

HARD COPY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

COPY

ADMINISTRATIVE PROCEEDING
File No. 3-16462



In the Matter of

LYNN TILTON;
PATRIARCH PARTNERS, LLC;
PATRIARCH PARTNERS VIII, LLC;
PATRIARCH PARTNERS XIV, LLC;
AND
PATRIARCH PARTNERS XV, LLC,

Respondents.

**DIVISION OF ENFORCEMENT'S
MOTION TO STRIKE RESPONDENTS'
FURTHER AMENDED WITNESS LIST
AND REQUESTS FOR HEARING
SUBPOENAS TO PREVIOUSLY
UNDISCLOSED WITNESSES**

Introduction

The Division of Enforcement (“Division”) respectfully moves to strike Respondents’ purported “Further Amended Witness List,” filed on October 7, 2016, as well as their related requests for hearing subpoena to two previously-undisclosed witnesses. Respondents are attempting to add two additional hearing witnesses more than six weeks after Respondents were ordered to disclose their witnesses, and only two weeks before this hearing is set to commence. Moreover, Respondents have offered no explanation of how the new witnesses’ testimony is relevant to this hearing, or of why Respondents could not have identified the witnesses earlier. Moreover, one of the new witnesses is trial counsel for the Division. Even had Respondents not waited until the eleventh hour to request this witness subpoena, there is no basis for such a subpoena to issue. Like Respondents’ attempt to belatedly add new expert witness opinions – an attempt Your Honor appropriately rejected – Respondents’ continued efforts to proffer new

evidence well past the deadlines set by Your Honor prejudices the Division, and should not be permitted.

Background

The prehearing schedule in this case was agreed to long ago. On May 7, 2015, the parties stipulated to a schedule that required Respondents to disclose their hearing witnesses approximately two months prior to the start of the hearing. *See* Order, Rel. No. 3990, dated July 15, 2016. Those witnesses were disclosed on schedule.¹ The parties were proceeding to hearing on the basis of that witness list until the U.S. Court of Appeals for the Second Circuit stayed the hearing on September 17, 2015. *See id.*

In June 2016, the Second Circuit vacated its stay. *See id.* More specifically, on June 1, 2016, the Second Circuit ruled that “our stay on further proceedings by the SEC is VACATED.” *Tilton et al. v. Securities and Exchange Commission*, No. 15-2103, 2016 WL 3084795, at *11 (2d Cir. June 1, 2016). On June 28, in response to a motion for clarification from the Commission, the Second Circuit confirmed that “the stay is vacated, subject, however, to a continuation of the stay until July 6, 2016, to permit Tilton to file a motion seeking a stay from the Supreme Court and, if such a stay motion is timely filed, until the Supreme Court or a justice thereof has definitely ruled on such a motion.” Respondents declined to file such a motion with the Supreme Court, however, so the stay in this case expired on July 6, 2016.

Following the lifting of the stay, in mid-July 2016, a revised prehearing schedule was entered. *See* Order, Rel. No. 3990, dated July 15, 2016. While Your Honor noted that most of the prehearing steps (including identification of witnesses) had been accomplished at the time of the

¹ Respondents did file an amended witness list a few days after their initial witness list. However, this list was filed in response to a request from the Division that Respondents’ list include a “brief summary of [the witnesses’] expected testimony” pursuant to Rule 222(a)(4).

stay, Your Honor ordered that “[i]n light of the passage of time, the parties may amend their previously filed witness ... lists.” *Id.* at 2. The date for amending the witness list was initially set for August 12, 2016, *see id.*, and was later extended by Your Honor to August 15, 2016. *See* Order, Rel. No. 4004, dated July 20, 2016. Respondents then requested – and the Division agreed to – an additional week to submit amended witness lists. *See* Ltr. from R. Mastro to Hon. C.F. Foelak, dated August 4, 2016. This timing was consistent with the original agreed-upon case schedule: Respondents’ witness disclosure was made approximately two months prior to the start of the hearing.

