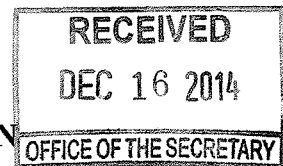


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



In the Matter of _____)
)
DENNIS J. MALOUF,)
)
Respondent.)
_____)

ADMINISTRATIVE PROCEEDING
File No. 3-15918

**RESPONDENT DENNIS MALOUF'S OPPOSITION TO
UASNM, INC.'S NOTICE OF COMPLIANCE
AND REQUEST FOR RECONSIDERATION**

Respondent, Dennis Malouf ("Mr. Malouf"), by and through the undersigned counsel, hereby files this Opposition to UASNM, Inc.'s ("UASNM") Notice of Compliance and Request for Reconsideration (the "**Request for Reconsideration**"). In support thereof, Respondent states:

I. Introduction

UASNM has vigorously opposed Respondent's attempts to subpoena and discover relevant documents in its possession. The primary tactic UASNM employed is asserting that compliance with the subpoena would subject UASNM to an "extreme" level of attorneys' fees and costs in connection with reviewing and preparing documents to be produced. UASNM has provided several inflated estimates of the potential fees and costs to comply with the subpoena in an effort to dissuade Respondent from pursuing the requested discovery, or to try and impose a significant financial burden on Respondent.¹

After a series of legal maneuvers (and successfully delaying compliance with the

¹ UASNM initially demanded that Respondent pay \$125,000 before it would produce any documents based on an estimate that it would cost at least that much to comply with the subpoena. UASNM later revised its demand and estimate to \$40,000, which it claimed was an underestimation. UASNM now seeks in excess of \$65,000.

subpoena until two weeks before the hearing), UASNM was ordered to produce documents responsive to the subpoena as previously modified. As a condition of compliance, UASNM could seek to recover reasonable costs and expenses associated with the production, up to \$20,000, including select costs of attorney time. *See* Exhibit A, October 28, 2014 Revised Order on Subpoena to UASNM, Inc. (the “**Revised Order**”). The “select costs of attorney time” contemplated in the Revised Order relate specifically to the “cost of attorney time . . . in reviewing documents for relevance and privilege,” which the hearing officer noted are “not a regularly reimbursed cost.” *Id.* Respondent agreed to proceed with the production subject to the \$20,000 cap on costs and fees.²

Having finally produced documents, many of which are duplicative and which UASNM was instructed not to produce, UASNM has completely disregarded the Revised Order and seeks over \$65,000 in fees and costs. UASNM requests that Respondent be held responsible for excessive and unreasonable fees and costs, many of which are not at all related to compiling and reviewing the documents produced. In doing so, UASNM has blatantly misrepresented the nature of the attorneys’ fees it seeks to recover to inflate its claim and to try to justify its prior complaints regarding the “undue burden” it would suffer.

Respondent has agreed to pay the reasonable costs of compliance with the subpoena, up to \$20,000. However, Respondent should not be required to pay any unreasonable fees and costs, in particular those which were never agreed to or provided for in the Revised Order. Further, the \$20,000 cap established by the Revised Order should not be reconsidered or

² *See* Exhibit B, email exchange between Robert Jamieson and Jim Boone. Respondent agreed to the production, subject to the \$20,000 cap, and repeatedly instructed UASNM not to produce documents that had already been produced to the SEC during its investigation or to Respondent during the state court litigation between Respondent and UASNM.

removed because Respondent relied upon that cap when deciding to proceed with his request for documents.

II. UASNM Has Failed to Negotiate in Good Faith

Besides the proposed procedure set forth in the Revised Order, Respondent and UASNM were encouraged to negotiate in good faith to reach a mutually agreeable alternative resolution. UASNM contacted Respondent on November 10, 2014, to advise that, despite the \$20,000 cap imposed by the Revised Order (upon which Respondent had relied), UASNM would request in excess of \$65,000 in fees and costs and seek to remove the cap. *See* Exhibit C. Respondent advised UASNM repeatedly that he was willing to negotiate in good faith with respect to the payment of costs, but that any good faith negotiation required UASNM to agree that a resolution could be reached at or below the \$20,000 cap. *Id.* UASNM would not agree to a resolution under the \$20,000 cap.

Instead, UASNM's counsel attempted to leverage the purported \$65,000 in costs and fees being claimed against Respondent's pending claims to approximately \$250,000 held in escrow. *Id.* The funds in escrow, which UASNM is currently seeking to obtain in the state court action between UASNM and Respondent, are owed to Respondent as compensation for the interest he previously owned in UASNM. UASNM's counsel indicated that UASNM might abandon its purported claim for \$65,000 in subpoena related costs if Respondent would waive his claims to the \$250,000 in escrow. *Id.* Respondent discontinued its attempts to negotiate an alternative resolution with UASNM when it became clear that UASNM would not entertain a resolution below the \$20,000 cap and was not willing to negotiate in good faith.

III. UASNM Seeks Excessive and Unreasonable Attorneys' Fees

a. The Only Fees and Costs Recoverable by UASNM are Those Related to the Review and Production of Documents Responsive to the Subpoena

UASNM's primary argument in opposition to the subpoena was the purported undue burden that it would face if it was forced to comply. Specifically, the undue burden that UASNM claimed in its Application to Quash Subpoena filed on September 5, 2014, ("**Application to Quash**") was that the subpoena would cause UASNM to incur an "extreme level of attorney fees . . . to review the excessive documents and create privilege logs." *See* Application to Quash, at 2 ¶ 5. UASNM also argued that the subpoena would cause it to "suffer an excessive amount of lost staff time and expense as well as expense for a third party to review and assemble files for production." *Id.* Based upon UASNM's objections the hearing officer modified the subpoena, UASNM was ordered to produce documents responsive to the modified subpoena, and Respondent was ordered to pay UASNM's costs of compliance. This resulted in further contention from UASNM regarding whether its attorneys' fees were considered costs of compliance since the SEC Rules of Practice clearly do not contemplate any entitlement to fees.³

Whether UASNM's attorneys' fees were recoverable was resolved in the Revised Order, which allowed UASNM to submit itemized billing records of the costs and time spent reviewing documents for relevance and privilege, and requiring Respondent to bear reasonable costs and expenses associated with production, including the "select costs of attorney time." *See* Exhibit A. Given UASNM's prior objections, and the statement in the Revised Order that "the cost of attorney time . . . in reviewing documents for relevance and privilege is not a regularly

