ISEMAN, CUNNINGHAM, RIESTER & HYDE, LLP

Attorneys and Counselors at Law

Robert H. Iseman
Carol A. Hyde
Brian M. Culnan
Richard A. Frankel
Richard A. Mitchell
Karen E. Sosler
James P. Lagios
John F. Queenan
Joshua E. Mackey
David R. Wise+

Senior Counsel:
Michael J. Cunningham

Frederick C. Riester
(1942-2012)

9 Thurlow Terrace • Albany, NY 12203
Phone 518-462-3000 Facsimile 518-462-4199
www.icrh.com

2849 South Road • Poughkeepsie, NY 12601
Phone 845-473-8100 Facsimile 845-473-8777

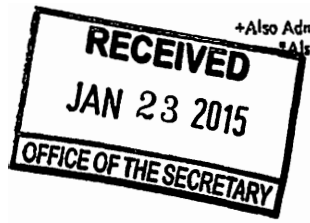
Of Counsel:
Stacey L. Goldstein+
Richard J. Graham*

Penny M. Hahn
Marc A. Antonucci
Omer Gil
Frank P. Izzo
Michael W. Deyo
Michelle Almeida+
Mackenzie M. Plaske

+Also Admitted in Connecticut
*Also Admitted in Texas

January 23, 2015

VIA FEDERAL EXPRESS



Hon. Jason S. Patil
Administrative Law Judge
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

Re: In the Matter of Edgar R. Page and PageOne Financial, Inc.
File No. 3-16037

Dear Judge Patil:

As directed by Your Honor's Post-Final Prehearing Conference Order, dated January 21, 2015, we submit this letter in support of Respondents' request that evidence of Respondents' engagement of counsel be allowed in this proceeding without a concomitant privilege waiver.

Respondents are not raising an advice-of-counsel defense but do intend to offer proof—without waiving any claim of privilege—that experienced securities counsel was engaged to handle all aspects of the complex transactional negotiations at issue in this case (the "Proffered Evidence"). The Division seemingly attempts to transform this basic evidentiary point into a truncated advice-of-counsel defense for purposes of excluding relevant evidence.

Respondents agree that assertion of an advice-of-counsel defense would require a waiver of privilege as to the advice relied upon to ensure that "the attorney-client privilege [is not] at once used as a shield and a sword."[1] It is axiomatic that a party "may not use the privilege to prejudice his opponent's case or to disclose some selected communications for self-serving purposes."[2] In other words, " 'a party cannot partially disclose privileged communications or affirmatively rely on privileged communications to support its claim or defense and then shield the underlying communications from scrutiny by the opposing party.' "[3]

The Division cannot recast the Proffered Evidence as an advice-of-counsel defense. Respondents do not intend to offer proof that they relied on any specific legal advice, nor will Respondents disclose or put at issue the substance of any privileged communications—much less in a partial or selective manner. Stated briefly, the submission of non-privileged evidence bearing on the engagement of counsel is not an advice-of-counsel defense in form or substance.[4]

---

[1] *See SEC v. Martino*, 255 F.Supp.2d 268, 285 (S.D.N.Y. 2003); *Markowski v. SEC*, 34 F.3d 99, 104-05 (2d Cir. 1994); *In re Grand Jury Proceedings*, 219 F.3d 175, 182 (2d Cir. 2000).

[2] *Trouble v. The Wet Seal, Inc.*, 179 F.Supp.2d 291, 304 (S.D.N.Y. 2001) (emphasis added.)

[3] *In re Sims*, 534 F.3d 117, 132 (2d Cir. 2008), *quoting In re Grand Jury*, 219 F.3d at 182 (emphasis added.)

[4] Even if Respondents wanted to raise an advice-of-counsel defense at trial, the Court has already ruled that such defense is unavailable because it's been waived by Respondents.

The Proffered Evidence is relevant under Commission Rule 320, does not unfairly prejudice the Division, and does not put at issue any privileged communications or the substance of any legal advice. Accordingly, there is no basis to exclude this evidence.