On August 22, 2016, Respondents disclosed their amended witness list, which included numerous witnesses not on Respondents’ original list. More than six weeks later – and with no notice to the Division – Respondents made a request for a hearing subpoena to Susan DiCicco. *See* Ltr. from S. Brune to Hon. C.F. Foelak, dated Oct. 6, 2016, attached hereto as Ex. 1. On the same day, the Division wrote to Your Honor to note that Ms. DiCicco, who was counsel for MBIA Insurance Corporation during the investigation in this matter, was not on either party’s amended witness list, and objecting to the request for the issuance of a hearing subpoena. *See* Ltr. from N. Heinke to Hon. C.F. Foelak, dated Oct. 6, 2016, attached hereto as Ex. 2. The next day, Respondents filed what they styled a “Further Amended Witness List” which added Ms. DiCicco. *See* Resps.’ Further Am. Witness List, filed Oct. 7, 2016, attached hereto as Ex. 3. In that list, Respondents claim only that Ms. DiCicco “may testify regarding the contents of an electronic mail communication with Amy Sumner dated December 17, 2013 and December 18, 2013 and matters related thereto.” *Id.* at 4.

Two days later, on October 9, 2016, Respondents made another request for a hearing subpoena, this time to Amy Sumner. *See* Ltr. from R. Mastro to Hon. C.F. Foelak, dated Oct. 8,

2016, attached hereto as Ex. 4.² Ms. Sumner was one of the counsel for the Division in the investigation into this matter, and remains trial counsel for the Division in connection with the upcoming hearing. Like Ms. DiCicco, Ms. Sumner is not on either party's amended witness list, nor is she listed on Respondents' belatedly-filed "Further Amended Witness List." *See* Ex. 3. On October 10, 2016, the Division wrote to Your Honor objecting to the issuance of a hearing subpoena to Ms. Sumner. *See* Ltr. from N. Heinke to Hon. C.F. Foelak, dated Oct. 10, 2016, attached hereto as Ex. 5.

Argument

A. Respondents Should Not Be Permitted to Add Additional Witnesses on the Eve of Trial.

Respondents' attempt to add additional hearing witnesses at this late stage of the proceeding must be rejected. Beginning on June 1, 2016, Respondents knew that this proceeding was likely to resume. Respondents had nearly three months from that date – until August 22, 2016 – to identify additional witnesses. And they did. Respondents' amended witness list contains a dozen new fact witnesses that were not on Respondents' initial witness list, bringing the total number of potential fact witnesses to twenty. The Division has been busy preparing to examine these witnesses at the upcoming hearing.³ Now, more than six weeks after Respondents' amended witness list was due, and only two weeks before the hearing is set to commence, Respondents seek to add two new witnesses. Moreover, Respondents have offered no explanation – to the Division or to Your Honor – of why Ms. DiCicco or Ms. Sumner's testimony would be relevant to this proceeding, or of why they could not have identified Ms. DiCicco or Ms. Sumner earlier. Indeed,

² The letter is dated October 8, but was not sent (at least to the Division) until October 9.

³ Both Respondents and the Division have been communicating in good faith to eliminate certain witnesses from their respective lists as the parties determine who they in fact intend to call at the hearing.

any claim that they could not have identified these witnesses before now would strain credulity.

Ms. Sumner's involvement as counsel for the Division in this investigation and litigation has been known to Respondents for years. Similarly, given Ms. DiCicco's involvement as counsel for MBIA Insurance Corporation during the investigation, her name could not have come as a recent surprise to Respondents.⁴

As with Respondents' attempt to belatedly introduce new expert witness testimony – an attempt Your Honor appropriately rejected, *see* Order, Rel. No. 4161, dated Sept. 16, 2016 – Respondents' attempt to offer additional witnesses at this late stage should not be permitted. Respondents were given significant time after the Second Circuit indicated the stay would be lifted to re-evaluate their witness list. Indeed, the Division even agreed to an extension of that time, giving Respondents until August 22 to do so. Respondents' amended witness list has been disclosed for more than six weeks. The addition of new witnesses at this late stage would significantly prejudice the Division, which has been busy preparing for the hearing on the basis of the witness list disclosed on August 22. Respondents should not be permitted to add additional witnesses at the eleventh hour.