³ SEC Rule of Practice 232(e)(2) provides that a possible condition of compliance with a subpoena may be to require the payment of reasonable compensation for the cost of copying and transporting evidence to the place for return of the subpoena.

reimbursed cost . . . ,” the “select costs” recoverable by UASNM are only those incurred in compiling and reviewing documents for relevance and privilege.

b. UASNM Seeks to Recover Excessive Fees and Costs Unrelated to the Review and Production of Responsive Documents

UASNM concedes that the recoverable fees and costs are limited to those associated with the compiling and review of documents by stating in its Request for Reconsideration that it has “[a]ttached . . . itemized bills of counsel . . . with regard to compiling the responsive documents to the modified subpoena as well as preparing the privilege log.” *See* Request for Reconsideration at ¶3. UASNM claims that these legal fees total \$39,606.⁴

However, a brief review of the itemized bills reveals that UASNM has misrepresented the nature of a significant portion of the legal fees it seeks to recover. Rather than seeking only those fees related to the compiling and review of responsive documents, UASNM has included fees related to time spent: (1) drafting its Application to Quash; (2) researching rules and applicable law, including grounds to object to the subpoena; (3) telephone calls and conferences with clients and other attorneys regarding how UASNM should respond to the subpoena; (4) reviewing orders entered by the hearing officer; (5) preparing tables of contents for filings; (6) discussing insurance coverage for defense costs with coverage counsel; (7) reviewing motions filed by other subpoenaed entities; (8) telephone calls with counsel for other subpoenaed entities; (9) correspondence with Respondent’s counsel; and (9) correspondence with SEC staff. These fees, which are not recoverable by UASNM, exceed \$17,500.⁵ A sampling of some of the

⁴ UASNM also claims \$2,772.42 in New Mexico state gross receipts tax. Respondent objects to UASNM’s claims for reimbursement of gross receipts tax because UASNM has not previously requested such reimbursement and the Revised Order does not provide for any such reimbursement.

⁵ There is also at least one instance of “block billing” where a number of activities are listed under one billing entry with no indication as to how much time was spent on each activity. The

largest billing entries that are clearly unrelated to the compilation and review of responsive documents is provided below.

<u>Date</u>	<u>Timekeeper</u>	<u>Description</u>	<u>Time</u>	<u>Amount Billed</u>
8/29/2014	Jim Boone	Research on compliance/objection to subpoenas before SEC and rules of procedure/case law on same (5.5); review subpoena contents, email from Patrick Griebel, and prior privilege log (1.5); phone call with Mr. Hudson and review e-mails from Mr. Hudson to SEC counsel (.5); prepare memo on proposed issues for consideration (.8).	8.3 hours	\$2,075
8/29/2014	Bill Chappell	" . . . research on grounds for objections."	3.7 hours	\$1,017.50
9/2/2014	Bill Chappell	Research; review of practice manual; review of opinions on subpoena enforcement.	2.3 hours	\$690
9/4/2014	Jim Boone	"Review and revise application to quash subpoena"	10.5 hours	\$2,625
9/4/2014	Bill Chappell	Review of cases; conference with James Boone, Esq. and Michael Hoferkamp, Esq. regarding response; review initial draft of response to subpoena; review correspondence regulations and other issues.	2.1 hours	\$630
9/4/2014	Michael Hoferkamp	Review and revise Application to add argument on other subpoenas, privileges, and Premo decision by Administrative Law Judge	2.7 hours	\$540
9/5/2014	Jim Boone	"Review and revise application to quash"	8.5 hours	\$2,125
9/8/2014	Jim Boone	. . . phone call with insurance coverage counsel (Ms. Carrillo) regarding coverage of insurance policy for defense costs in Malouf and SEC cases	2 hours	\$500
10/6/2014	Jim Boone	Review Malouf's Motion to Compel and begin preparation of response to same; emails to Mr. Hudson on same and costs incurred to date.	2 hours	\$500
10/10/2014	Jim Boone	Review and revise response in opposition to motion to enforce	2 hours	\$500

October 1, 2014 billing entry is for 7.5 hours and \$1,875. It includes time spent reviewing documents to be produced in response to the subpoena, but also includes a number of other activities. It is impossible to determine from the billing entry how much of the 7.5 hours was spent reviewing documents versus the other activities. Given UASNMs gross overreaching, an adverse inference should be drawn that the majority of this time was not spent reviewing documents.

Though UASNM claims that the \$39,606 it seeks to recover relates to “compiling the responsive documents to the modified subpoena as well as preparing the privilege log,” in reality less than half of the fees claimed actually relate to the production of responsive documents.⁶ For example, none of the fees incurred prior to the September 22, 2014 Order Quashing in Part and Modifying Subpoena Requests to UASNM, Inc. and Albuquerque Business Law P.C. (“**Order Quashing in Part**”) were related to the review of responsive documents because UASNM had moved to quash the subpoena and refused to produce any documents. Therefore, any entries which predate the Order Quashing in Part should be summarily rejected as being outside the scope of the Revised Order. UASNM’s inflated and misleading claims in the Request for Reconsideration are a continuation of the abusive practices and tactics that UASNM has employed all along to impede and antagonize Respondent. Even when the billing entries are read in the light most favorable to UASNM, the total legal fees having any discernible relation to the compilation and review of responsive documents do not exceed \$16,750, a far cry from the \$39,606 in legal fees that UASNM claims.⁷

IV. UASNM Seeks Costs Related to Duplicative Documents it was Explicitly Instructed Not to Produce

In the Application to Quash UASNM argued that the subpoena issued to it was unreasonable and unduly burdensome specifically because it sought documents that UASNM had already provided to the SEC, and which in turn had been provided to Respondent. *See*

⁶ UASNM seeks to recover fees for at least 33 hours spent researching (11.5 hours) and drafting (21.7 hours) UASNM’s Application to Quash. Regardless of the fact that such fees are not related to the review and production of documents, and therefore are not recoverable from Respondent, the time spent and fees incurred on the Application to Quash alone are further evidence of the excessive and unreasonable nature of UASNM’s claims.

