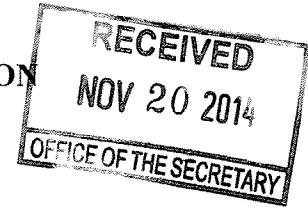


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-16130

In the Matter of

SEAN C. COOPER,

Respondent.

OPPOSITION TO MOTION TO QUASH
SUBPOENA TO THIRD PARTY WESTEND
CAPITAL MANAGEMENT, LLC FOR
PRODUCTION OF DOCUMENTARY EVIDENCE

1. Introduction

Respondent, Sean Cooper ("Cooper"), has subpoenaed certain documents from third-party WestEnd Capital Management, LLC ("WestEnd"). The requested documents are relevant to the establishment of Mr. Cooper's defenses in this proceeding. After numerous teleconferences with counsel for WestEnd, Cooper has agreed to limit the scope of the pending subpoena to "all documents that reflect the total assets under management in the WestEnd Partners, L.P. hedge fund for each quarter" and "all documents that reflect the calculation and amount of the hedge fund management fee earned by WestEnd for each quarter." Presently, Cooper is seeking only those documents from WestEnd for the 2003-2007 period. Cooper has deferred his requests to WestEnd for post-2007 documents for the time being. Finally, Cooper is not interested in obtaining documents that disclose private information, financial or otherwise, about the individual investors/limited partners of the hedge fund.

2. Background

WestEnd has been the general partner of and adviser to the WestEnd Partners, L.P. hedge fund (the "Fund") since the Fund's inception in 2003. Charles Bolton ("Bolton"), an ex-principal of WestEnd, started the Fund and managed it for a time before turning his duties over to

Cooper.¹ During Bolton's tenure, Bolton developed a protocol for collecting hedge fund management fees that Cooper followed once he replaced Bolton, and kept in place until his expulsion from WestEnd in 2012.²

The SEC has instituted an administrative proceeding against Cooper for alleged violations of Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 and Section 9(b) of the Investment Company Act of 1940. The allegations made against Cooper concern Cooper's withdrawal of excess hedge fund management fees beyond the amounts that were actually earned by WestEnd under the Fund's governing documents.

In its Order Instituting Administrative Cease and Desist Proceedings ("Order"), the SEC alleges that Cooper's actions that led to the violations were "willful," "fraudulent, deceptive," and/or "manipulative."³ The SEC will be seeking the imposition of civil penalties against Cooper. The "tier" (first, second or third) of penalties imposed against Cooper corresponds to the level of culpability found by the administrative law judge. *See In re Reserve Fund Securities and Derivative Litigation*, 2013 WL 5432334, at *15-16 (S.D.N.Y. 2013). The SEC is seeking the highest tier of penalties because it alleges that Cooper's conduct was "willful," "deceptive" and/or "fraudulent." Cooper, however, is defending on the grounds that his conduct was not willful but instead was akin to negligence. Specifically, Cooper will establish that his withdrawal of excess management fees was merely the continuation of a faulty protocol that was put into place by his predecessor Bolton prior to the time Cooper took over management of the Fund. Thus, Cooper may face liability for negligently failing to question and correct faulty management fee

¹ See Transcript of JAMS Arbitration Hearing, February 27, 2014, attached as Ex. A, at 15.

² *See id.*

³ SEC Order ¶¶ 18-21.

collection practices, but he did not willfully or fraudulently steal money from investors. To establish Cooper's state of mind, Cooper seeks to introduce evidence of his predecessor Bolton's management of the Fund during the years before Cooper's tenure, as well as evidence of Cooper's continuation of the fee collection protocol put in place by Bolton.⁴ To that end, Cooper has subpoenaed the following documents from WestEnd:

- The general ledger for the Fund from its inception to the date of Mr. Cooper's expulsion from WestEnd in June 2012 (Request No. 1).
- All records, documents and things showing the assets under management of the Fund for each quarter from the Fund's inception to the date of Mr. Cooper's expulsion from WestEnd in June 2012 (Request No. 2).
- All private placement memoranda, offering documents, partnership agreements or similar documents and things related to the Fund from its inception to the date of Mr. Cooper's expulsion from WestEnd in June 2012 (Request No. 3).
- All records, documents and things reflecting hedge fund management fees earned by, due to, or paid to the Fund's general partner, WestEnd (or paid by the Fund's limited partners), for each quarter from the inception of the Fund to the date of Mr. Cooper's expulsion from WestEnd in June 2012 (Request Nos. 4 & 5).⁵

⁴ It is also worth noting that WestEnd mischaracterizes Cooper's defense in its Motion to Quash. WestEnd articulates Cooper's defense as "Mr. Cooper posits that the documents will somehow prove that a prior partner at WestEnd who left the firm in 2004 told him it was acceptable to take the fees in this manner." WestEnd's Motion to Quash at 3. But again, Cooper is not seeking to prove that Bolton told him that the established management fee collection protocol was acceptable or not acceptable. Rather, Cooper is merely trying to elicit evidence of his state of mind – a negligent failure to question and correct a flawed system that was already in place.