First, the Proffered Evidence is relevant, as demonstrated by the Division's own trial exhibits showing the involvement of Respondents' counsel in negotiating the transaction, drafting and revising key documents, and communicating with United's counsel[5] (copies of these exhibits are attached for ease of reference). The Division makes the unusual suggestion that it be permitted to introduce relevant documentary exhibits at trial while simultaneously precluding the Respondents from identifying one of the correspondents therein as Respondents' attorney. This would be an unnatural distortion of basic evidentiary principles.

Second, the Division's contention that it would be prejudiced by the Proffered Evidence is equally implausible. The Division cannot argue that it would be prejudiced by the introduction of additional relevant evidence regarding facts the Division has already put into play through its own trial exhibits.

The Division relies upon *SEC v. Tourre* for the proposition that evidence demonstrating the involvement of counsel in transactional negotiations is irrelevant and prejudicial.[6] In *Tourre*, evidence of counsel's involvement was precluded not because the defendant refused to waive privilege or because such evidence was improper as a matter of law, but out of concern that the jury could misunderstand the subtle distinction between a technical advice-of-counsel defense and the introduction of more limited proof of attorney involvement.[7] In this case there is no risk that the fact-finder will misunderstand this legal nuance, making *Tourre* completely inapplicable.

Since the Proffered Evidence is relevant and not prejudicial, the relevant inquiry becomes whether evidence of the mere engagement and involvement of counsel can be introduced without waiving privilege, expressly or implicitly. We are unaware of any case in which a party was required to waive privilege before introducing non-privileged testimonial or documentary evidence of the engagement of counsel. To the contrary—privilege is expressly waived where a party asserts a formal advice-of-counsel defense or otherwise relies on privileged advice.[8] The fact that counsel was engaged and involved in transactional negotiations is not itself privileged, and there is no basis to find a waiver resulting from the introduction of such evidence.[9]

An implied waiver may be found where the privilege holder "asserts a claim that in fairness requires examination of [privileged] communications,"[10] but where a defendant "neither reveals substantive information, nor prejudices the government's case, nor misleads a court by relying on an

---

[5] *See, e.g.*, Division Exhibits 37 and 93.

[6] 950 F.Supp.2d 666, 682-83 (S.D.N.Y. 2013) (holding that evidence showing that lawyers attended meetings and "suggest[ing] that counsel blessed the relevant disclosures" was precluded because it is "such a fine-grained distinction from a reliance on counsel defense, that it would likely confuse the jury") (emphasis added).

[7] *Id.*

[8] *See Martino*, 255 F. Supp. 2d at 285; *Markowski*, 34 F.3d at 104-05; *In re Grand Jury*, 219 F.3d at 182; *In re County of Erie*, 546 F.3d 222, 229 (2d Cir. 2008) (holding that for a waiver to occur, "a party must rely on privileged advice from his counsel to make his claim or defense"); *see also Green v. Beer*, No. 06 Civ. 4156, 2010 WL 2653650, at *6 (S.D.N.Y. July 2, 2010) (finding no required waiver where the legal advice in dispute "is no doubt relevant" to the parties' claims, but where the parties "are not relying on that advice to demonstrate the reasonableness of their decision").

[9] *See, e.g., In re Katz*, 623 F.2d 122, 126 (2d Cir. 1980); *United States v. Barth*, 1992 U.S. Dist. LEXIS 18414, No. N-90-5 (WWE) (D. Conn. July 9, 1992).

[10] *U.S. v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir. 1991).

incomplete disclosure, fairness and consistency do not require the inference of waiver."[11] Proof of counsel's engagement and involvement—particularly without any partial or selective disclosure or reference to substantive advice—can easily be proven or disproven without examining privileged communications. Thus, no privilege would be waived by introducing the Proffered Evidence, nor is there any basis to exclude this evidence as a result of Respondents' unwillingness to waive privilege voluntarily.

