkbox"/>	<input type="checkbox"/>
More than \$5,000,000	<input type="checkbox"/>	<input type="checkbox"/>

If securities investments are over \$5,000,000, how much? (round to the nearest \$1,000,000)

If non-securities investments are over \$5,000,000, how much? (round to the nearest \$1,000,000)

	Yes	No
I. Custody		
(1) Do you withdraw advisory fees directly from your <i>clients'</i> accounts? If you answered "yes", respond to the following:	<input type="checkbox"/>	<input type="checkbox"/>
(a) Do you send a copy of your invoice to the custodian or trustee at the same time that you send a copy to the <i>client</i> ?	<input type="checkbox"/>	<input type="checkbox"/>
(b) Does the custodian send quarterly statements to your <i>clients</i> showing all disbursements for the custodian account, including the amount of the advisory fees?	<input type="checkbox"/>	<input type="checkbox"/>
(c) Do your <i>clients</i> provide written authorization permitting you to be paid directly for their accounts held by the custodian or trustee?	<input type="checkbox"/>	<input type="checkbox"/>
(2) Do you act as a general partner for any partnership or trustee for any trust in which your advisory <i>clients</i> are either partners of the partnership or beneficiaries of the trust? If you answered "yes", respond to the following:	<input type="checkbox"/>	<input type="checkbox"/>
(a) As the general partner of a partnership, have you engaged an attorney or an independent certified public accountant to provide authority permitting each direct payment or any transfer of funds or securities from the partnership account?	<input type="checkbox"/>	<input type="checkbox"/>
(3) Do you require the prepayment of fees of more than \$500 per <i>client</i> and for six months or more in advance?	<input type="checkbox"/>	<input type="checkbox"/>

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: **LOCKE CAPITAL MANAGEMENT INC** CRD Number: **106742**

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ADV - Amendment, Part 1B, Page 4

Part 1B Item 2 - Additional Information (Continued)	
	Yes No
J. If you are organized as a sole proprietorship, please answer the following:	
(1) (a) Have you passed, on or after January 1, 2000, the Series 65 examination?	

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- (b) Have you passed, on or after January 1, 2000, the Series 66 examination and also passed, at any time, the Series 7 examination? C C
- (2) (a) Do you have any Investment advisory professional designations? C C
If "no", you do not need to answer Item 2.J(2)(b).
- (b) I have earned and I am in good standing with the organization that issued the following credential:
- Certified Financial Planner ("CFP")
 - Chartered Financial Analyst ("CFA")
 - Chartered Financial Consultant ("ChFC")
 - Chartered Investment Counselor ("CIC")
 - Personal Financial Specialist ("PFS")
 - None of the above
- (3) Your Social Security Number:

FORM ADV**UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION**Primary Business Name: **LOCKE CAPITAL MANAGEMENT INC**CRD Number: **106742**

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ADV - Amendment, SCHEDULE A

Form ADV, Schedule A**Direct Owners and Executive Officers**

1. Complete Schedule A only if you are submitting an Initial application. Schedule A asks for information about your direct owners and executive officers. Use Schedule C to amend this information.
2. Direct Owners and Executive Officers. List below the names of:
 - (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer (Chief Compliance Officer is required and cannot be more than one individual), director, and any other individuals with similar status or functions;
 - (b) if you are organized as a corporation, each shareholder that is a direct owner of 5% or more of a class of your voting securities, unless you are a public reporting company (a company subject to Section 12 or 15(d) of the Exchange Act);

Direct owners include any *person* that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of your voting securities. For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

- (c) if you are organized as a partnership, all general partners and those limited and special

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ADV All pages

- partners that have the right to receive upon dissolution, or have contributed, 5% or more of your capital;
- (d) in the case of a trust that directly owns 5% or more of a class of your voting securities, or that has the right to receive upon dissolution, or has contributed, 5% or more of your capital, the trust and each trustee; and
 - (e) if you are organized as a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 5% or more of your capital, and (ii) if managed by elected managers, all elected managers.
3. Do you have any indirect owners to be reported on Schedule B? Yes No
4. In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner or executive officer is an individual.
5. Complete the Title or Status column by entering board/management titles; status as partner, trustee, sole proprietor, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).
6. Ownership codes are: NA - less than 5% B - 10% but less than 25% D - 50% but less than 75%
 A - 5% but less than 10% C - 25% but less than 50% E - 75% or more
7. (a) In the Control Person column, enter "Yes" if the person has control as defined in the Glossary of Terms to Form ADV, and enter "No" if the person does not have control. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are control persons.
 (b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.
 (c) Complete each column.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Title or Status	Date Title or Status Acquired MM/YYYY	Ownership Code	Control Person	PR	CRD No. If None: S.S. No. and Date of Birth, IRS Tax No., or Employer ID No.
JENKINS, LEILA, CASSEL	I	PRESIDENT, CHIEF INVESTMENT OFFICER, AND CHIEF COMPLIANCE OFFICER	01/1995	E	Y	N	1097009

FORM ADV
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION
 Primary Business Name: LOCKE CAPITAL MANAGEMENT INC CRD Number: 106742

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ADV - Amendment, SCHEDULE B

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Form ADV, Schedule B**Indirect Owners**