⁵ Cooper's initial subpoena requests to WestEnd, attached as Ex. B, sought the above documents for the time frame extending to the present day. During a meet and confer

WestEnd has made a two-fold objection to Cooper's requests – (1) WestEnd claims that Cooper is already in possession of numerous documents that cover the 2010 – 2012 time frame⁶ by virtue of WestEnd's own document production to the SEC during the SEC's 2012 on-site examination of WestEnd (as well as a production made by WestEnd during a previous arbitration between WestEnd and Cooper) which were in-turn provided to Cooper and (2) WestEnd claims that the information sought by Cooper for the time period prior to 2010 is irrelevant to the instant proceeding against Cooper and furthermore constitutes private financial information that is protected from discovery.⁷

3. Law and Argument

A. The dispute over documents from 2008-2012 can be deferred at this time.

Cooper has subpoenaed documents from the Fund's accounting firm, McGladrey, LLP, for the years 2008-2011. McGladrey's production, which Cooper understands to be arriving in the coming weeks, may contain sufficient information to make Cooper's document requests to WestEnd for 2008-2011 moot. Additionally, as WestEnd points out in its Motion to Quash, Cooper is in possession of some documents produced by WestEnd to the SEC (and additional documents produced by WestEnd to Cooper pursuant to an arbitration proceeding) that may contain the requested documentation for the years 2010-2012. Cooper is in the process of reviewing the WestEnd documents already in his possession, and will review the McGladrey documents as soon as he receives them. Cooper's requests related to 2008-2012 can therefore be

teleconference, however, Cooper agreed to compromise and amend his requests to only include documents for the time period extending to his expulsion from WestEnd in June 2012. The parties further agreed to a compromise that resolved Cooper's document request No. 6.

⁶ See list of documents on page 7 of WestEnd's Motion to Quash.

⁷ See WestEnd's Motion to Quash at 10-13.

deferred at this time. Cooper will re-raise his document requests to WestEnd for 2008-2012 if the requested documents are not contained in the McGladrey production or in WestEnd's previous productions.

B. Cooper is not seeking private financial information relating to the Fund's investors.

In light of numerous telephone conferences with WestEnd's counsel and WestEnd's Motion to Quash, Cooper has agreed to limit the scope of his subpoena to the following – all documents that reflect the total assets under management and subject to the quarterly management fees in the Fund for each year in question⁸ and all documents that reflect the calculation and amount of the hedge fund management fee earned by WestEnd for each quarter of each year in question. As mentioned above, at this time Cooper is only seeking such documents from WestEnd for the years 2003-2007. Cooper is not interested in obtaining documents that disclose private information, financial or otherwise, about the individual investors/limited partners. The documents that Cooper is requesting – those that merely reflect the calculation of assets under management and management fees earned for each quarter – would not contain any financial information or even the names of any individual investors.

C. The pre-2010 documents in question are relevant and discoverable.

Rule 232(e)(2) of the Commission's Rules of Practice provides that a hearing officer shall quash or modify a subpoena if compliance with the subpoena would be unreasonable, oppressive, or unduly burdensome.

“The Federal Rules of Civil Procedure do not govern administrative proceedings before the Commission, but they often provide helpful guidance in resolving issues not directly

⁸ The funds invested by WestEnd's principals were exempt from the management fees under the Fund's governing documents.

addressed by the Commission's Rules of Practice.” *In re Putnam Investment Management, LLC*, SEC Administrative Proceeding File No. 3-11317, Release No. 614 (April 7, 2004) (*citing Clarke T. Blizzard*, 77 SEC Docket 1505, 1510-11 n.17, 19 (Apr. 23, 2002)). Under Fed. R. Civ. P. 26(b)(1), parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party. "Relevance" does not hinge on admissibility at trial. Under Fed. R. Civ. P. 26(b)(1), a court need only determine if the information sought "appears reasonably calculated to lead to the discovery of admissible evidence." *Id.*

Other than lodging its objections to producing private financial data of its clients, which Cooper has already addressed, WestEnd has not shown (or even alleged) that compliance with Cooper's subpoena would be “unreasonable, oppressive, or unduly burdensome.” WestEnd's only remaining objection is that the pre-2010 documents sought by Cooper are not relevant to the instant proceeding. WestEnd does concede, however, that the pre-2010 financial records would be discoverable if it is shown that they are “relevant to a cause of action.”⁹