B. Respondents Should Not Be Permitted to Call the Division's Trial Counsel as a Witness.

Even if Respondents had not waited until the eve of trial to request a trial subpoena for Ms. Sumner, such a request would be improper. Both ALJs and courts look with considerable disfavor on attempts to turn a party's counsel into a witness. *See, e.g., In the Matter of Stanley Jonathan et al.*, AP Rulings Rel. No. 1801, dated Sept. 12, 2014 (available at <https://www.sec.gov/alj/aljorders/2014/ap-1801.pdf>) (granting Division's motion seeking a

⁴ For example, Ms. DiCicco represented Anthony McKiernan and David Crowle as counsel during their investigative testimony. Those testimony transcripts – with Ms. DiCicco identified as counsel – were produced to Respondents in April of 2015.

protective order barring Respondent from presenting testimony of two Division attorneys and noting that “attempts to obtain testimony from an opponent’s counsel are disfavored”).⁵

Allowing a party’s counsel to question another lawyer involved in the case causes “the standards of the profession [to] suffer,” and disrupts the adversarial process. *Hickman v. Taylor*, 329 U.S. 495, 513 (1947).

For this reason, there is a heavy burden on parties seeking testimony from an opponent’s attorney. See *Shelton*, 805 F.2d at 1327; see also, e.g., *In the Matter of Stanley Jonathan et al.*, AP Rulings Rel. No. 1801 (adopting the *Shelton* factors). Specifically, to be permitted to place a Division attorney in the witness chair, Respondents have the burden of establishing that: (i) the information sought from the attorney is actually relevant and non-privileged; (ii) the information is crucial to the case; and (iii) no other means exist to obtain the information than to take testimony from the attorney. See *id.*⁶

⁵ Accord *In the Matter of Clean Energy Capital, LLC and Scott A. Brittenham*, AP Rulings Rel. No. 1801, dated July 25, 2014 (available at <http://www.sec.gov/alj/aljorders/2014/ap-1653.pdf>) (granting Division’s motion barring Respondents from calling Division attorneys at hearing); *Shelton v. Am. Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986) (“We view the increasing practice of taking opposing counsel’s deposition as a negative development in the area of litigation, and one that should be employed only in limited circumstances.”); *Doubleday v. Ruh*, 149 F.R.D. 601, 612 (E.D. Cal. 1993) (explaining that attempts to depose attorneys implicate concerns beyond those relating to the potential disclosure of privileged information).

⁶ Accord *Lloyd Lifestyle Ltd. v. Soaring Helmet Corp.*, No. C06-0349C, 2006 WL 753243, *2 (W.D. Wash. March 23, 2006) (party seeking attorney deposition has “burden of establishing the right to discovery” under *Shelton* factors); *M&R Amusement Corp. v. Blair*, 142 F.R.D. 304, 305-06 (N.D. Ill. 1992) (denying motion to depose insured’s counsel and stating: “Deposing an opponent’s attorney is a drastic measure. It not only creates a side-show and diverts attention from the merits of the case, its use also has a strong potential for abuse. Thus, a motion to depose an opponent’s attorney is viewed with a jaundiced eye and is infrequently proper.”); *Harriston v. Chicago Tribune Co.*, 134 F.R.D. 232, 233 (N.D. Ill. 1990); *EEOC v. HBE Corp.*, 157 F.R.D. 465, 466 (E.D. Mo. 1994), *aff’d in part and rev’d in part on other grounds* by 135 F.3d 543, 1998 U.S. App. LEXIS 1049 (8th Cir. 1998); *SEC v. Morelli*, 143 F.R.D. 42, 47 (S.D.N.Y. 1992); *SEC v. World-Wide Coin Investments, Ltd.*, 92 F.R.D. 65, 67