1. Complete Schedule B only if you are submitting an initial application. Schedule B asks for information about your indirect owners; you must first complete Schedule A, which asks for information about your direct owners. Use Schedule C to amend this information.
2. Indirect Owners. With respect to each owner listed on Schedule A (except individual owners), list below:
 - (a) in the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;

For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.
 - (b) in the case of an owner that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital;
 - (c) in the case of an owner that is a trust, the trust and each trustee; and
 - (d) in the case of an owner that is a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 25% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.
3. Continue up the chain of ownership listing all 25% owners at each level. Once a public reporting company (a company subject to Sections 12 or 15(d) of the Exchange Act) is reached, no further ownership information need be given.
4. In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner is an individual.
5. Complete the Status column by entering the owner's status as partner, trustee, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).
6. Ownership codes are:

C - 25% but less than 50%	E - 75% or more
D - 50% but less than 75%	F - Other (general partner, trustee, or elected manager)
7. (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.
 - (b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.
 - (c) Complete each column.

No Indirect Owner Information Filed

FORM ADV**UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION**

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ADV - Amendment, SCHEDULE C

Form ADV, Schedule C

Amendments to Schedules A and B

1. Use Schedule C only to amend information requested on either Schedule A or Schedule B. Refer to Schedule A and Schedule B for specific instructions for completing this Schedule C. Complete each column.
2. In the Type of Amendment column, indicate "A" (addition), "D" (deletion), or "C" (change in information about the same person).
3. Ownership codes are:

NA - less than 5%	C - 25% but less than 50%	G - Other (general partner, trustee, or elected member)
A - 5% but less than 10%	D - 50% but less than 75%	
B - 10% but less than 25%	E - 75% or more	
4. List below all changes to Schedule A (Direct Owners and Executive Officers):

No Changes to Direct Owner / Executive Officer Information Filed

5. List below all changes to Schedule B (Indirect Owners):

No Changes to Indirect Owner Information Filed

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

Primary Business Name: **LOCKE CAPITAL MANAGEMENT INC** CRD Number: **106742**

ADV - Amendment, SCHEDULE D Page 1

Form ADV, Schedule D Page 1

Certain items in Part 1A of Form ADV require additional information on Schedule D. Use this Schedule D Page 1 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

Section 1.B. Other Business Names

List your other business names and the jurisdictions in which you use them. You must complete a separate Schedule D for each business name.

No Information Filed

Section 1.F. Other Offices

Complete the following information for each office, other than your *principal office and place of business*, at which you conduct investment advisory business. You must complete a separate Schedule D Page 1 for each location. If you are applying for registration, or are registered, only with the SEC, list only the largest five (in terms of numbers of employees).

Number and Street 1:
227 AUSTRALIAN AVENUE

Number and Street 2:
SUITE 2C

City: PALM BEACH State: FL Country: US ZIP+4/Postal Code: 33480

If this address is a private residence, check this box:

Telephone Number at this location: 561-655-1516 Facsimile number at this location: 800-243-9211

Section 1.I. World Wide Web Site Addresses

List your World Wide Web site addresses. You must complete a separate Schedule D for each World Wide Web site address.

World Wide Web Site Address: WWW.LOCKECAPITAL.COM

World Wide Web Site Address: WWW.ASSETGROWTH.COM

Section 1.K. Locations of Books and Records

Complete the following information for each location at which you keep your books and records, other than your *principal office and place of business*. You must complete a separate Schedule D Page 1 for each location.

Name of entity where books and records are kept:

LOCKE CAPITAL MANAGEMENT, INC.

Number and Street 1:
227 AUSTRALIAN AVENUE

Number and Street 2:
SUITE 2C

City: PALM BEACH State: FL Country: US ZIP+4/Postal Code: 33480

If this address is a private residence, check this box:

Telephone Number: 561-655-1516 Facsimile number: 800-243-9211

This is (check one):

- one of your branch offices or affiliates.
 a third-party unaffiliated recordkeeper.
 other.

Briefly describe the books and records kept at this location.

SOME CURRENT BOOKS AND RECORDS ARE KEPT AT THIS LOCATION, COMBINED WITH THE PRESIDENT'S COMPUTER WHEN SHE IS HERE.

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

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ADV - Amendment, SCHEDULE D, Page 2

Form ADV, Schedule D Page 2

Use this Schedule D Page 2 to report details for Items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

Section 1.L. Registration with Foreign Financial Regulatory Authorities

List the name, in English, of each *foreign financial regulatory authority* and country with which

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you are registered. You must complete a separate Schedule D Page 2 for each foreign financial regulatory authority with whom you are registered.

No Information Filed

Section 2.A(7) Affiliated Adviser

No Information Filed

Section 2.A(8) Newly Formed Adviser

If you are relying on rule 203A-2(d), the newly formed adviser exemption from the prohibition on registration, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations. You must make both of these representations:

- I am not registered or required to be registered with the SEC or a state securities authority and I have a reasonable expectation that I will be eligible to register with the SEC within 120 days after the date my registration with the SEC becomes effective.
- I undertake to withdraw from SEC registration if, on the 120th day after my registration with the SEC becomes effective, I would be prohibited by Section 203A(a) of the Advisers Act from registering with the SEC.

Section 2.A(9) Multi-State Adviser

If you are relying on rule 203A-2(e), the multi-state adviser exemption from the prohibition on registration, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations.