⁷ In some instances it is unclear whether an entry reflecting document review is actually related to reviewing documents that are responsive to the subpoena.

Application to Quash, at 1 ¶ 2.a. Similarly, UASNM argued that the subpoena sought documents that had already been produced to Respondent in the course of the 2011 state court lawsuit between UASNM and Respondent. *Id.* at 1 ¶ 2.c.⁸

In the Order Quashing in Part the hearing officer noted that Respondent did not expect UASNM to produce documents already produced to the SEC or during the state court litigation. *See* Order Quashing in Part, at 2. Further, it was specifically ordered that UASNM need not produce any such documents. *Id.*⁹ When UASNM finally agreed to produce documents, Respondent repeatedly advised UASNM’s counsel that duplicative documents should not be produced and that Respondent would not pay the costs to review or produce such duplicative documents. *See* Exhibit B.¹⁰ Despite explicit instructions from the hearing officer and Respondent, UASNM has produced a significant number of duplicative documents for which it now seeks to recover its fees for reviewing and producing.

Due to time constraints, the volume of documents produced, and the format in which documents have been produced, Respondent has been unable to quantify the full extent of UASNM’s duplicative production with specificity. Instead, Respondent has reviewed 50 emails that were produced by UASNM in response to the subpoena and compared them to emails

⁸ UASNM argues in greater detail regarding the documents already produced in Sections II.A and II.C of its Application to Quash. *See* Application to Quash, at 6-8.

⁹ The Order stated that “UASNM shall produce responsive, non-privileged, and non-duplicative documents no later than close of business on October 3, 2014” Exhibit A p.6.

¹⁰ UASNM initially resisted the production of duplicative documents in its Application to Quash on grounds that they had already been produced to the SEC and Respondent and therefore production would be unreasonable and unduly burdensome. However, UASNM quickly reversed course once it became apparent that they would have to produce documents and suddenly claimed that it could not possibly know which documents Respondent already had, and therefore it would produce all documents, whether duplicative or not. *See* Exhibit C, November 14, 2014 email from Jim Boone.

previously produced to the SEC during its investigation.¹¹ Respondent determined, with certainty, that 38 of the 50 emails (76%) were previously produced to the SEC by UASNM because they appear in the SEC's investigative file bearing a Bates label with a "UASNM" prefix (e.g. documents produced to the SEC bearing Bates labels UASNM0070616 to 0070617, an email from March 2, 2009, were produced again in response to Respondent's subpoena).

Respondent reviewed emails as a measure of the extent of UASNM's duplicative production because the billing records UASNM has submitted reflect over 65 hours spent reviewing emails as part of UASNM's production. The time spent reviewing emails represents \$11,625 of the total fees that UASNM now seeks to recover, or approximately 70% of the total fees that have some discernible relation to the compilation and review of responsive documents. Given the pervasive duplication found in the sample of emails Respondent has reviewed (as well as UASNM counsel's repeated insistence on producing all documents requested despite warnings that Respondent would not pay for duplicative documents, *see* Exhibit B), it is highly likely that the duplication found in the emails exists throughout UASNM's production.¹²

UASNM has produced a large number of duplicative documents, including documents that were produced by other parties (e.g. ACA), to artificially inflate the size of its production and to try to justify its prior claims that the production would cause "undue burden." UASNM is also trying to justify the inflated estimates of fees and costs it relied upon in opposition to the subpoena, which Kirk Hudson has attested to in affidavits. UASNM's current claim for \$65,000

¹¹ The emails reviewed were responsive to subpoena requests numbers 4 and 24.

¹² Evidence of UASNM's duplicative production is not limited to emails. For example, UASNM produced a Raymond James Financial Services trade blotter in response to the subpoena which was previously produced in the course of the state court litigation between UASNM and Respondent (as evidenced by the Bates label range "RJFS-Malouf-000151 to 000226" which is printed on the document.)

in fees is also artificially inflated by time purportedly spent “reviewing” these duplicative documents. Like UASNМ’s attempt to recover fees for time spent opposing the subpoena and numerous other tasks unrelated to the production of responsive documents, *see* III.b *supra*, inflating its production with duplicative documents is further evidence of the abusive practices and tactics employed by UASNМ.

Respondent should not be responsible for any costs or attorneys’ fees associated with the review and production of documents that were already produced, and which UASNМ was explicitly instructed not to produce by Respondent and the hearing officer. Accordingly, the 65 hours that are claimed to have been spent reviewing emails and the \$11,625 in associated fees are unreasonable and excessive, as are any other fees that are based upon UASNМ’s “review” and production of duplicative documents.

V. UASNМ Should Not Be Able to Recover Mr. Hudson’s or Mr. Kopczynski’s Purported Fees

UASNМ seeks to recover \$23,125 of fees purportedly incurred by Kirk Hudson and Joseph Kopczynski in connection with responding to the subpoena. These fees are based upon a claim that Messrs. Hudson and Kopczynski spent almost 90 hours on “subpoena production.” However, it is impossible to tell from the time sheets submitted with the Request for Reconsideration what they actually did that took 90 hours. Given that they are not attorneys and they were not reviewing the documents for relevance or privilege, the 90 hours was presumably spent searching for and compiling responsive documents. It is inconceivable that it took Messrs. Hudson and Kopczynski 90 hours to collect and provide documents to UASNМ’s counsel, especially in light of the fact that the majority of the documents ultimately produced duplicate UASNМ’s production to the SEC and the fact that UASNМ’s counsel spent far less than 90 hours to actually review the documents for relevance and privilege.

The rate charged for their work, \$250 per hour, is also unreasonable and excessive. Compiling documents could have easily been performed by a UASNM staff member at a fraction of the cost claimed by Messrs. Hudson and Kopczynski. They are seeking a rate equal to that of their counsel for work that is administrative in nature, not legal. A rate of \$250 per hour cannot be justified in connection with the simple act of searching for and providing documents to counsel. The excessive and unreasonable nature of the time and hourly rate claimed by Messrs. Hudson and Kopczynski is supported by the finding in the Revised Order that “UASNM’s [attempt] to charge [Respondent] \$300 per hour for UASNM’s internal work, a seemingly excessive amount of time for compiling documents, and at a rate that, compared to the hourly rate of its law firm (about \$200), is unreasonable.”¹³ The time allegedly spent compiling documents – which are duplicative – and the excessive hourly rate claimed are another example of UASNM’s abusive practices and tactics. Respondent should not be responsible for these excessive and unreasonable fees.