Respondents cannot meet this heavy burden. Respondents have not even attempted to show what information they seek to elicit from Ms. Sumner: they have not listed her on their witness list or otherwise disclosed the subject or subjects into which they intend to inquire. For this reason alone, Respondents eleventh-hour attempt to subpoena Ms. Sumner should be rejected. But even if the Division were to presume that Respondents seek to question Ms. Sumner on the same topics as Ms. DiCicco – namely “the contents of an electronic mail communication with Amy Sumner dated December 17, 2013 and December 18, 2013 and matters related thereto” – they could not meet their burden. Respondents have not explained how this information is relevant, much less crucial, to their case. Nor have Respondents explained why they could not obtain this information through other means. Indeed, such an argument would be curious, as Respondents have the two email communications themselves, which on their face show the “contents of [the] communication.” *See* Resps.’ Further Am. Witness List at 4 , attached hereto as Ex. 3. As Respondents have not even attempted to meet their burden to call Ms. Sumner as a witness, their subpoena request should be rejected.

Moreover, any questions directed at Ms. Sumner would almost certainly entail Division work product: The work-product doctrine protects materials prepared or collected by an attorney “in the course of preparation for possible litigation.” *Hickman*, 329 U.S. at 505. The work-product doctrine safeguards “written statements, private memoranda and personal recollections prepared or formed by an adverse party’s counsel in the course of his legal duties.” *Hickman*, 329 U.S. at 510. Testimony from trial and investigating attorneys necessarily impinges this sacrosanct privilege and, for that very reason, courts almost never permit a party to compel testimony from the opponent’s lawyers. That is especially true in

(N.D. Ga. 1981) (denying motion to compel depositions of Commission trial counsel and investigator).

government enforcement actions, where courts routinely bar defendants from obtaining testimony from government attorneys. *See, e.g., SEC v. Buntrock*, 217 F.R.D. 441, 444 (N.D. Ill. 2003) (finding that “the [Rule] 30(b)(6) notice is an inappropriate attempt to depose opposing counsel and to delve into the theories and opinions of SEC attorneys”); *SEC v. Rosenfeld*, No. 97 Civ. 1467 (RPP), 1997 U.S. Dist. LEXIS 13996, *5 (S.D.N.Y. Sept. 12, 1997) (granting protective order barring deposition of Commission counsel because it “clearly calls for the revealing of information gathered by the SEC attorneys in anticipation of bringing the instant enforcement proceedings”); *Morelli*, 143 F.R.D. at 44-47 (denying defendant’s request to depose Commission’s counsel because it was “impermissible attempt by defendant to inquire into the mental processes and strategies of the SEC” and appeared to be “intended to ascertain how the SEC intends to marshal the facts, documents and testimony in its possession”); *SEC v. Jasper*, No. C 07-061222 JW (HRL), 2009 WL 1457755, *3 (N.D. Cal. May 26, 2009) (same, because court was “unpersuaded that the stated need for the SEC’s deposition outweighs the SEC’s interest in protecting its attorneys’ work product”); *SEC v. Monterosso*, No. 07-61693-CIV, 2009 WL 8708868, *1 (S.D. Fla. June 2, 2009) (same, because defendant “seeks the mental impressions of the SEC’s attorneys”).

Finally, Respondents may be seeking a tactical advantage by requesting a subpoena for Ms. Sumner. Ms. Sumner will be a core member of the Division’s trial team, and is expected to be examining and cross-examining witnesses. Moreover, Ms. Sumner has a factual familiarity with this matter that, while perhaps not equal to that of Respondents, is extensive. Respondents attempt to make her a witness may be an attempt to circumvent her crucial role as a member of

the trial team by requesting that she be sequestered prior to being called as a witness or otherwise disqualified from serving as trial counsel. Such gamesmanship should not be condoned.

Conclusion

For the foregoing reasons, Respondents' Further Amended Witness List should be stricken and their requests for hearing subpoenas to Ms. DiCicco and Ms. Sumner should be denied.