As discussed above, Cooper intends to defend on the grounds that his actions were negligent rather than willful or fraudulent to lessen the amount of penalties that may be imposed against him in this proceeding. To that end, Cooper seeks pre-2010 records from WestEnd to establish that his withdrawal of excess management fees from 2010-2012 was merely the continuation of a faulty protocol that was put into place by his predecessor before Cooper took over management of the Fund. Those records relate directly to Cooper's defenses. *See SEC v. Moran*, 944 F. Supp. 286, 297 (S.D.N.Y. 1996) (“Moran acted with negligence and apparently had no intent to violate the law. Accordingly, the court finds that the violations of Section 206(2) [of the Advisers Act] ... constitute a First Tier violation, rather than a Second Tier violation, as

⁹ *See* WestEnd's Motion to Quash at 12-13

urged by the SEC.”); *In re Reserve Fund Securities and Derivative Litigation*, 2013 WL 5432334, at * 16 (S.D.N.Y. 2013) (“In determining the appropriate civil remedy [i.e., penalty tier for violations of the Investment Advisers Act], courts consider,” among other factors, the “defendants’ scienter.”).

Documents establishing that Cooper merely failed to correct an already faulty management fee protocol (rather than intentionally defraud investors) are therefore directly relevant to the claims and defenses in the instant proceeding. The relevance and probative nature of these documents are in no way outweighed by the privacy concerns cited by WestEnd, which as discussed above, have already been addressed by Cooper. Other than its stated privacy concerns, WestEnd has not shown (or even alleged) that compliance with Cooper’s subpoena would be “unreasonable, oppressive, or unduly burdensome.”

Additionally, the requested documents are also relevant to Cooper’s evaluation of the disgorgement figure set forth by the SEC. In its Order, the SEC alleges that WestEnd owed the Fund \$320,779.00 by February 2012 due to Cooper’s misappropriations from the Fund.¹⁰ The arbitrator in the related JAMS arbitration proceeding awarded damages to WestEnd for the exact same misappropriations for a lesser amount of \$130,166.64, however.¹¹ Cooper must evaluate documents which reflect the total assets under management and management fees collected for the years in question in order to reconcile these conflicting figures and defend himself on the disgorgement issue.

¹⁰ SEC Order ¶ 11.

¹¹ Final JAMS Award, attached as Ex. C, at 11.

4. Conclusion

Cooper has agreed to table his document requests relating to 2008-2012 for the time being. The documents he requests from WestEnd for 2003-2007 are directly relevant to the claims and defenses presented in the instant proceeding, and WestEnd has not shown that compliance with Cooper's subpoena would be "unreasonable, oppressive, or unduly burdensome." For these reasons, and because Cooper is expressly not seeking any private financial information about individual investors, WestEnd should be ordered to produce responsive documents relating to 2003-2007.

Respectfully submitted:



Robert B. Bieck, Jr., Esq.
Tarak Anada, Esq.
Jones Walker LLP
201 St. Charles Avenue
New Orleans, LA 70170-5100
Phone: (504) 582-8202
Email: rbieck@joneswalker.com
tanada@joneswalker.com
Attorneys for Respondent Sean C. Cooper

CERTIFICATE OF SERVICE

I, Tarak Anada, hereby certify that an original and three copies of the foregoing OPPOSITION TO MOTION TO QUASH SUBPOENA TO THIRD PARTY WESTEND CAPITAL MANAGEMENT, LLC FOR PRODUCTION OF DOCUMENTARY EVIDENCE was filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549, and that a true and correct copy of the foregoing has been served by Federal Express, marked for next day delivery and U.S. Mail on November 20, 2014, on the following persons entitled to notice:

Honorable Jason S. Patil
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557
alj@sec.gov

and by U.S. Mail and/or email on the following person entitled to notice:

Eric M. Brooks
Attorney, Division of Enforcement
Securities & Exchange Commission
San Francisco Regional Office
44 Montgomery Street, Suite 2800
San Francisco, California 94104
BrooksE@sec.gov

Britt Evangelist
Swanson & McNamara LLP
300 Montgomery Street, Suite 1100
San Francisco, CA 94104
Counsel for WestEnd Capital Management, LLC
bevangelist@swansonmcnamara.com



Tarak Anada

JAMS ARBITRATION

WESTEND CAPITAL MANAGEMENT,	*	JAMS Ref. No.:
L.L.C., a California Limited	*	
Liability Company, et al.,	*	1100071836
Claimants,	*	
	*	
VERSUS	*	
	*	
SEAN C. COOPER, an	*	
individual,	*	
Respondent.	*	
	*	
* * * * *	*	

JAMS ARBITRATION held in the above-entitled matter at 201 St. Charles Avenue, 14th Floor, New Orleans, Louisiana 70170, commencing at 9:10 a.m., on Thursday, the 27th day of February, 2014.

THE ARBITRATOR:

Honorable William J. Cahill
Two Embarcadero Center
Suite 1500
San Francisco, California 94111



1 Q. -- Analysis of Hedge Fund Prepaid
2 Management Fees under the middle block in the middle.
3 CCO is the process of performing an impact analysis to
4 determine cause and financial implications of the
5 hedge fund overpayment. Right?