If you are applying for registration as an investment adviser with the SEC, you must make both of these representations:

- I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of 30 or more states to register as an investment adviser with the securities authorities in those states.
- I undertake to withdraw from SEC registration if I file an amendment to this registration indicating that I would be required by the laws of fewer than 25 states to register as an investment adviser with the securities authorities of those states.

If you are submitting your *annual updating amendment*, you must make this representation:

- Within 90 days prior to the date of filing this amendment, I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of at least 25 states to register as an investment adviser with the securities authorities in those states.

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UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

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ADV - Amendment, SCHEDULE D, Page 3

Form ADV, Schedule D Page 3

Use this Schedule D Page 3 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted

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information.

Section 2.A(11) SEC Exemptive Order
No Information Filed
Section 4 Successions
Complete the following information if you are succeeding to the business of a currently-registered investment adviser. If you acquired more than one firm in the succession you are reporting on this Form ADV, you must complete a separate Schedule D Page 3 for each acquired firm. See Part 1A Instruction 4.
No Information Filed
Section 5.I(2) Wrap Fee Programs
If you are a portfolio manager for one or more <i>wrap fee programs</i> , list the name of each program and its <i>sponsor</i> . You must complete a separate Schedule D Page 3 for each <i>wrap fee program</i> for which you are a portfolio manager.
No Information Filed
Section 6.B. Description of Primary Business
No Information Filed
Section 7.A. Affiliated Investment Advisers and Broker-Dealers
You MUST complete the following information for each investment adviser with whom you are affiliated. You MAY complete the following information for each broker-dealer with whom you are affiliated. You must complete a separate Schedule D Page 3 for each listed affiliate.
No Information Filed

FORM ADV

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

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ADV - Amendment, SCHEDULE D, Page 4

Form ADV, Schedule D Page 4
Use this Schedule D Page 4 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.
Section 7.B. Limited Partnership Participation or Other Private Fund Participation
You must complete a separate Schedule D Page 4 for each limited partnership in which you or a <i>related person</i> is a general partner, each limited liability company for which you or a <i>related person</i> is a manager, and each other private fund that you advise.
No Information Filed
Section 10 Control Persons
You must complete a separate Schedule D Page 4 for each <i>control person</i> not named in Item 1.A. or Schedules A, B, or C that <i>directly or indirectly controls</i> your management or policies.

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No Information Filed

FORM ADV
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

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ADV - Amendment, SCHEDULE D, Page 5

Form ADV, Schedule D Page 5

Use this Schedule D Page 5 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

Schedule D - Miscellaneous

You may use the space below to explain a response to an Item or to provide any other information.

No Information Filed

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UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

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ADV - Amendment, DRP Pages

CRIMINAL DISCLOSURE REPORTING PAGE (ADV)
No Information Filed
REGULATORY ACTION DISCLOSURE REPORTING PAGE (ADV)
No Information Filed
CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)
No Information Filed
Bond DRPs
No Information Filed
Judgment/Lien DRPs
No Information Filed
Arbitration DRPs
No Information Filed

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ADV - Amendment, Execution Pages

DOMESTIC INVESTMENT ADVISER EXECUTION PAGE

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial application for SEC registration and all amendments to registration.

Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint the Secretary of State or other legally designated officer, of the state in which you maintain your *principal office and place of business* and any other state in which you are submitting a *notice filing*, as your agents to receive service, and agree that such *persons* may accept service on your behalf, of any notice, subpoena, summons, *order* instituting *proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding* or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is *founded*, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of the state in which you maintain your *principal office and place of business* or of any state in which you are submitting a *notice filing*.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having custody or possession of these books and records to make them available to federal and state regulatory representatives.

Signature:

Date: MM/DD/YYYY

Printed Name:

Title:

Adviser CRD Number:
106742

NON-RESIDENT INVESTMENT ADVISER EXECUTION PAGE

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial application for SEC registration and all amendments to registration.

1. Appointment of Agent for Service of Process

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3/29/2006

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint each of the Secretary of the SEC, and the Secretary of State or other legally designated officer, of any other state in which you are submitting a *notice filing*, as your agents to receive service, and agree that such *persons* may accept service on your behalf, of any notice, subpoena, summons, *order* instituting *proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding*, or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is *founded*, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of any state in which you are submitting a *notice filing*.

2. Appointment and Consent: Effect on Partnerships

If you are organized as a partnership, this irrevocable power of attorney and consent to service of process will continue in effect if any partner withdraws from or is admitted to the partnership, provided that the admission or withdrawal does not create a new partnership. If the partnership dissolves, this irrevocable power of attorney and consent shall be in effect for any action brought against you or any of your former partners.

3. Non-Resident Investment Adviser Undertaking Regarding Books and Records

By signing this Form ADV, you also agree to provide, at your own expense, to the U.S. Securities and Exchange Commission at its principal office in Washington D.C., at any Regional or District Office of the Commission, or at any one of its offices in the United States, as specified by the Commission, correct, current, and complete copies of any or all records that you are required to maintain under Rule 204-2 under the Investment Advisers Act of 1940. This undertaking shall be binding upon you, your heirs, successors and assigns, and any *person* subject to your written irrevocable consents or powers of attorney or any of your general partners and *managing agents*.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the *non-resident* investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having custody or possession of these books and records to make them available to federal and state regulatory representatives.