Dated: October 11, 2016

Respectfully Submitted,



Dugan Bliss, Esq.
Nicholas Heinke, Esq.
Amy Sumner, Esq.
Mark L. Williams, Esq.
Division of Enforcement
Securities and Exchange Commission
Denver Regional Office
1961 Stout Street, Ste. 1700
Denver, CO 80294

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **DIVISION OF ENFORCEMENT'S MOTION TO STRIKE RESPONDENTS' FURTHER AMENDED WITNESS LIST AND REQUESTS FOR HEARING SUBPOENAS TO PREVIOUSLY UNDISCLOSED WITNESSES** was served on the following on this 11th day of October, 2016, in the manner indicated below:

Securities and Exchange Commission
Brent Fields, Secretary
100 F Street, N.E.
Mail Stop 1090
Washington, D.C. 20549
(By Facsimile and original and three copies by UPS)

Hon. Judge Carol Fox Foelak
100 F Street, N.E.
Mail Stop 2557
Washington, D.C. 20549
(By Email)

Randy M. Mastro, Esq.
Lawrence J. Zweifach, Esq.
Barry Goldsmith, Esq.
Caitlin J. Halligan, Esq.
Reed Brodsky, Esq.
Monica K. Loseman, Esq.
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166
(By email pursuant to the parties' agreement)

Susan E. Brune, Esq.
Brune Law PC
450 Park Avenue
New York, NY 10022
(By email pursuant to the parties' agreement)

Martin J. Auerbach
Law Firm of Martin J. Auerbach, Esq.
1330 Avenue of the Americas
Ste. 1100
New York, NY 10019
(By email pursuant to the parties' agreement)



BRUNE

Brune Law P.C.
450 Park Avenue
New York, NY 10022
212 668 1900
www.brunelaw.com

October 6, 2016

VIA EXPRESS MAIL, FACSIMILE, AND ELECTRONIC MAIL

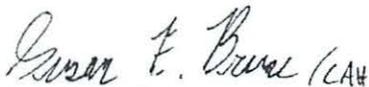
The Honorable Carol Fox Foelak
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 26049

Re: *In the Matter of Lynn Tilton, et al. (File No. 3-16462)*

Dear Judge Foelak:

On behalf of Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIV, LLC, and Patriarch Partners XV, LLC (collectively, "Respondents"), please find enclosed a request to issue a subpoena to appear and testify at the hearing beginning October 24, 2016, at 1:00 p.m., to Susan DiCicco. We respectfully request that Your Honor execute the enclosed subpoena at Your Honor's earliest convenience.

Respectfully,


Susan E. Brune

cc: Dugan Bliss, Esq.
Nicholas Heinke, Esq.
Amy A. Sumner, Esq.



UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

-----	x	
In the Matter of,	:	
	:	
LYNN TILTON	:	
PATRIARCH PARTNERS, LLC,	:	Administrative Proceeding
PATRIARCH PARTNERS VIII, LLC,	:	File No. 3-16462
PATRIARCH PARTNERS XIV, LLC and	:	
PATRIARCH PARTNERS XV, LLC	:	Judge Carol Fox Foelak
	:	
Respondents.	:	
	:	
-----	x	

RESPONDENTS' REQUEST FOR HEARING SUBPOENA

Pursuant to Rule 232(a) of the U.S. Securities and Exchange Commission (the "Commission") Rules of Practice (the "Rules"), 17 C.F.R. § 201.232, Respondents Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIV, LLC, and Patriarch Partners XV, LLC (collectively, "Respondents") respectfully submit this request for a subpoena to be issued to Susan DiCicco to appear at the designated time and place of the above-captioned hearing. The subpoena is enclosed herein as Attachment A.

We have enclosed a USPS envelope for the return of the issued subpoena.

Dated: New York, New York
October 6, 2016

BRUNE LAW P.C.

By: Susan E. Brune

Susan E. Brune
BRUNE LAW P.C.
450 Park Avenue
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Telephone: 212.668.1900
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Randy M. Mastro
Reed Brodsky
Barry Goldsmith
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Lawrence J. Zweifach
Lisa H. Rubin
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166-0193

Counsel for Respondents

ATTACHMENT A



SUBPOENA TO APPEAR AND TESTIFY AT A HEARING

Issued Pursuant to U.S. Securities and Exchange Commission Rules of Practice 111(b) and 232, 17 C.F.R. §§ 201.111(b), 201.232.