6 A. Uh-huh (indicating affirmatively).

7 Q. Who told you how to calculate the hedge
8 fund management fees?

9 A. Charlie Bolton.

10 Q. Did you change how you calculated them in
11 the years since Charlie Bolton left Westend?

12 A. No, except for the increase in management
13 fees percentage.

14 THE ARBITRATOR:

15 That's from 1 to 1 1/2 percent?

16 THE WITNESS:

17 Yes.

18 EXAMINATION BY MR. LOUGHLIN:

19 Q. Was there ever any overage or any issue
20 with the calculation of the fee prior to 2010 and
21 2011, to your knowledge?

22 A. I can't recall. There may have been. I
23 would not -- Maybe I was not cc'd on the document.
24 Charlie didn't tell me.

25 Q. Okay.

1 A. We changed administrators because you had
2 to. There was the new SEC law that you couldn't
3 have -- We had everything being done by a big
4 accounting firm in San Francisco. What is it called?
5 I can't remember. It's a very reputable firm.

6 They could be the administrator and the
7 accountant to do the financial audit at the same time,
8 but the SEC made an order that that had to be
9 transparently separate. So, therefore, that's when I
10 asked one of the guys there and he referred me to
11 Polina Tsikman.

12 Q. Let me show you Exhibit 221. Exhibit 221
13 is a letter to John Chee at the SEC dated
14 January 17th, 2013, again, after you were expelled,
15 right?

16 A. Uh-huh (indicating affirmatively).

17 Q. Look on Page 2 --

18 A. Uh-huh (indicating affirmatively).

19 Q. -- under B --

20 A. Uh-huh (indicating affirmatively).

21 Q. -- under "Response," the first large
22 paragraph toward the middle.

23 A. Uh-huh (indicating affirmatively).

24 Q. "Additionally, following an internal
25 analysis of potential harm that could have affected

SUBOENA DUCES TECUM

UNITED STATES OF AMERICA
SECURITIES AND EXCHANGE COMMISSION

To WestEnd Capital Management, LLC, 86 Graham St., San Francisco, CA 94129

At the instance Sean C. Cooper, through his counsel of record, Robert B. Bieck, Jr. you are hereby required to produce documentary or other tangible evidence as requested on the attached Rider

at Jones Walker LLP, 201 St. Charles Avenue Suite 4900

In the City of New Orleans, LA 70170-5100

on the 14th day of November, 2014, at 5 o'clock pm CST. Of that day,

In connection with Securities and Exchange Commission Proceeding In the Matter of Sean C. Cooper

Administrative Proceeding File No. 3-16130

Fail not at your peril.

In testimony whereof, the seal of the Securities and Exchange Commission is affixed hereto, and the undersigned, a member of said Securities and Exchange Commission, or an officer designated by it, has hereunto set his hand at WASHINGTON, DC this 28th day of OCTOBER 2014

Brenda Murray

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16130

In the Matter of

SEAN C. COOPER,

Respondent.

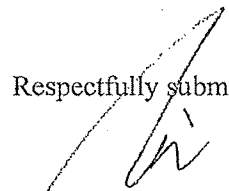
REQUEST FOR ISSUANCE OF SUBPOENA
REQUIRING THE PRODUCTION OF
DOCUMENTARY EVIDENCE PURSUANT TO
SEC RULE OF PRACTICE 232

Pursuant to SEC Rule of Practice 232, Respondent, Sean C. Cooper ("Cooper"), requests that the hearing officer issue a subpoena requiring WestEnd Capital Management, LLC, 86 Graham St, San Francisco, CA 94129, to produce the following documents to the office of undersigned counsel by or before November 14, 2014:

1. The general ledger for the WestEnd Partners, LP hedge fund ("Fund") from its inception to the present day.
2. All records, documents and things showing the assets under management of the Fund for each quarter from the Fund's inception to the present day.
3. All private placement memoranda, offering documents, partnership agreements or similar documents and things related to the Fund from its inception to the present day.
4. All records, documents and things reflecting hedge fund management fees earned by, due to, or paid to the Fund's general partner, WestEnd Capital Management, LLC, for each quarter from the inception of the Fund to the present day.
5. All records, documents and things reflecting all hedge fund management fees paid by or assessed against the Fund's limited partners for each quarter from the fund's inception to the present day.

6. All records, documents and things identifying any employee or affiliated person of WestEnd Capital Management, LLC who managed or supervised management of the Fund since its inception to the present day.