Signature:	Date: MM/DD/YYYY
Printed Name:	Title:
Adviser CRD Number: 106742	

State Registered Investment Adviser Execution Page

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial application for state registration and all amendments to registration.

1. Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint the legally designated officers and their successors, of the state in which you maintain your *principal office and place of business* and any other state in which you are applying for registration or amending your registration, as your agents to receive service, and agree that such persons may accept service on your behalf, of any notice, subpoena, summons, *order instituting proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, *administrative proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding*, or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of the state in which you maintain your *principal office and place of business* or of any state in which you are applying for registration or amending your registration.

2. State-Registered Investment Adviser Affidavit

If you are subject to state regulation, by signing this Form ADV, you represent that, you are in compliance with the registration requirements of the state in which you maintain your principal place of business and are in compliance with the bonding, capital, and recordkeeping requirements of that state.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having *custody* or possession of these books and records to make them available to federal and state regulatory representatives.

Signature	Date MM/DD/YYYY
CRD Number 106742	
Printed Name	Title



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EAM Banking

In addition to the classic private banking services range you also have access to the following services:

Securities, Foreign Exchange and Precious Metals trading

You can contact our own securities and FX dealers directly via DirectAccess. It is the responsibility and aim of every dealer to achieve the best possible deal on the market for our clients.

Independent Research

The Investment Office of Clariden Leu permanently monitors and analyses developments in the financial markets. We provide you with access to our experts' information on all the major markets. We are happy to invite you to a personal meeting with our analysts where you can actively discuss and exchange ideas.

There around the clock for you and your clients

The internet portal EAMNet we have set up for our external asset managers allows you to access your client data and to execute market orders via a secure link at any time. SecureMail provides you with a platform to ensure the secure transmission of data via e-mail. As a member of our EAM Member Area you have access to research and product information and to news specifically for external asset managers. In addition our EAMs have online access to most of the forms they need.

Clariden Leu Funds

Take advantage of the direct contact with our fund managers. Clariden Leu's funds have demonstrated their quality in the intense competition between fund products, as the numerous awards received from neutral rating agencies confirm.

Competent lending specialists

Our product range is rounded off with professional support on financing matters from trained and experienced lending experts.

Private Family Service, Foundations, Trusts and more

To ensure that the needs of all family members as well as future generations are met on a long-term basis, specialized subsidiaries of Clariden Leu offer services for the establishment and management of trusts, foundations and companies as well as a range of other services.

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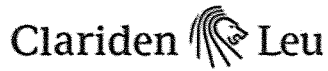


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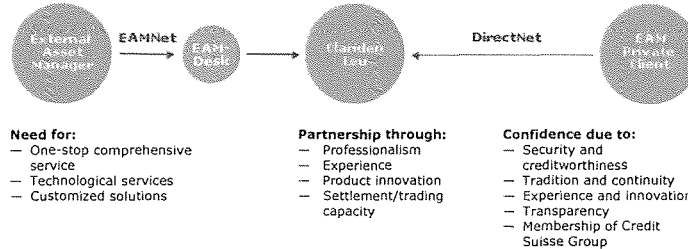
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2001 U.S. App. LEXIS 2056, *2 Fed. Appx. 632

Dennis Calhoun, Appellant, v. Brooks Fiber Properties, Inc., Appellee.

No. 00-1451EM

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

2 Fed. Appx. 632; 2001 U.S. App. LEXIS 2056

December 14, 2000, Submitted

February 12, 2001, Filed

NOTICE:

[*1] RULES OF THE EIGHTH CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

SUBSEQUENT HISTORY:

Reported in Table Case Format at: 2001 U.S. App. LEXIS 24089

PRIOR HISTORY:

On Appeal from the United States District Court for the Eastern District of Missouri.

JUDGES: Before WOLLMAN, Chief Judge, RICHARD S. ARNOLD, and HANSEN, Circuit Judges.

OPINION

PER CURIAM.

This suit arises under the Age Discrimination in Employment Act, 29 U.S.C. § 623 et seq, and the Missouri Human Rights Act, Chapter 213, Mo. Rev. Stat. Dennis Calhoun appeals the District Court's n1 grant of summary judgment in favor of Brooks Fiber Properties, Inc. Mr. Calhoun asserts that he established a prima facie case, and that there were factual disputes as to material issues. We disagree and affirm.

----- Footnotes -----1

The Hon. Mary Ann L. Medler, United States Magistrate Judge for the Eastern District of

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Missouri.

----- End Footnotes -----

Mr. Calhoun worked as the Director of Right of Way and Real Estate. He supervised five regional managers throughout the country, a job which necessitated frequent travel. When Mr. Calhoun was not traveling, and except on Fridays, Brooks Fiber allowed him [*2] to work from his home in Brookfield, Missouri. On Fridays, Mr. Calhoun went to Brooks Fiber's home office in St. Louis.

Mr. Calhoun's supervisor, Ines LeBow, requested that he cease working out of his home and work out of St. Louis when he was not traveling. In her affidavit, Ms. LeBow testified that she learned that Mr. Calhoun reported to St. Louis only one day a week, and that there were complaints he was not reachable. Mr. Calhoun asked whether Brooks Fiber would give him moving expenses or pay for his housing accommodations if he worked out of the St. Louis office. Ms. LeBow replied that Brooks Fiber would offer no financial compensation. n2

----- Footnotes ----- 2

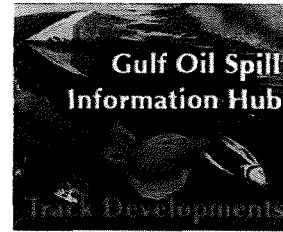
It seems undisputed that Mr. Calhoun's salary, duties, benefits, and position would have been unaffected by the relocation.