VI. UASNM Seeks Excessive and Unreasonable Costs

Though the costs claimed by UASNM constitute a relatively small portion of the total amount UASNM seeks to recover, the costs it claims are emblematic of its abusive and misleading practices. For example, included in the \$209.82 of Federal Express charges for which UASNM seeks reimbursement are \$130.79 related to UASNM’s filings with the SEC, not the production and delivery of documents to Respondent.¹⁴

¹³ UASNM estimated it would take 93 hours of internal work to compile documents, an estimate that is, not surprisingly, very similar to the nearly 90 hours now claimed.

¹⁴ UASNM has included \$103.25 of Federal Express costs incurred in September which presumably relate to the filing of UASNM’s Application to Quash. There is an additional \$27.54 Federal Express charge on October 10, 2014, which appears to be related to the filing of UASNM’s response to Respondent’s Motion to Enforce Subpoena.

UASNM also seeks reimbursement of \$118.11 for the cost of two hard drives it used to produce responsive documents. Par for the course with UASNM, production via hard-drive is far more expensive than any number of other ways that UASNM could have electronically produced documents. For example, documents could have been produced: (1) at little or no cost through a file sharing service such as DropBox; (2) for the cost of a CD-ROM or DVD (approximately \$0.50 to \$2.00) plus postage; or (3) for the cost of a USB thumb-drive (approximately \$5 to \$10) plus postage. When this issue was raised with UASNM's counsel he dismissed the cost as "insignificant" and claimed that a hard-drive was used so that Respondent's "search would be easier." See Exhibit C. This sort of justification, which is absurd given that searching the documents would be no less easy if they were produced via any other electronic method, is a poor attempt to cover up or rationalize UASNM's vindictive and abusive conduct.

VII. Respondent Will Pay the Reasonable Costs of Production

Respondent has agreed to pay the reasonable costs of compliance with the subpoena, up to \$20,000, and believes that, based upon the foregoing, the following represents a fair and reasonable estimate of UASNM's costs of compliance with the subpoena.

- Considered in the light most favorable to UASNM, the attorney and paralegal fees related to the review and production of documents and the preparation of privilege logs do not exceed \$16,750. UASNM should not be permitted to recover any fees in excess of this amount. The actual amount that UASNM is ultimately allowed to recover should be a fraction of the \$16,750 billed given that the vast majority of documents reviewed and produced appear to be duplicative.¹⁵
- The time and hourly rate claimed by Messrs. Hudson and Kopczynski are excessive and unreasonable in light of the nature of the work performed and the extent of

¹⁵ In the interest of avoiding further escalation of the costs in this matter, Respondent chose not to undertake a full review and comparison of documents produced to determine the full extent of the duplication. It is clear however that the vast majority of documents were duplicative of prior productions. As a result, Respondent suggests that a reduction of two-thirds of \$16,750 (to \$5,583) would more accurately reflect the amount of fees necessary in reviewing non-duplicative documents for relevance and privilege.

UASNM's duplicative production. Respondent should not be required to pay any of these charges.

In light of the extreme and frivolous opposition that Respondent has faced from UASNM in connection with the subpoena, and in light of the abusive practices and tactics that UASNM has employed, Respondent believes that it would be reasonable to offset any fees or costs that are ultimately found to be recoverable by UASNM with fees Respondent has incurred as a result of UASNM's abusive conduct. Respondent represents that he has incurred \$7,935 in fees related to the Application to Quash, \$3,037.50 in fees related to the Motion to Enforce Subpoena, and \$1,503 in other fees related to his attempts to procure documents responsive to the subpoena.