Respectfully submitted:



Robert B. Bieck, Jr., Esq.
Jones Walker LLP
201 St. Charles Avenue
New Orleans, LA 70170-5100
Phone: (504) 582-8202
Email: rbieck@joneswalker.com
Attorney for Respondent Sean C. Cooper

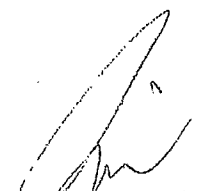
CERTIFICATE OF SERVICE

I, Robert B. Bieck, Jr., hereby certify that an original and three copies of the foregoing REQUEST FOR ISSUANCE OF SUBPOENA REQUIRING THE PRODUCTION OF DOCUMENTARY EVIDENCE PURSUANT TO SEC RULE OF PRACTICE 232 was filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549, and that a true and correct copy of the foregoing has been served by Federal Express, marked for next day delivery and U.S. Mail on October 23, 2014, on the following persons entitled to notice:

Honorable Jason S. Patil
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557
alj@sec.gov

and by U.S. Mail on the following person entitled to notice:

Eric M. Brooks
Attorney, Division of Enforcement
Securities & Exchange Commission
San Francisco Regional Office
44 Montgomery Street, Suite 2800
San Francisco, California 94104



Robert B. Bieck, Jr.

Hon. William J. Cahill (Ret.)
JAMS
Two Embarcadero Center, Suite 1500
San Francisco, CA 94111
Phone: 415-774-2662
Fax: 415-982-5287
Email: jnixon@jamsadr.com

JAMS ARBITRATION CASE REFERENCE NO. 1100071836

WestEnd Capital Management, LLC, George
Bolton Holdings, LLC, and Gustave R. Ozag,

Claimants,

v.

Sean C. Cooper,

Respondent, and Cross-Claimant

v.

WestEnd Capital Management, LLC, et al.

Cross-Respondents.

FINAL AWARD

Place of Arbitration: New Orleans, Louisiana

Date of Final Award: October 24, 2014

I. Introduction

A. Prior Orders

A hearing was held in this matter in New Orleans from February 20 through February 28, 2014. Following the hearing, Claimants and Cross-Respondents, WestEnd Capital Management, LLC, et al.

FINAL AWARD

EXHIBIT C

1

(collectively “WestEnd Parties” or “Claimants”), and Respondent and Cross-Claimant, Mr. Sean Cooper (herein “Cooper” or “Respondent”) each submitted post-hearing briefs on March 30, 2014, and reply post-hearing briefs on April 7, 2014. On April 8, 2014, the parties each submitted a proposed award.

After consideration of all evidence presented, and arguments made, on May 7, 2014, the arbitrator issued his first interim award, captioned “Decision and Award” (herein “Interim Award #1”). The Interim Award #1 is attached hereto as Appendix A and is incorporated fully into this Final Award, except to the extent changed by the Interim Award #2, *see infra*.

On May 14, 2014, Respondent submitted a motion pursuant to JAMS Arbitration Rule 24(j) that allows the arbitrator to correct computational errors in arbitration awards. On May 21, 2014, Claimants submitted its opposition to Respondent’s motion under JAMS Rule 24(j). Respondent filed a reply on May 23, 2014. After reviewing the motion, the arbitrator, on July 14, 2014, asked for additional information and cites to the hearing transcript. A hearing on the matter was held on July 24, 2014. During the hearing, Respondent requested for the first time that the arbitrator change paragraph 8 of the Interim Award #1 that orders an accounting, and find the accounting issue moot. The arbitrator asked for 2-page letter briefs on the accounting issue; those letter briefs were both submitted on July 28, 2014.

On July 30, 2014, the arbitrator issued the “Interim Award re Motion for Correction Under JAMS Rule 24 (j) and Request to Find Accounting Order in Decision and Award Moot,” (“Interim Award #2”). In Interim Award #2, the arbitrator found that \$28,729.08 awarded in pre-judgment interest to WestEnd was done in error. The arbitrator also found that Cross-Respondent Christine Hardy was not a prevailing party entitled to award of attorneys’ fees and costs. And finally, the arbitrator found that the accounting should go forward as originally ordered. Interim Award #2 is attached hereto as Appendix B and is incorporated fully into this Final Award.

B. Briefing on Attorneys' Fees Motion and Post-Accounting Relief Sought by WestEnd

On May 27, 2014, the WestEnd Parties filed their Petition for Award of Attorney Fees and Costs, seeking \$731,532.50 in fees and \$126,838.20 in costs. On June 10, 2014, Respondent filed his Opposition to Petition for Attorneys' Fees. The WestEnd Parties submitted their Reply on June 18, 2014, which included their first supplemental fee invoice. As of June 18, 2014, WestEnd sought \$735,340.50 in fees and \$131,549.24 in costs. On July 21, 2014, WestEnd submitted its second supplemental attorney fee invoice; as of July 21, 2014, WestEnd sought \$740,036.00 in fees and \$131,549.24 in costs.