<p>1. TO Susan DiCicco Morgan, Lewis & Bockius LLP 101 Park Ave. New York, NY 10178-0060</p>	<p>This subpoena requires you to testify at a hearing, at the date and time specified in Item 4, at the request of the Party and/or Counsel described in Item 6, in this U.S. Securities and Exchange Commission Administrative Proceeding described in Item 5.</p>
<p>2. PLACE OF HEARING Daniel Patrick Moynihan U.S. Courthouse, 500 Pearl Street Courtroom 17C New York, New York 10007</p>	<p>3. YOUR TESTIMONY AT THE HEARING WILL BE BEFORE The Honorable Carol Fox Foelak Administrative Law Judge U.S. Securities and Exchange Commission</p> <hr/> <p>4. DATE AND TIME OF TESTIMONY (testimony may also be required on subsequent dates of hearing) October 24, 2016, at 1:00 p.m. and continuing from day-to-day until testimony is complete</p>
<p>5. TITLE OF THE MATTER AND ADMINISTRATIVE PROCEEDING NUMBER In the Matter of Lynn Tilton, et al., Administrative Proceeding File No. 3-16462</p>	<p>6. PARTY AND COUNSEL REQUESTING ISSUANCE OF SUBPOENA Lynn Tilton; Patriarch Partners, LLC; Patriarch Partners VIII, LLC; Patriarch Partners XIV, LLC; and Patriarch Partners XV, LLC. Susan E. Brune, Brune Law P.C. 450 Park Avenue New York, New York 10022</p>

DATE SIGNED	SIGNATURE OF ADMINISTRATIVE LAW JUDGE
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GENERAL INSTRUCTIONS

<p>MOTION TO QUASH The U.S. Securities and Exchange Commission's Rules of Practice require that any application to quash or modify a subpoena comply with Commission Rule of Practice 232(e)(1). 17 C.F.R. § 201.232(e)(1).</p>	<p>TRAVEL EXPENSES Witness fees and mileage will be paid by the party at whose instance the witness appears. 17 C.F.R. § 201.232(f).</p>
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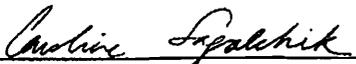
CERTIFICATE OF SERVICE

I hereby certify that I served true and correct copies of the Respondents' Notice of Request for Subpoena on this sixth day of October, 2016, in the manner indicated below:

United States Securities and Exchange Commission
Office of the Secretary
Attn: Secretary of the Commission Brent J. Fields
100 F Street, N.E.
Mail Stop 1090
Washington, D.C. 20549
Fax: (202) 772-9324
(By Facsimile and original, and three copies by Express Mail)

Hon. Judge Carol Fox Foelak
100 F Street, N.E.
Mail Stop 2557
Washington, D.C. 20549
(By Express Mail)

Dugan Bliss, Esq.
Division of Enforcement
Securities and Exchange Commission
Denver Regional Office
1961 Stout Street, Ste. 1700
Denver, CO 80294
(By Email pursuant to parties' agreement)


Caroline Sagalchik



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
DENVER REGIONAL OFFICE
1961 STOUT STREET
SUITE 1700
DENVER, COLORADO 80294-1961

DIVISION OF
ENFORCEMENT

Direct Number: (303) 844.1071
Facsimile Number: (303) 297.3529

October 6, 2016

Via Email and Facsimile

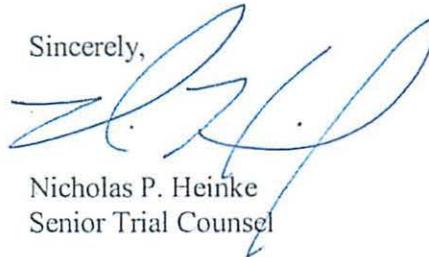
Honorable Carol Fox Foelak
U.S. Securities and Exchange Commission
100 F Street, NE
Washington DC 25049