Respectfully submitted,



DENNIS J. MALOUF

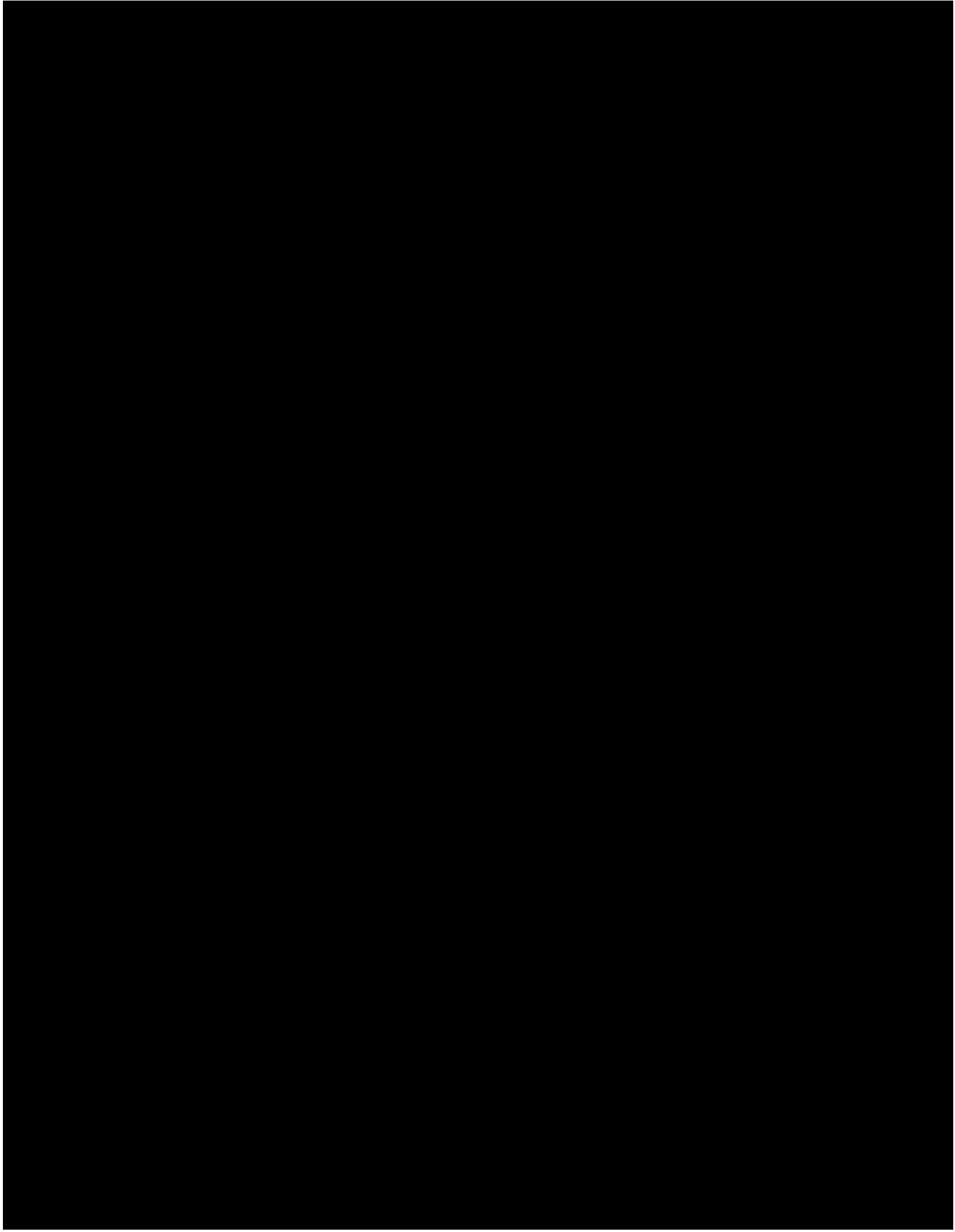


EXHIBIT A

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1951A/October 28, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15918

In the Matter of

DENNIS J. MALOUF

REVISED ORDER ON SUBPOENA TO
UASNM, INC.

On October 6, 2014, this Office received Respondent's Motion to Enforce Subpoena Duces Tecum Without Deposition Directed to UASNM, Inc. (Motion). The Motion represents that UASNM did not comply with the subpoena directed to it, as modified by this Office's Order of September 22, 2014. Motion at 2; *see Dennis J. Malouf*, Admin. Proc. Rulings Release No. 1827, 2014 SEC LEXIS 3493 (Sept. 22, 2014). On October 10, 2014, this Office ordered UASNM to show cause why it had not yet complied with the subpoena. *Dennis J. Malouf*, Admin. Proc. Rulings Release No. 1906, 2014 SEC LEXIS 3818. On October 14, 2014, UASNM opposed the Motion and responded to the Order to Show Cause (UASNM Response). Respondent did not file a reply.

The Motion, to the extent it asks to refer the matter for enforcement proceedings in federal district court, is DENIED as premature. UASNM is ORDERED to produce the responsive documents to Respondent by November 4, 2014, provided that Respondent agrees to bear the following costs of UASNM's subpoena compliance.

First, in advance of the UASNM production, Respondent shall tender payment of \$1356.00 for the cost of the consultant retained by UASNM to compile responsive emails. *See* UASNM Response at 4-5.

Second, although the cost of attorney time in responding to a subpoena in reviewing documents for relevance and privilege is not a regularly reimbursed cost; here, as noted in the order modifying and quashing in part this subpoena, given the uncharacteristically large scope of the subpoena with respect to UASNM, Respondent will be required to bear reasonable costs and expenses associated with UASNM's production, including select costs of attorney time. UASNM seeks \$22,838.08 for legal fees and \$27,900 for ninety-three hours of internal work compiling documents. UASNM Response at 4. UASNM seeks to charge Malouf \$300 per hour for UASNM's internal work, a seemingly excessive amount of time for compiling documents, and at a rate that, compared to the hourly rate of its law firm (about \$200), is unreasonable. Following UASNM's November 4, 2014, production of the responsive documents to

Respondent, it is ORDERED that UASNM will file and serve final, itemized billing records of the costs and time spent in complying with the subpoena, and that based on those records, this Office shall order Respondent to pay as much as \$20,000 in reasonable costs of compliance. However, if Respondent does not agree, in advance, to bear additional reasonable costs up to \$20,000, then UASNM need not produce its documents.

Finally, Respondent and UASNM are encouraged to negotiate, in good faith, an alternative, mutually agreeable resolution to the dispute over the costs of subpoena compliance. If they reach an alternative resolution, they should make appropriate notice to this office.

Jason S. Patil
Administrative Law Judge

EXHIBIT B

Robert Jamieson

From: Jim Boone <[REDACTED]>
Sent: Thursday, October 30, 2014 11:00 AM
To: Robert Jamieson
Cc: 'McKenna, Stephen C.'; 'Bill Chappell'; 'Erin Dingman'; alj@sec.gov; Peter King
Subject: RE: SEC v. Malouf

Mr. Jamieson,

I have read your e-mails. You have already taken the position that you will not pay for documents that you required to be produced under the subpoena you had issued. Your position violates two orders issued in this matter. In light of your threat to move for contempt, I suggest you be careful with your pleadings in light of your stated intentions to violate the two orders. We will produce documents that are responsive and we will provide our bills as required by the October 29 order. The Administrative Law Judge, and not you or your client, will decide what your client is obligated to pay.

Jim Boone

From: Robert Jamieson [REDACTED]
Sent: Thursday, October 30, 2014 8:09 AM
To: Jim Boone
Cc: McKenna, Stephen C.; Bill Chappell; Erin Dingman; alj@sec.gov; Peter King
Subject: RE: SEC v. Malouf

Mr. Boone,

To be clear, we will need your confirmation no later than noon ET today. In the event you fail to confirm, we will immediately move forward with further enforcement efforts, including a motion for contempt.

Regards,
Rob Jamieson

Robert K. Jamieson
5505 W. Gray Street
Tampa, FL 33609
Phone: 813.347.5110
Fax: 813.347.5160
rjamieson@wiandlaw.com
www.wiandlaw.com



Disclaimer under IRS Circular 230: Unless expressly stated otherwise in this transmission, nothing contained in this message is intended or written to be used, nor may it be relied upon or used, (1) by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code of 1986, as amended and/or (2) by any person to support the promotion or marketing of or to recommend any Federal tax transaction(s) or matter(s) addressed in this message.