Following the Arbitrator's Interim Award #2 ordering that the Accounting go forward, and pursuant to paragraph 8 of the Interim Award #1, the WestEnd Parties submitted the accounting and an application seeking further relief pursuant to the accounting, as well as a third supplemental attorney fee invoice, requesting an addition \$5,527.80 in fees. This submission was received on September 4, 2014. Respondent submitted a response dated September 12, 2014, and on September 29, 2014, Claimant submitted a reply.

On October 2, 2014, a hearing was held on the post-accounting motion brought by WestEnd. The arbitrator asked for further submissions from both parties related to Respondent's participation in the accounting. Claimants submission was due on October 7, and Respondent's submission on October 14, 2014. In their October 7, 2014 submission, WestEnd asked for an additional \$3,195.50 in fees for work related to the accounting. Respondent never submitted anything on October 14, 2014, or thereafter. After October 14, 2014, this entire matter was deemed submitted.

This Final Award fully incorporates Interim Award #1 and Interim Award #2, attached hereto as Appendices A and B respectively. It also resolves Claimant's Motion for an Award of Fees and Costs, and Claimant's request for post-accounting relief.

II. Discussion

In the Interim Award #1, as amended by Interim Award #2, the arbitrator found Respondent liable as follows:

- (1) To Mr. Bolton in the principal amount of \$386,247.28, plus pre-judgment interest in the amount of \$137,519.57;
- (2) To Mr. Ozag in the principal amount of \$940,140.57, plus pre-judgment interest in the amount of \$220,507.88;
- (3) To WestEnd in the amount of \$130,166.64 (principal and interest combined).

The arbitrator also awarded Respondent the value of his capital account, \$234,342.00, plus pre-judgment interest in the amount of \$40,950.

In addition, the arbitrator found the WestEnd Parties, including WestEnd, George Bolton Holdings, LLC, Gustave Ozag, George Bolton and George Elliman to be entitled to an award of attorneys' fees and costs.¹

In their fee petition, Claimants seek \$748,759.30 total in fees and \$131,549.24 total in costs. In addition to the amounts awarded in Interim Award #1, as modified by Interim Award #2, and fees and costs, WestEnd also seeks a further award of \$60,794.83 from Mr. Cooper based on the accounting. Finally, WestEnd seeks an order requiring Mr. Cooper to pay the entire cost of accounting, \$9,375.00, instead of splitting that cost 50-50 as originally ordered.

Below is a discussion and award on each of these issues.

A. Attorneys' Fees

In the present case, the parties agree that the 2009 First Amended and Restated Operating Agreement for WestEnd Capital Management, LLC (the "Operating Agreement") governs. Paragraph 25 of the

¹ Claimant Christine Hardy was originally awarded attorneys' fees and costs, but this award was in error, and was changed in Interim Award #2.

Operating Agreement expressly provides for attorneys' fees and costs for the prevailing party. As stated, in Interim Award #1, the arbitrator found the WestEnd Parties, including WestEnd, George Bolton Holdings, LLC, Gustave Ozag, George Bolton and George Elliman to be entitled to an award of attorneys' fees and costs. The WestEnd Parties seek all fees incurred in pursuing their claims against respondent Cooper and in defending against cross-claims that Cooper asserted against them, as well as fees incurred in the post-hearing accounting and post-hearing motions by Respondent.

Mr. Cooper opposes the WestEnd parties' fee application on multiple bases. Each of Mr. Cooper's objections is discussed below.

1. Whether Fees Claimed by Mr. Banks and Ms. Pasieczny Should be Denied because They Engaged in the "Unauthorized Practice of Law"

Mr. Cooper argues that Claimants are not entitled to recover fees and costs for the "unauthorized practice of law" in Louisiana. Relying on Louisiana Rule of Professional Conduct 5.5(c), Cooper specifically challenges the fees claimed for Mr. Banks and Ms. Pasieczny's services.

Rule 5.5(c) provides in relevant part as follows:

- (c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:
- (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in this matter;
 - ...
 - (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or
 - (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

This case started in California and is based on California law. Anticipating that the arbitration would be held in California, Mr. Banks and Ms. Pasieczny both were admitted by the State Bar of California, Office of Special Admissions to appear in the arbitration initiated in California. Mr. Cooper then filed a change of venue motion and the case was moved to New Orleans.

Under Rule 5.5, fees for the work of Mr. Banks and Ms. Pasiieczny are recoverable. Their work was undertaken in association with attorneys admitted to practice in Louisiana, and thus under Louisiana Rule 5.5 they did not engage in the unauthorized practice of law. Further, their work was reasonably related to the lawyer's practice in California, a jurisdiction in which both Mr. Banks and Ms. Pasiieczny were admitted to practice for purposes of this arbitration.

2. Whether Fees incurred on behalf of Mr. Elliman or Mr. Bolton Individually Should Be Rejected Because they are not Parties To Operating Agreement

Mr. Cooper argues that any fees incurred on behalf of Mr. Elliman or Mr. Bolton, individually, are not recoverable. Mr. Elliman and Mr. Bolton were named as cross-respondents in Mr. Cooper's cross claims and they prevailed on those claims.