This case is analogous to *Aristocrat Leisure Ltd. v. Deutsche Bank Trust Co. Americas*, which involved a dispute between bondholders and an issuer.[12] In that case the issuer moved *in limine* to prevent the bondholders from introducing evidence that they received, considered, or relied on the advice of counsel and, in the alternative, sought a determination that privilege was waived as to the substance of counsel's advice.[13] The bondholders distinguished their asserted argument that they sought legal advice as one aspect of an overall course of reasonable conduct from the unasserted argument that they acted reasonably by relying on such advice.[14] According to the bondholders, the first argument did not waive the privilege, but the second would. The bondholders assured the Court they merely intended to show the jury that counsel was consulted on the subject matter underlying the litigation. The court allowed the evidence without requiring a privilege wavier, holding that "[b]ecause the Bondholders are not claiming to have relied on an opinion of counsel, the actual content of the advice provided to the Bondholders is irrelevant."[15]

Similarly, an unsecured creditors' committee in a bankruptcy proceeding moved to preclude the debtors from offering evidence of their reliance on counsel's advice concerning the evaluation, negotiation, or approval of settlement.[16] The Court held that while privilege was not waived if the debtors argued that they sought legal advice in an effort to reasonably educate themselves as to merits of settlement, debtors, having asserted privilege throughout discovery, could offer limited evidence that counsel was engaged and consulted but could not introduce the substance of the advice to prove their good faith.[17]

In summary, Respondents should not be precluded from introducing proof of the mere engagement and involvement of counsel because this evidence is relevant, not prejudicial, and does not put any privileged communications or the substance of any legal advice at issue.

Very truly yours,

ISEMAN, CUNNINGHAM, RIESTER & HYDE, LLP

Robert H. Iseman

Michael W. Deyo

---

[11] *United States v. White*, 887 F.2d 267, 270–71 (D.C.Cir.1989) (Ginsburg, J.), *citing In re von Bulow*, 828 F.2d 94, 101–02 (2d Cir. 1987).

[12] 727 F.Supp.2d 256 (S.D.N.Y. 2010).

[13] *Id.* at 264.

[14] *Id.* at 273.

[15] 2009 WL 3111766 at *16 (S.D.N.Y. Sept. 28, 2009).

[16] *In re Residential Capital, LLC*, 491 B.R. 63, 68 (Bankr. S.D.N.Y. 2013).

[17] *Id.* at 72.

Kimberly Richardson

From: John R. Mineaux [redacted]
Sent: Wednesday, April 14, 2010 8:30 PM
To: [redacted]

Rich - thanks again for making the trip today and working so productively on the various issues and documents. I'm writing to confirm for all that you and I are each holding two (2) fully executed counterparts of the "Agreement" covering referral fees from PageOne to Millennium Credit Markets and that we will substitute new first pages for each counterpart once we have mutually agreed to the effective date for that document. I look forward to working with you on development of the Stock Purchase Agreement and Shareholders Agreement relating to PageOne - thanks - John

PLEASE NOTE

Our Firm's name and my email

address have changed:

John R. Mineaux, Esq.

Managing Partner

Roemer Wallens Gold & Mineaux LLP

[redacted]

[redacted]

Ph: [redacted]

Fax: [redacted]

Mobile: [redacted]

[redacted]

communication in error, please contact us by email, or telephone at (518)464-1300 and delete the original message.

To comply with U.S. Treasury Regulations, we advise you that any U.S. federal tax advice included in this communication is not intended or written to be used, and cannot be used, to avoid any U.S. federal tax penalties or to promote, market, or recommend any transaction or matter. Thank you.

Roemer Wallens
Gold & Mineaux LLP
Counsellors at Law

Via Electronic Mail

August 6, 2013

Richard C. Engel, Esq.
Mackenzie Hughes LLP
[redacted]

RE: ***Page Notes Outstanding to The United Group of Companies, Inc.***

Dear Rich:

I am writing to follow up on our June 20th meeting with Richard Kotlow and our prior and subsequent disoussions regarding the above-referenced issue.