If you desire a formal opinion on a particular tax matter for the purpose of avoiding the imposition of any penalties, we will discuss the additional Treasury requirements that must be met and whether it is possible to meet those requirements under the circumstances, as well as the anticipated time and additional fees involved.

Confidentiality Disclaimer: This e-mail message and any attachments are private communication sent by a law firm, Wiand Guerra King P.L., and may contain confidential, legally privileged information meant solely for the intended recipient. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. Please notify the sender immediately by replying to this message, then delete the e-mail and any attachments from your system. Thank you.

From: Robert Jamieson
Sent: Thursday, October 30, 2014 9:40 AM
To: Jim Boone
Cc: McKenna, Stephen C.; Bill Chappell; Erin Dingman; alj@sec.gov; Peter King
Subject: RE: SEC v. Malouf

Mr. Boone,

Per my email below, please confirm today whether UASNM will produce documents pursuant to Judge Patil's October 29 Order. Thank you.

Regards,
Rob Jamieson

Robert K. Jamieson
5505 W. Gray Street
Tampa, FL 33609
Phone: 813.347.5110
Fax: 813.347.5160
rjamieson@wiandlaw.com
www.wiandlaw.com



Disclaimer under IRS Circular 230: Unless expressly stated otherwise in this transmission, nothing contained in this message is intended or written to be used, nor may it be relied upon or used, (1) by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code of 1986, as amended and/or (2) by any person to support the promotion or marketing of or to recommend any Federal tax transaction(s) or matter(s) addressed in this message. If you desire a formal opinion on a particular tax matter for the purpose of avoiding the imposition of any penalties, we will discuss the additional Treasury requirements that must be met and whether it is possible to meet those requirements under the circumstances, as well as the anticipated time and additional fees involved.

Confidentiality Disclaimer: This e-mail message and any attachments are private communication sent by a law firm, Wiand Guerra King P.L., and may contain confidential, legally privileged information meant solely for the intended recipient. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. Please notify the sender immediately by replying to this message, then delete the e-mail and any attachments from your system. Thank you.

From: Robert Jamieson
Sent: Wednesday, October 29, 2014 9:15 PM
To: Jim Boone
Cc: McKenna, Stephen C.; Bill Chappell; Erin Dingman; alj@sec.gov; Peter King
Subject: Re: SEC v. Malouf

Mr. Boone,

We believe any reasonable reading of my communications with you makes clear that we have already agreed to bear reasonable costs up to \$20,000, pursuant to the procedure spelled out in Judge Patil's October 29 order. We believe your suggestions to the contrary and your refusal to produce the documents are part of UASNM's ongoing efforts to interfere with Mr. Malouf's defense of the SEC's claims and to obstruct this administrative proceeding. Nevertheless, in order to remove what you are contending without basis to be ambiguity, I will reiterate:

Mr. Malouf agrees to bear reasonable costs up to \$20,000, pursuant to the procedure spelled out in Judge Patil's October 29 order.

I will also reiterate that we will not agree to pay for copies of documents UASNM has already produced to the SEC in this proceeding, or to Mr. Malouf in the state court litigation, because it is wasteful and unnecessary.

This is our good faith effort to work this out in a reasonable way, as Judge Patil has encouraged us to do. Please confirm that UASNM will produce the documents by November 4.

Regards,

Robert Jamieson

On Oct 29, 2014, at 8:24 PM, "Jim Boone" <jimb@chappellfirm.com> wrote:

Mr. Jamieson,

I'm sorry but my e-mail to which you have responded still stands. Neither your letter of today's date nor your below e-mail in my opinion complies with the order. Your statements concerning Mr. Malouf, your attempts to argue against documents your client demanded be produced, and your argument against future payments to my client for costs incurred in complying with document production are not unequivocal statements that your client will pay up to \$20,000 in reasonable costs of compliance. It's an easy fix which your client is apparently unwilling to do.

Again, as stated in my e-mail to you, the trade binders will be produced by UASNM, Inc. upon receipt of the \$200.

Jim Boone

From: Robert Jamieson [<mailto:RJamieson@wiandlaw.com>]

Sent: Wednesday, October 29, 2014 5:59 PM

To: Jim Boone

Cc: 'McKenna, Stephen C.'; 'Bill Chappell'; 'Erin Dingman'; alj@sec.gov; Peter King

Subject: RE: SEC v. Malouf

Mr. Boone,

In response to your email below, the September 22 Order clearly provides that UASNM need not produce documents already produced to the SEC and to Mr. Malouf in the state court litigation (See attached, at p.2). UASNM has a record of all such documents it has produced, and therefore should easily be able to discern which documents it has not already produced. We have received the UASNM documents that were produced to the SEC, and Mr. Malouf already received documents from UASNM in the state court litigation. We do not wish to receive them again and do not wish to pay for documents we already have, or for the review of documents UASNM has already reviewed in connection with those two prior productions. Judge Elliot's September 22 order sensibly allows both parties to avoid needless duplication and wasted resources.

Judge Patil's October 29 Order provides the procedure for payment. We indicated in our letter, and will reiterate here, that we will comply with the procedure set forth in the Order. We have complied with the October 29 Order by tendering payment of \$1,356. We look forward to timely receiving the responsive documents in accordance with the ALJ's orders. Thank you.

Regards,
Robert Jamieson

Robert K. Jamieson
5505 W. Gray Street
Tampa, FL 33609
Phone: 813.347.5110
Fax: 813.347.5160
rjamieson@wiandlaw.com
www.wiandlaw.com



Disclaimer under IRS Circular 230: Unless expressly stated otherwise in this transmission, nothing contained in this message is intended or written to be used, nor may it be relied upon or used, (1) by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code of 1986, as amended and/or (2) by any person to support the promotion or marketing of or to recommend any Federal tax transaction(s) or matter(s) addressed in this message.

If you desire a formal opinion on a particular tax matter for the purpose of avoiding the imposition of any penalties, we will discuss the additional Treasury requirements that must be met and whether it is possible to meet those requirements under the circumstances, as well as the anticipated time and additional fees involved.

Confidentiality Disclaimer: This e-mail message and any attachments are private communication sent by a law firm, Wiand Guerra King P.L., and may contain confidential, legally privileged information meant solely for the intended recipient. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. Please notify the sender immediately by replying to this message, then delete the e-mail and any attachments from your system. Thank you.