Re: *In the Matter of Lynn Tilton, et al. (File No. 3-16462)*

Dear Judge Foelak:

We write in response to Respondents' letter, dated October 6, 2016, requesting the issuance of a subpoena to appear and testify at the hearing to Susan DiCicco. Ms. DiCicco, who was counsel for MBIA Insurance Corporation during the investigation in this matter, is not on either party's amended witness list. For that reason, the Division objects to the Respondents' request for the issuance of a subpoena to Ms. DiCicco.

Sincerely,



Nicholas P. Heinke
Senior Trial Counsel

cc via email:
Randy Mastro, Esq.
Lisa Rubin, Esq.
Susan Brune, Esq.



UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

----- x
In the Matter of :
 :
LYNN TILTON, :
PATRIARCH PARTNERS, LLC, : Administrative Proceeding
PATRIARCH PARTNERS VIII, LLC, : File No. 3-16462
PATRIARCH PARTNERS XIV, LLC and :
PATRIARCH PARTNERS XV, LLC : Judge Carol Fox Foelak
 :
Respondents. :
----- x

RESPONDENTS' FURTHER AMENDED WITNESS LIST

Respondents hereby submit the attached further amended witness list.

New York, New York
Dated: October 7, 2016

GIBSON, DUNN & CRUTCHER LLP

By: Randy M. Mastro/N6
Randy M. Mastro
Reed Brodsky
Barry Goldsmith
Caitlin J. Halligan
Mark A. Kirsch
Monica Loseman
Lawrence J. Zweifach
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Susan E. Brune
BRUNE LAW P.C.
450 Park Avenue
New York, NY 10022
Counsel for Respondents



RESPONDENTS' FURTHER AMENDED WITNESS LIST

Respondents reserve the right to call (1) any witness identified by the Division of Enforcement, (2) custodians of records or any other witness for purposes of authenticating an exhibit, and (3) additional witnesses for purposes of impeachment or rebuttal. Respondents do not guarantee that any witness listed will be available for trial.

Will Call List		
Witness	Contact Information	Areas of Testimony
Lynn Tilton	Respondents' Counsel	Ms. Tilton will testify regarding the creation, management, and operation of the Zohar funds; the governing documents; her roles and responsibilities and the responsibilities of other Patriarch personnel; the financial reporting process; interactions with outside parties relating to the Zohar funds; management and operations of the Portfolio Companies; the allegations in the Division's Order Instituting Proceedings; and other topics to be decided.
John Dolan (Expert)	Respondents' Counsel	Mr. Dolan will testify about the subjects in his expert report.
Mark Froeba (Expert)	Respondents' Counsel	Mr. Froeba will testify about the subjects in his expert report.
Glenn Hubbard (Expert)	Respondents' Counsel	Dean Hubbard will testify about the subjects in his expert report.
Charles Lundelius (Expert)	Respondents' Counsel	Mr. Lundelius will testify about the subjects in his forthcoming expert report.
Peter Vinella (Expert)	Respondents' Counsel	Mr. Vinella will testify about the subjects in his forthcoming expert report.
Steven L. Schwarcz (Expert)	Respondents' Counsel	Mr. Schwartz will testify about the subjects in his forthcoming expert report.

<u>May Call List</u>		
Witness	Contact Information	Areas of Testimony
Gideon Agar	Marc A. Weinstein, Esq. Hughes, Hubbard & Reed LLP	Mr. Agar may testify regarding the management and operation of the portfolio companies; his roles and responsibilities and those of others at Patriarch and the portfolio companies; business processes at the portfolio companies; interactions between portfolio companies and Respondents, including financial and operational reporting, business planning, and discussions concerning portfolio company loans; the platform management function; and the allegations in the Division's Order Instituting Proceedings.
Steve Berlin	c/o Gibson Dunn	Mr. Berlin may testify regarding the management and operation of the portfolio companies; his roles and responsibilities and those of others at Patriarch and the portfolio companies; business processes at the portfolio companies; interactions between portfolio companies and Respondents, including financial and operational reporting, business planning, and discussions concerning portfolio company loans; and the allegations in the Division's Order Instituting Proceedings.
Gary Bird	c/o Gibson Dunn	Mr. Bird may testify regarding the management and operation of the portfolio companies; his roles and responsibilities and those of others at Patriarch and the portfolio companies; business processes at the portfolio companies; interactions between portfolio companies and Respondents, including financial and operational reporting, business planning, and discussions concerning portfolio company loans; and the allegations in the Division's Order Instituting Proceedings.