----- End Footnotes -----

A week later and after consulting with his wife, Mr. Calhoun informed Ms. LeBow that for personal and financial reasons relocating to the St. Louis office "was not an option" for him. Ms. LeBow terminated Mr. Calhoun.

Mr. Calhoun then filed [*3] this suit against Brooks Fiber alleging age discrimination in violation of the ADEA and the Missouri Human Rights Act. We have considered the record and briefs and heard oral argument. We find no substantial evidence that what happened to Mr. Calhoun had anything to do with his age. Accordingly, it was proper for the District Court to grant summary judgment, the reasons for which are fully explained in that Court's opinion. Thus, the judgment will be affirmed.

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2009 U.S. App. LEXIS 24488, *353 Fed. Appx. 95

RUDY E. DAVIS, JR., Plaintiff-Appellant, v. ZIANA LIESE, M.D., Defendant-Appellee, and SHAWNEE MISSION MEDICAL CENTER, INC.; EM SPECIALISTS P.A.; ROBERT L. PROSSER, JR., M.D., Defendants.

No. 08-3326

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

353 Fed. Appx. 95; 2009 U.S. App. LEXIS 24488

November 6, 2009, Filed

NOTICE:

PLEASE REFER TO **FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1** GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

PRIOR HISTORY: [*1]

(D.C. No. 2:07-CV-02323-EFM). (D. Kan.).

Davis v. Shawnee Mission Med. Ctr., Inc., 2008 U.S. Dist. LEXIS 87491 (D. Kan., Oct. 27, 2008)

COUNSEL: For RUDY E. DAVIS, JR., Plaintiff - Appellant: **Michael Alan Gross**, Michael Gross Law Firm, St Louis, MO; **Philip R. Holloway**, Dougherty, Modin & Holloway, Kansas City, MO.

For ZIANA LIESE, M.D., Defendant - Appellee: **Timothy Patrick McCarthy**, Gilliland & Hayes, P.C. - Op, Overland Park, KS US.

For SHAWNEE MISSION MEDICAL CENTER, INC., Defendant - Appellee: **Derrick A. Pearce**, Wallace Saunders Austin Brown & Enochs Chtd. - Op, Overland Park, KS.

For EM SPECIALISTS P.A., ROBERT L. PROSSER, M.D., JR., M.D., Defendants: **Jeff K. Brown**, **Scott K. Logan**, **Thomas R. Pickert**, **M. Bradley Watson**, Logan Logan & Watson, L.C., Prairie Village, KS.

JUDGES: Before TACHA, ANDERSON, and EBEL, Circuit Judges.

OPINION BY: David M. Ebel

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OPINION

ORDER AND JUDGMENT *

----- Footnotes -----*

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, [*2] for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

----- End Footnotes-----

Rudy E. Davis, Jr. appeals the district court's determination that his medical malpractice claims against Ziana Liese, M.D., are barred by the statute of limitations because Dr. Liese was not timely served with process. Because Mr. Davis never received or filed an executed waiver of service and did not formally serve Dr. Liese before the statutory deadline, we affirm. n1

----- Footnotes -----1

On December 11, 2008, this court identified a potential issue of appellate jurisdiction because Mr. Davis's claims against defendant Shawnee Mission Medical Center, Inc. had been dismissed without prejudice and thus remained viable in district court. The district court subsequently issued an order certifying its decision as to Dr. Liese as final under Fed. R. Civ. P. 54(b). The jurisdictional issue was referred to this panel. In light of the Rule 54(b) certification, we are satisfied that this court has jurisdiction to hear this appeal. See Lewis v. B.F. Goodrich Co., 850 F.2d 641, 645 (10th Cir. 1988) (en banc).

----- End Footnotes-----

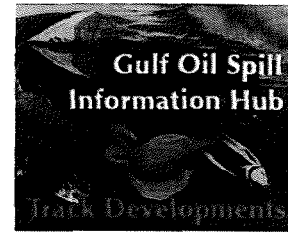
Background

The district court correctly chose to apply Kansas limitations provisions because the case was brought under diversity [*3] jurisdiction. See Walker v. Armco Steel Corp., 446 U.S. 740, 752-53, 100 S. Ct. 1978, 64 L. Ed. 2d 659 (1980) (concluding that "state service requirements which are an integral part of the state statute of limitations should control in an action based on state law which is filed in federal court under diversity jurisdiction."); Guaranty Trust Co. v. York, 326 U.S. 99, 110, 65 S. Ct. 1464, 89 L. Ed. 2079 (1945) (holding that state limitations periods govern state-law claims in a diversity case).