From: Jim Boone [<mailto:jimb@chappellfirm.com>]
Sent: Wednesday, October 29, 2014 7:03 PM
To: Robert Jamieson
Cc: 'McKenna, Stephen C.'; 'Bill Chappell'; 'Erin Dingman'
Subject: SEC v. Malouf

Mr. Jamieson,

Mr. Jamieson,

I have read your letter dated October 29, 2014, and I find it is non-responsive to the language of the order. Your client needs to affirmatively state that he will pay additional reasonable costs up to \$20,000.00 to UASNM, Inc. , for responding to your subpoena as clearly stated in the order. Your letter also now improperly states that you will not pay for documents you requested in your subpoena and which you never amended. My client has no idea what documents your client has or has not received either from the Security and Exchange Commission or your client's multiple attorneys in the state court action. Your attempt to assert future non-payment for documents you requested is also in my opinion contrary to the October 29, 2014, order so that you must withdraw the second paragraph of your letter of October 29, 2014.

There has been no subpoena for the trade binders directed to UASNM, Inc. as you were previously advised in the responses to the individual subpoenas and you declined the offer of October 15 to receive such documents. They are not part of the subpoena to UASNM, Inc. However, in an act of good faith, copies of the binders will be produced in PDF format upon receipt of the \$200 payment.

Jim Boone

[REDACTED]

The information contained in this email message is attorney-privileged and confidential information intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, copying or other use of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone or email and delete this email message. Thank you.

ExchangeDefender Message Security: [Check Authenticity](#)

ExchangeDefender Message Security: [Check Authenticity](#)

EXHIBIT C

Robert Jamieson

From: Jim Boone [REDACTED]
Sent: Friday, November 14, 2014 11:23 AM
To: Robert Jamieson
Cc: 'Erin Dingman'; 'Bill Chappell'
Subject: RE: SEC v. Malouf

Follow Up Flag: Follow up
Flag Status: Flagged

Mr. Jamieson,

It's obvious neither you nor your client wish to get this resolved. You know what the costs and fees are and you refuse to make an offer (or counteroffer if you prefer). My client will not be bidding against itself. You have all the documents. Absent a court order it is obvious that your client has no intention of paying anything further, judging by your letter to the ALJ and which I'm sure was your client's plan all along. In your letter you've even complained about an insignificant cost in the entire amount expended by my client, that of receiving a drive (so that your search would be easier), yet you state it should have been on CDs instead. You complain you have nothing to do with the state court matter or Mr. Wainwright; yet, you further complain that you received documents concerning the state court matter that was part of your subpoena that you allegedly received earlier (and, as you well know, my client would have absolutely no knowledge of what you received).

You have no concept of good faith. Since you have refused to make any offer of any kind, your lack of good faith is noted and this will confirm that no settlement negotiations are possible because of your, and your client's, refusal to make an offer. I look forward to your further complaints about the fees and costs my client incurred in responding to your subpoena (which has required to date two court orders based upon your actions) in your response in opposition.

Jim Boone

From: Robert Jamieson [mailto:RJamieson@wiandlaw.com]
Sent: Friday, November 14, 2014 8:33 AM
To: Jim Boone
Cc: Peter King
Subject: RE: SEC v. Malouf

Mr. Boone,

We continue to offer to negotiate in good faith. However, I will state for a third time that any good faith negotiation first requires an agreement from UASNM that a resolution can be reached somewhere between \$0 and \$20,000. Since we have not received any such agreement from UASNM in response to any of my prior emails, it is clear that UASNM is not interested in negotiating in good faith.

Please be advised that we have not and will not have any discussion with Mr. Wainwright regarding any settlement discussions related to the escrow account. You should communicate any such settlement discussions directly to Mr. Wainwright. Also, we have not accepted or rejected anything by way of my previous email, nor has Mr. Malouf.

Regards,
Rob Jamieson

Robert K. Jamieson
5505 W. Gray Street
Tampa, FL 33609
Phone: 813.347.5110
Fax: 813.347.5160
rjamieson@wiandlaw.com
www.wiandlaw.com



Disclaimer under IRS Circular 230: Unless expressly stated otherwise in this transmission, nothing contained in this message is intended or written to be used, nor may it be relied upon or used, (1) by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code of 1986, as amended and/or (2) by any person to support the promotion or marketing of or to recommend any Federal tax transaction(s) or matter(s) addressed in this message.

If you desire a formal opinion on a particular tax matter for the purpose of avoiding the imposition of any penalties, we will discuss the additional Treasury requirements that must be met and whether it is possible to meet those requirements under the circumstances, as well as the anticipated time and additional fees involved.

Confidentiality Disclaimer: This e-mail message and any attachments are private communication sent by a law firm, Wiand Guerra King P.L., and may contain confidential, legally privileged information meant solely for the intended recipient. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. Please notify the sender immediately by replying to this message, then delete the e-mail and any attachments from your system. Thank you.

From: Jim Boone [<mailto:jimb@chappellfirm.com>]
Sent: Thursday, November 13, 2014 11:12 AM
To: Robert Jamieson
Cc: 'Bill Chappell'; 'Erin Dingman'
Subject: RE: SEC v. Malouf

Mr. Jamieson,

I was out of town on Tuesday afternoon and yesterday. I have reviewed your e-mail this morning.

Since you do not consider any settlement discussion to be privileged, and you are in receipt of the billing and all of the documents required by your subpoena, feel free to make your non-privileged settlement offer in response to the amount requested. This should include when payment would be made, enforcement procedures if your client doesn't pay, and all other terms and conditions of such offer.

With regard to my prior correspondence, I thought Mr. Malouf would be interested in ending litigation and that he had the ability to discuss matters with Mr. Wainwright if he was interested in ending litigation. I take your e-mail as Mr. Malouf's rejection of the concept I outlined in my e-mail so that I will not discuss the concept with our firm's client.

Jim Boone

From: Robert Jamieson [<mailto:RJamieson@wiandlaw.com>]
Sent: Tuesday, November 11, 2014 3:05 PM
To: Jim Boone
Cc: Peter King; 'Erin Dingman'
Subject: RE: SEC v. Malouf

Mr. Boone,

We are not, nor have we ever been, engaged to represent Mr. Malouf in connection with the escrow account in the state court action. As you well know, Mr. Malouf's counsel in the state court litigation is Allan Wainwright. We have only ever been engaged in the SEC's administrative proceeding.