Paragraph 25 of the Operating Agreement provides that fees shall be awarded to prevailing parties, including "affiliates". Section 1.2 of the Operating Agreement defines "affiliate" as "any person directly or indirectly controlling, controlled by or under common control with the specified Person." Here, Mr. Elliman and Mr. Bolton are properly considered "affiliates" under section 1.2 of the Operating Agreement. Fees incurred on behalf of their defense of the cross claims are recoverable under section 25 of the Operating Agreement.

3. Whether the "Prevailing Parties" as found in Interim Award #1 Incurred any Attorneys' Fees

Mr. Cooper next argues that the only Claimant that actually incurred fees in this proceeding was WestEnd Capital Management, and WestEnd was not a prevailing party because WestEnd recovered less than Mr. Cooper. Mr. Cooper argues that Claimants' Counsel cannot recover fees incurred on behalf of George Bolton Holdings, or Messengers Ozag, Bolton, or Elliman because they did not actually incur fees; all invoices were addressed to and paid by WestEnd.

As already found, the WestEnd Parties, including WestEnd Capital Management, are the prevailing

parties, not Mr. Cooper. The WestEnd Parties prevailed on almost all of their claims, except for punitive damages. Mr. Cooper only prevailed on his claim for recovery of the value of his capital account. The WestEnd parties never disputed that he was entitled to that account, but argued that it should offset their claims against him.

Under the Operating Agreement, the individual Claimants and individual counter-respondents are prevailing parties and entitled to recover attorneys' fees even if WestEnd pays those fees for them during the course of this arbitration.

4. Whether Claimants' Attorneys' Billing Rates are Reasonable

Mr. Cooper challenges the billing rates charged by the WestEnd Parties' multiple counsel, arguing that especially the billing rates of Mr. Lapidus, Mr. Banks, Ms. Pasieczny, and Mr. Peiffer have not been shown to be commensurate with the fair or prevailing market rate for legal services in New Orleans. Mr. Cooper argues that only fees which are commensurate with prevailing market rates in the relevant venue are recoverable. *Covington v. McNeese State University*, 2012-2182 (La. 5/7/13); 118 So.3d 343.

The burden is on the parties seeking fees to produce satisfactory evidence, in addition to the attorneys' own affidavits, that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation. *Blum v. Stenson*, 465 U.S. 886, 895, n.11 (1984).

The WestEnd Parties argue that this is a California case, and that California should be the benchmark and that the hourly rates charged are reasonable in the California legal community. They further argue that the rates charged by the Louisiana attorneys are equal or below market rates in Louisiana.

There is nothing in the attorney declarations submitted in support of the fee claim showing that the rates claimed are those usually charged, or that they are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation. However, the

attorney declarations do set forth the years of experience practicing, as well as leadership positions within the relevant legal communities.

While the arbitrator was not given evidence of prevailing rates in the New Orleans legal community, the arbitrator finds the claimed rates reasonable in the California legal community where some of the attorneys practice. The arbitrator finds the following rates reasonable and will apply them to the extent fees are awarded herein:

ATTORNEY or PARALEGAL	RATE CLAIMED	RATE AWARDED
Cary Lapidus (CSL)	\$450	\$450
Robert Banks (RSB)	\$395	\$395
Darlene Pasieczny (DDP)	\$325	\$325
Angela Clark paralegal	\$195	\$195
Jean-Paul Layrisson (JPL)	\$300	\$300
Timothy D. Scandurro (TDS)	\$300	\$300
Krista M. Eleew (KME)	\$150	\$150
Joseph Pfeiffer (JCP)	\$500	\$500
Lance C McCardle (LCM)	\$290	\$290
Kristen V. Gresham (KVG)	\$240-\$260	\$240-\$260
Daniel J. Carr (DJC)	\$275	\$275

5. Whether Fees should be Reduced because Redundant or Otherwise Unnecessary

It is well settled that a court, in awarding an appropriate attorney fee, should reduce the number of hours submitted in the fee application if the claimed time is “excessive, redundant, or otherwise unnecessary.” *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983).

The WestEnd Parties argue that there was no redundancy.

The arbitrator has gone through all billing records, page by page, and has not awarded fees for time found to be redundant or unnecessary.

6. Whether the WestEnd Parties can Recover Fees Incurred in Connection with the Related Federal and State Lawsuits, and the SEC investigation and Fees Incurred Before Arbitration Commenced

Mr. Cooper argues that attorney work done on the related, but separate federal and state lawsuits,

and the SEC investigation, as well as work done prior to the commencement of the arbitration on September 27, 2012, are not compensable in this proceeding.

The WestEnd Parties argue that the hours billed were necessary to the arbitration.