Mr. Davis's claims arise from the deaths of his wife and unborn child on January 25, 2006. Under Kan. Stat. Ann. § 60-513, he had two years from that date to commence his suit. Kansas deems a suit to have commenced as of the date the complaint is filed, so long as the defendants are served within ninety days of the filing. See Kan. Stat. Ann. § 60-203(a). But when service does not occur within that ninety-day period, it is the date of service, not the date of filing, which marks the commencement of the suit. See *id.*

Mr. Davis filed his original complaint, which did not name Dr. Liese as a defendant, in July 2007. On December 3, 2007, he filed an amended complaint including the claims against her. n2 As permitted by Fed. R. Civ. P. 4(d), n3 Mr. Davis, through his [*4] counsel, mailed her a request to waive service, along with a copy of the amended complaint. Dr. Liese testified in her deposition that she received and read the waiver packet, and that she signed something and handed it back to her office manager. She was not sure whether it was the waiver that she signed. It is undisputed, however, that the waiver never was returned to Mr. Davis or filed with the district court. Dr. Liese answered the amended complaint on December 17, 2007, asserting in her affirmative defenses "[t]hat Plaintiff's claims may fail due to improper service of process." *Aplt. App.* at 28.

----- Footnotes -----2



Dr. Liese asserts that "the action against [her] was not commenced pursuant to **Federal Rule of Civil Procedure 3**" because the first amended complaint was filed shortly after the deadline for filing amended complaints, without Mr. Davis seeking leave to file out of time. Aplea. Br. at 24. But the district court expressly allowed Mr. Davis to file his first amended complaint out of time due to excusable neglect. Dr. Liese does not take issue with the finding of excusable neglect, so we do not further consider this argument.³

Fed. R. Civ. P. 4 sets the standard for adequacy of service in [*5] federal court, even in a diversity case. See **Hanna v. Plumer, 380 U.S. 460, 463-64, 85 S. Ct. 1136, 14 L. Ed. 2d 8 (1965)**.

----- End Footnotes-----

The ninety-day service period elapsed on Monday, March 3, 2008. On March 24, Dr. Liese moved for dismissal under **§§ 60-513** and **60-203(a)**, arguing that she had not been served within the ninety-day period, so the suit had not commenced on or before January 25, 2008. The court issued a summons as to Dr. Liese on March 31, and Mr. Davis formally served her with the summons and a copy of the amended complaint. The court, however, agreed with Dr. Liese and granted judgment in her favor. Mr. Davis appeals. n4

----- Footnotes -----4

The district court also granted judgment to defendants EM Specialists, P.A. and Robert L. Prosser, Jr., M.D. Pursuant to the parties' stipulation, this court dismissed these defendants from this appeal.

----- End Footnotes-----

Analysis

Mr. Davis argues that the district court erred in granting judgment to Dr. Liese because (1) she waived formal service of process by signing the waiver form; (2) she waived the defenses of insufficiency of service and the statute of limitations when she filed her answer, and (3) he is entitled to invoke the savings provision in **Kan. Stat. Ann. § 60-203(b)**, under which the commencement date [*6] would still be the filing date. Our review of the district court's decision is de novo. See **Jenkins v. City of Topeka, 136 F.3d 1274, 1275 (10th Cir. 1998)**.

1. Dr. Liese did not waive formal service of process.

Mr. Davis argues that by receiving the waiver packet, reading it, signing the waiver, and handing it back to her office manager, Dr. Liese "in this case in fact had waived the formal service of process." Aplt. Br. at 25. We disagree.

It is unclear whether Dr. Liese signed the waiver, her testimony was that she signed some document, but she did not recall whether it was the waiver. Ultimately, though, it does not matter whether it was the waiver that she signed. **Rule 4(d)** requires that the waiver be executed by the defendant, returned to the plaintiff, and filed with the court. Formal service is excused only upon the filing of the executed waiver. See **Fed. R. Civ. P. 4(d)(4)**; see also **Fed. R. Civ. P. 4**, Adv. Comm. Notes, 1993 Amendments ("The revised rule is clear that, if the waiver is not returned and filed, . . . the action will not otherwise proceed until formal service of process is effected."). Mr. Davis misplaces his reliance on **Morse v. Elmira Country Club, 752 F.2d 35, 40 (2d Cir. 1984)**. [*7] which held that service by mail under **Fed. R. Civ. P. 4(c)(2)(C)(ii)** was complete and effective even though defendant did not return the acknowledgment. **Rule 4(c)(2)(C)(ii)** was superseded by the 1993 amendments to **Rule 4**, which, as noted above, indicate that the waiver must be returned and filed to be effective. See **Cambridge Holdings Group, Inc. v. Fed. Ins. Co., 489 F.3d 1356, 1362, 376 U.S. App. D.C. 520 (D.C. Cir. 2007)**. Because the waiver never was returned or filed with the court, there was no effective waiver of formal service in this case.

2. Dr. Liese did not waive her defenses when she filed her answer.

Mr. Davis also argues that Dr. Liese waived the insufficiency-of-service and limitations defenses in two ways when she filed her answer. First, he contends that under Kansas law, the

appearance of counsel has the same effect as formal service of process. But we need not address this assertion. We have not found where Mr. Davis argued before the district court that counsel's appearance had the same effect as formal service, and arguments not raised in the district court are waived on appeal. See Rosewood Servs., Inc. v. Sunflower Diversified Servs., Inc., 413 F.3d 1163, 1167 (10th Cir. 2005).