After our meeting you indicated that Edgar was preparing an explanatory history to assist you in understanding the origin and purpose of the Notes, which he promised to finish and provide you by June 30th. As of July 10th, I don't believe you had received any information and, as far as I am aware, tomorrow will mark an additional four weeks without any response.

As we discussed with you in June, the origin and purpose of the Notes is that they were prepared by him to provide a means of recovering monies paid to Edgar in the event that the planned purchase of forty-nine percent (49%) of PageOne Financial stock was never acquired – which turned out to be the case.

As I noted to Edgar in my initial correspondence on this subject, my client has no desire to commence litigation but, absent any realistic offer toward resolving this matter, there seems to be no other alternative. The Trustees have a fiduciary responsibility to liquidate and recover any amounts that are due and owing to any United entities and these Notes fall into that realm.

[redacted]

Demand has been made to pay the principal balance and all accrued interest under the Notes. Please provide me with an offer to resolve this matter by August 16, 2013.

Very truly yours,

Roetzer Wallens Gold & Mineaux LLP

John R. Mineaux

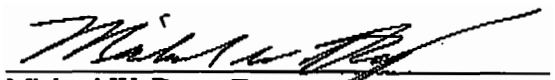
JRM/moi

cc: Richard Kotlow
The United Group of Companies, Inc.

I also certify that on this 23rd day of January, 2015, I caused a true and correct facsimile of the foregoing to be delivered to the Secretary, in order to ensure delivery before the expiration of the prescribed filing deadline.

Respectfully submitted,

Dated: January 23, 2015
New York, New York

By: 

Michael W. Deyo, Esq.
Iseman, Cunningham, Riester & Hyde, LLP
[redacted]

ISEMAN, CUNNINGHAM, RIESTER & HYDE, LLP

Attorneys and Counselors at Law

Robert H. Iseman
Carol A. Hyde
Brian M. Culnan
Richard A. Frankel
Richard A. Mitchell
Karen E. Sosler
James P. Lagios
John F. Queenan
Joshua E. Mackey
David R. Wise+

Senior Counsel:
Michael J. Cunningham

Frederick C. Riester
(1942-2012)

9 Thurlow Terrace • Albany, NY 12203
Phone 518-462-3000 Facsimile 518-462-4199
www.icrh.com

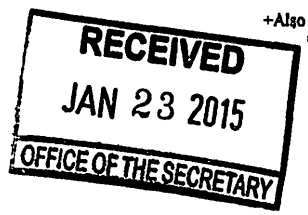
2649 South Road • Poughkeepsie, NY 12601
Phone 845-473-8100 Facsimile 845-473-8777

Of Counsel:
Stacey L. Goldstein+
Richard J. Graham*

Penny M. Hahn
Marc A. Antonucci
Omer Gil
Frank P. Izzo
Michael W. Deyo
Michelle Almeida+
Mackenzie M. Plaske

+Also Admitted in Connecticut
*Also Admitted in Texas

January 23, 2015



VIA U.S. MAIL and FACSIMILE 202-772-9324

The Honorable Brent J. Fields
Secretary of the Commission
Securities & Exchange Commission
Office of the Secretary
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: In the Matter of Edgar R. Page and PageOne Financial, Inc.
Administrative Proceeding File No. 3-16037

Dear Secretary Fields:

Pursuant to Judge Patil's order of January 21, 2015, enclosed are an original and three (3) copies of Respondents' letter brief.

If you have any questions, please contact me at (518) 462-3000.

Very truly yours,

ISEMAN, CUNNINGHAM, RIESTER & HYDE, LLP

Michael W. Deyo

/mkl
Enc.

c: Hon. J. Patil *(via Federal Express and e-mail)*
G. Gross *(via U.S. Mail)*
E. Schmidt *(via U.S. Mail)*
A. Janghorbani *(via Federal Express and e-mail)*