The arbitrator agrees that work done on the federal and state lawsuits and regarding the SEC investigation is not compensable under the Operating Agreement's fee provision. Under section 25 of the Operating Agreement, only fees incurred directly related to the arbitration and filing of the arbitration are compensable.

The arbitrator has not awarded fees incurred for work other than on the arbitration or for work done in commencing the arbitration.

7. Whether WestEnd Parties can Recover Fees for Issues they Ultimately Lost

In this proceeding, Mr. Cooper sought to venue the arbitration in New Orleans, and the WestEnd Parties opposed the motion. Mr. Cooper won the motion, and now argues that time spent by the WestEnd Parties opposing the motion is not compensable because they lost that motion and thus did not prevail on that motion. He also argues that any time spent opposing Mr. Cooper's claim to recover his capital account is not compensable since Mr. Cooper won that claim.

The arbitrator agrees. Time spent by the WestEnd Parties on the venue motion or in opposition to the recovery of the capital account are not compensable.

8. Whether Attorneys' Fees Incurred in Connection with Mr. Banks' Representation of Mr. Lapidus at the Arbitration Hearing and Mr. Lapidus' Testimony as a Fact Witness must be Disallowed

Mr. Cooper argues that time billed by Mr. Banks and by Mr. Lapidus during Mr. Lapidus' arbitration testimony is not compensable. In opposition, the WestEnd parties argue that Mr. Cooper initiated Mr. Lapidus' half-hour testimony and both Mr. Banks and Mr. Lapidus were still acting as counsel during this half hour.

At issue is only one half hour of time and this attorney time is compensable. Mr. Lapidus testimony was necessary evidence in the arbitration and it is reasonable that he be represented during that testimony.

9. Whether Fees Incurred in Connection with Mr. Layrisson's Numerous Redacted Time Entries must be Disallowed

Mr. Layrisson represented Ms. Hardy. The arbitrator did not award Ms. Hardy's counsel fees, and thus Mr. Layrisson's time is not compensable in this proceeding.

B. Costs

In total, the WestEnd Parties seek to recover \$131,549.24 in costs. Mr. Cooper challenges some of the costs claimed and in response, WestEnd corrected some of these charges. Mr. Cooper also challenges the WestEnd Parties' claim to recover amounts paid to Accounting Consultants.

The arbitrator has gone through each of the invoices submitted by the WestEnd parties, as well as each fee invoice which includes claimed costs. The arbitrator finds the following categories of costs compensable: JAMS fees, accounting and court reporter fees. As to travel and meals, the arbitrator has gone through each of these charges and will award a portion of these costs. Further, costs associated with the federal and state court cases are not compensable in this proceeding.

C. Claimant's Request for Post-Accounting Relief

In its post-accounting application, made pursuant to the Interim Award #1, paragraph 8, the WestEnd Parties seek a further award of \$60,794.83 from Mr. Cooper based on the accounting. The WestEnd Parties also seek an order requiring Mr. Cooper to pay the pay the entire cost of accounting \$9,375.00, instead of splitting that cost 50-50 as originally ordered.

The declarations submitted by the WestEnd parties on October 7, 2014, establish that despite multiple requests, Mr. Cooper did not respond to the accountant's requests for input, or participate in the accounting in anyway. Despite the arbitrator's express request, there was no submission by Respondent to refute the documents submitted by WestEnd to support its post-accounting claim of \$60,794.83.

III. FINAL AWARD

1. As set forth in the Interim Award #1, as amended by Interim Award #2, Respondent is liable as follows:
 - a. to Mr. Bolton in the principal amount of \$386,247.28, plus pre-judgment interest in the amount of \$137,519.57;
 - b. to Mr. Ozag in the principal amount of \$940,140.57, plus pre-judgment interest in the amount of \$220,507.88;
 - c. to WestEnd in the amount of \$130,166.64 (principal and interest combined).
2. As an offset to the amounts set forth in paragraph 1 above, Respondent is entitled to the value of his capital account, \$234,342.00, plus pre-judgment interest in the amount of \$40,950.
3. As set forth in Interim Award #1, the WestEnd Parties, including WestEnd, George Bolton Holdings, LLC, Gustave Ozag, George Bolton and George Elliman, are the prevailing parties and are entitled to an award of attorneys' fees and costs as follows:
 - a. Respondent is liable to the WestEnd parties for fees in the amount of \$499,215.50.
 - b. Respondent is liable to the WestEnd parties for costs in the amount of \$108,347.37.
4. Respondent is also liable to the WestEnd parties in the amount of \$60,794.83 based on the accounting and supporting declarations.
5. Respondent and Claimants shall split the cost of the accounting (\$9,375.00) 50-50 and pay \$4,687.50 each. Respondent is liable to Claimants for his share of the accounting, or \$4,687.50.

This award resolves all claims between the parties submitted for decision in this proceeding.

IT IS SO ORDERED.

Dated: October 24, 2014



William J. Cahill
Arbitrator