We continue to offer to negotiate in good faith the claims for costs not to exceed \$20,000, and we would be happy to continue to discuss this matter with you upon agreement that a resolution can be reached somewhere between \$0 and \$20,000. Inasmuch as this is not a negotiation of the settlement of a lawsuit, we do not consider these to be privileged settlement communications.

Regards,
Rob Jamieson

Robert K. Jamieson
5505 W. Gray Street
Tampa, FL 33609
Phone: 813.347.5110
Fax: 813.347.5160
rjamieson@wiandlaw.com
www.wiandlaw.com



Disclaimer under IRS Circular 230: Unless expressly stated otherwise in this transmission, nothing contained in this message is intended or written to be used, nor may it be relied upon or used, (1) by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code of 1986, as amended and/or (2) by any person to support the promotion or marketing of or to recommend any Federal tax transaction(s) or matter(s) addressed in this message.

If you desire a formal opinion on a particular tax matter for the purpose of avoiding the imposition of any penalties, we will discuss the additional Treasury requirements that must be met and whether it is possible to meet those requirements under the circumstances, as well as the anticipated time and additional fees involved.

Confidentiality Disclaimer: This e-mail message and any attachments are private communication sent by a law firm, Wiand Guerra King P.L., and may contain confidential, legally privileged information meant solely for the intended recipient. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. Please notify the sender immediately by replying to this message, then delete the e-mail and any attachments from your system. Thank you.

From: Jim Boone [<mailto:jimb@chappellfirm.com>]
Sent: Monday, November 10, 2014 6:44 PM
To: Robert Jamieson
Cc: 'Bill Chappell'; 'Erin Dingman'
Subject: RE: SEC v. Malouf

FOR SETTLEMENT PURPOSES ONLY AND NOT ADMISSIBLE FOR ANY PURPOSE

Mr. Jamieson,

Thank you for your e-mail. As you know we have requested the ALJ to remove the artificial cap since the September 22, 2014, order, contains no such cap. Obviously, having said that, I haven't asked our client whether it is willing to take an almost \$50,000 hit on responding to the subpoena and the various orders that were needed.

Let me ask you to think about this instead (and I do not have our client's consent for this so I cannot make this a formal offer of settlement): consider whether your client would be willing to waive any claim to the escrow fund which is now in litigation in the state court here in exchange for no fees/costs being sought by UASNM in the SEC case. The benefit to our clients I think would be to stop the fees from being expended in both matters (SEC subpoena and state court matters) as well as saving your client from having to come out of pocket in this case concerning the subpoena to UASNM. He also has already received all the documents.

While I'm sure you're spending all of your time getting ready for next week's hearing, please let me know something by the end of the day tomorrow if you think this is a possible area of compromise. Thank you.

Jim Boone

From: Robert Jamieson [<mailto:RJamieson@wiandlaw.com>]
Sent: Monday, November 10, 2014 3:59 PM
To: Jim Boone
Cc: 'Bill Chappell'; 'Erin Dingman'; McKennaS@SEC.gov; Peter King
Subject: RE: SEC v. Malouf

Good afternoon, Mr. Boone,

We would be happy to negotiate in good faith regarding a mutually agreeable resolution to the dispute over the costs of subpoena compliance.

It is clear from Judge Patil's October 28 Order that the maximum amount of reasonable costs that Respondent will be obligated to pay is \$20,000. Further, I advised you in my October 29, 2014 email that Respondent agreed to bear reasonable costs up to \$20,000, pursuant to Judge Patil's Order. Therefore, any good faith negotiation for an alternate resolution must start with an agreement that a resolution can be reached somewhere between \$0 and \$20,000. Please advise whether you are willing to negotiate in good faith within the range established by Judge Patil.

Regards,
Rob Jamieson

Robert K. Jamieson
5505 W. Gray Street
Tampa, FL 33609
Phone: 813.347.5110
Fax: 813.347.5160
rjamieson@wiandlaw.com
www.wiandlaw.com



Disclaimer under IRS Circular 230: Unless expressly stated otherwise in this transmission, nothing contained in this message is intended or written to be used, nor may it be relied upon or used, (1) by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code of 1986, as amended and/or (2) by any person to support the promotion or marketing of or to recommend any Federal tax transaction(s) or matter(s) addressed in this message.

If you desire a formal opinion on a particular tax matter for the purpose of avoiding the imposition of any penalties, we will discuss the additional Treasury requirements that must be met and whether it is possible to meet those requirements under the circumstances, as well as the anticipated time and additional fees involved.

Confidentiality Disclaimer: This e-mail message and any attachments are private communication sent by a law firm, Wiand Guerra King P.L., and may contain confidential, legally privileged information meant solely for the intended recipient. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. Please notify the sender immediately by replying to this message, then delete the e-mail and any attachments from your system. Thank you.

From: Jim Boone [mailto:jimb@chappellfirm.com]
Sent: Friday, November 07, 2014 4:51 PM
To: Robert Jamieson
Cc: 'Bill Chappell'; 'Erin Dingman'; McKennaS@SEC.gov
Subject: SEC v. Malouf

Good afternoon, Mr. Jamieson,

As you know the Administrative Law Judge requested that we negotiate in good faith concerning a resolution of the fees and costs to be paid by your client. You received our prior affidavits in this regard. You will also be receiving by e-mail today our Notice of Compliance and Request for Reconsideration with the billing attached. The total bill for fees and costs exceeds \$65,000.00. We are requesting, in this regard, that the Administrative Law Judge remove the \$20,000 cap since there is no cap contained in the September 22, 2014, order. Please advise what amount, if any, your client would be willing to pay.

Additionally, the privilege log is being sent to you tonight via FEDEX today for delivery on Monday, 11/10/14.

Jim Boone

James B. Boone
Chappell Law Firm, PA

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The information contained in this email message is attorney-privileged and confidential information intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, copying or other use of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone or email and delete this email message. Thank you.

ExchangeDefender Message Security: [Check Authenticity](#)

ExchangeDefender Message Security: [Check Authenticity](#)

ExchangeDefender Message Security: [Check Authenticity](#)