Second, [*8] Mr. Davis argues that Dr. Liese's answer did not assert a statute of limitations defense. See Fed. R. Civ. P. 8(c), 12(b) (requiring defendants to assert affirmative defenses in responsive pleading). As the district court noted, when Dr. Liese filed her answer in December 2007, the limitations period had not expired. Therefore, at that time there was no limitations defense to be raised. The answer did raise the defense of service of process, and Dr. Liese promptly asserted the limitations defense once it came into existence. We agree that, under these circumstances, Dr. Liese did not waive either the process defense or the limitations defense. Cf. Expertise, Inc. v. Aetna Fin. Co., 810 F.2d 968, 973 (10th Cir. 1987) (holding that failure to assert limitations defense in the answer did not result in waiver, where the defense was included in the pretrial order).

3. *The district court did not err in denying relief under Kan. Stat. Ann. § 60-203(b).*

Finally, Mr. Davis argues that he is entitled to a second chance for service under Kan. Stat. Ann. § 60-203(b), which retains the original commencement date "[i]f service of process . . . purports to have been made but is later adjudicated to [*9] have been invalid due to any irregularity in form or procedure or any defect in making service[.]" so long as the plaintiff serves process within the ninety-day period following the adjudication.

To determine whether § 60-203(b) should apply, the district court applied the factors set forth in Grimmett v. Burke, 21 Kan. App. 2d 638, 906 P.2d 156 (Kan. App. 1995). *Grimmett* held that "before it can be said that service has 'purported to have been made,' it must be shown that a defendant was given actual notice of having been sued." *Id.* at 164. In addition, there should exist three additional factors:

(1) The original service must have "appeared" to be valid and the returns by the sheriff's office or other process servers must indicate that the service was valid. (2) The record should show that the plaintiff believed in good faith that his or her service was valid and relied on that validity to his or her detriment. (3) The plaintiff had no reason to believe the defendant was contesting service until after the statute of limitations had run, but had no opportunity to take steps to correct the defective service. *Id.* Analyzing these factors, the district court concluded that (1) there did not appear to be valid [*10] service because the materials sent to Dr. Liese did not include a summons, and specifically stated that the request for waiver was not a summons; (2) Mr. Davis could not believe in good faith that the request for waiver effectuated valid service, since it did not include a summons; and (3) Dr. Liese's answer put Mr. Davis on notice that she was contesting service, and he could have accomplished formal service before the limitations period expired. Thus, the district court declined to apply § 60-203(b). On appeal, Mr. Davis contends that the *Grimmett* factors are inconsistent with the Kansas Supreme Court's interpretation of § 60-203(b). He urges us to rely solely on Hughes v. Martin, 240 Kan. 370, 729 P.2d 1200, 1204 (Kan. 1986), in which the Kansas Supreme Court stated, "we must construe K.S.A. 60-203(b) liberally to secure the just determination of the action now before us."

We disagree that *Grimmett* is inconsistent with *Hughes*. The Kansas Supreme Court has approved and adopted the *Grimmett* factors. See Pieren-Abbott v. Kan. Dep't of Revenue, 279 Kan. 83, 106 P.3d 492, 504 (Kan. 2005); see also Estate of Norris ex rel. Norris v. Hastings, 36 Kan. App. 2d 479, 141 P.3d 511, 513-14 (Kan. App. 2006) (recognizing that the Kansas Supreme [*11] Court had employed the *Grimmett* analysis and noting that *Hughes* was not entirely controlling). Therefore, the district court did not err in employing the *Grimmett* analysis. Further, we agree with the district court's analysis of the *Grimmett* factors and, for substantially the reasons stated by the district court, conclude that Mr. Davis is not entitled to proceed under § 60-203(b). See Pieren-Abbott, 106 P.3d at 504 (holding that plaintiffs could not proceed under § 60-203(b) where there was no original service and they were informed that the defendant was contesting service before the service period expired); Estate of Norris, 141 P.3d at 514 (declining to apply § 60-203(b) where plaintiff failed to satisfy any of the *Grimmett*

factors, even though defendant had actual notice of the suit due to the initial invalid service); Cook v. Cook, 32 Kan. App. 2d 214, 83 P.3d 1243, 1248 (Kan. App. 2003) (declining to apply § 60-203(b) where plaintiff "cannot contend that original service appeared valid, as the appearance docket reflects that a summons had not been issued in the case until the statute of limitations ran"); Grimmett, 906 P.2d at 164 (declining to apply § 60-203(b) where plaintiff was aware that she [*12] had incorrect address and was advised within limitations period that defendant would contest service).

Conclusion

The judgment of the district court is AFFIRMED.

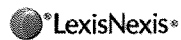
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David M. Ebel

Circuit Judge

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EXHIBIT I

Remaining Withheld Evidence:

This list is a sampling of the continued to be withheld evidence, documented from notes kept by Jenkins during the June 2008 NY exam, the receipt for copying the August, 2008 production to the SEC, the December 30, 2008 telephone call with the SEC, the January, 2009 NY and RI exams and electronic records still maintained. As this list includes the documents most critical to the defense of this case, Jenkins continues to be very adversely affected by the withholding of these documents and their absence prevents her from successfully defending the case:

- 1) Annual bank statements for the Swiss client accounts in 2001 (3 accounts, 61 pages) and 2006 (4 accounts, 91 pages), for a total of seven statements.
- 2) Three Locke produced reconciliations of the above Bank Statements for 2001, account holdings and valuation data (28 pages).
- 3) Advent Axys reports showing portfolio holdings, valuations, performance and a variety of trading data for the 3 then 4 Swiss based accounts from 1999 – 2008 (about 1600 pages).
- 4) Documents allegedly provided by Locke which show Chase bank account numbers for the 4 Swiss client accounts – Jenkins does not know of these documents.
- 5) Assets Under Management data by client (# of clients) for the following end of periods: 6/30/99 (6), 12/31/99 (7), 12/31/00 (11), 12/31/01 (14), 12/31/02 (13), 6/30/03 (9), 12/31/03 (3), 12/31/04 (4), 12/31/05 (4), 12/31/06 (33), 12/31/07 (89), and 12/31/08 (94).
- 6) Custodial bank data for the year end 2006 29 non Swiss based accounts.
- 7) The January 6, 2009 termination notice of Locke's sub advisory mandate from the Principal of the investment advisor for the four Swiss based accounts. While the SEC continues to withhold this critical evidence, Jenkins has supplied it to the Court in Exhibit 18 of Docket 65.
- 8) Fourth CD (John Day Swiss accounts trading data 0.4MB) of data produced for the January NY portion of the Locke exam, produced and sent to the SEC on 2/3/09 (records kept by John Day which conclusively contradict SEC

allegations that Jenkins did all the trading and data entry for the Swiss based accounts. Doc 67 – 4 Exh 4A SEC John Day depo excerpts is also relevant).

- 9) Original documents taken from Locke files during the RI portion of the January, 2009 exam as evidenced by the many “colored sticky notes” showing where documents were pulled from each file crate to be copied and returned. They were not returned (roughly 2000 pages) and are not produced at this time by the SEC.
- 10) Documents sent to Locke counsel on Jan 9, 2009 for preservation and copying. Approximately 4500 pages of documents were copied which include extensive trading notes for all accounts (records kept primarily by Diane Hudson which again conclusively contradict SEC allegations that Jenkins did all the trading and data entry for the Swiss based accounts. Exh 67 – 5 Exh 4B SEC Hudson depo excerpts is relevant.), Locke financial data and contracts, Jenkins financial data, Locke and Jenkins tax returns back to 1995, Diane Hudson’s reconciliation work for the Swiss based and other accounts and worksheets for performance calculations also done by Hudson, and extensive Locke data Hudson provided to consultants. (Another roughly 6000 pages were sent, for a total of 7 file crates as documented by the Ken Walsh affidavit, which were not copied. Exh IA Affidavit of KJW is relevant.)
- 11) Police reports provided by Jenkins reporting the many unauthorized entries made into the Locke office in Newport, RI between 2006 and 2009 (more now in 2010) which explain why data critical to this case is no longer available to Jenkins for her defense. While the SEC continues to withhold this critical evidence, Jenkins has supplied it to the Court in Exhibit 8 of Docket 67.
- 12) Two 2” binders of Coamerica bank statements for the Mott account produced during the January 2009 exam. (roughly 500 pages - Some other Coamerica Mott statements produced during the June 2008 exam were returned which were additional to the withheld statements.)
- 13) One 2” binder of Schwab statements for all accounts custodied there during 2008 (roughly 250 pages).

- 14) All Ashland Partners communications about the performance track record audit and bills evidencing same (about 30 pages).
- 15) Many Locke contracts and all of the termination letters are not produced at this time. However, where there are some contracts returned, and frequently there are multiple duplications of those same contracts. (About 300 pages were returned and about 300 pages are still missing.)
- 16) Substantive evidence provided about mandated tax selling for Vogel Consulting clients, most important now due to the inaccurate information provided by Vogel to the SEC. (10 pages)
- 17) Custodial statements and communications regarding the Lee account, one of Locke's earliest accounts from the 1997 – 1998 time frame. (5 pages)
- 18) Custodial statements from custodian Stanford, managed by SMH in Texas, about 1000 pages (Locke was a sub advisor for these accounts).

Some documents which were returned allegedly as part of Locke's evidence have never before been sighted by Jenkins. As such, she has no knowledge as to who produced them or if they are valid. Many of them appear to be reconciliations and may well have been useful to Jenkins, if they are valid, in her defense if they had been provided in a timely manner and could have been reviewed properly. Without the time to adequately review now, Jenkins is unable to determine their validity or whether they are part of the fabricated evidence, as determined during discovery, provided by Day, Rosenblum and Caithness.



**Attn: Judge Cameron Elliot on the Matters of Locke
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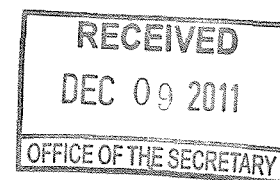
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Cc: shieldsk@sec.gov; vaselk@sec.gov; huntingtonf@sec.gov; ljenkins@lockecapital.com; Kathleen Myer (kathleenmyer@hotmail.com)

1 attachment

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TO: ALJ Cameron Elliot:



Attached are electronic files for the above referenced matters.

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The captioned documents are being sent today to the Secretary's Office for filing. These documents also have been served as indicated in the Certificate of Service for each document.

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Kathleen J. Myer (aka Kathleen J. Ennen, recently married)

By POA

On behalf of my sister, Leila C Jenkins.

Tel: [REDACTED]

E-mail: kathleenmyer@hotmail.com