Susan DiCicco	Morgan, Lewis & Bockius LLP	Ms. DiCicco may testify regarding the contents of an electronic mail communication with Amy Sumner dated December 17, 2013 and December 18, 2013 and matters related thereto.
J. Richard Dietrich (Expert)	Respondents' Counsel	Mr. Dietrich may testify about the subjects in his expert report.
Kevin Grady	c/o Gibson Dunn	Mr. Grady may testify regarding the management and operation of the portfolio companies; his roles and responsibilities and those of others at Patriarch and the portfolio companies; business processes at the portfolio companies; interactions between portfolio companies and Respondents, including financial and operational reporting, business planning, and discussions concerning portfolio company loans; and the allegations in the Division's Order Instituting Proceedings.
Stephen Gray	Box 573 Vinalhaven, ME 05863 ssg@grayandcompanyllc.com	Mr. Gray may testify regarding the formation of the Zohar funds; the governing documents; and the allegations in the Order Instituting Proceedings.
John Harrington	Marc A. Weinstein, Esq. Hughes, Hubbard & Reed LLP	Mr. Harrington may testify regarding the management and operation of the portfolio companies; his roles and responsibilities and those of others at Patriarch and the portfolio companies; business processes at the portfolio companies; interactions between portfolio companies and Respondents, including financial and operational reporting, business planning, and discussions concerning portfolio company loans; the platform management function; and the allegations in the Division's Order Instituting Proceedings.
Ralph Inglese	David R. Gelfand, Esq. Milbank, Tweed, Hadley & McCloy LLP	Mr. Inglese may testify regarding the formation of the Zohar funds; the governing documents; and the allegations in the Order Instituting Proceedings.

W. Randall Jones	Respondents' Counsel	Mr. Jones may testify regarding the management and operation of the portfolio companies; his roles and responsibilities and those of others at Patriarch and the portfolio companies; business processes at the portfolio companies; interactions between portfolio companies and Respondents, including financial and operational reporting, business planning, and discussions concerning portfolio company loans; the platform management function; and the allegations in the Division's Order Instituting Proceedings.
Adam Katz	Respondents' Counsel	Mr. Katz may testify regarding the management and operation of the Zohar funds; his roles and responsibilities and the responsibilities of other Patriarch personnel; interactions with outside parties relating to the Zohar funds; and the allegations in the Division's Order Instituting Proceedings.
Carlos Mercado	Marc A. Weinstein, Esq. Hughes, Hubbard & Reed LLP	Mr. Mercado may testify regarding the financial reporting and accounting policies, procedures and processes at Patriarch; his roles and responsibilities and those of other Patriarch personnel; the controller function; interactions with outside parties relating to the Zohar funds; and the allegations in the Division's Order Instituting Proceedings.
Mike Motahari	c/o Gibson Dunn	Mr. Motahari may testify regarding the management and operation of the portfolio companies; his roles and responsibilities and those of others at Patriarch and the portfolio companies; business processes at the portfolio companies; interactions between portfolio companies and Respondents, including financial and operational reporting, business planning, and discussions concerning portfolio company loans; and the allegations in the Division's Order Instituting Proceedings.

Keith O'Leary	Respondents' Counsel	Mr. O'Leary may testify regarding the management and operation of the portfolio companies; his roles and responsibilities and those of others at Patriarch and the portfolio companies; business processes at the portfolio companies; interactions between portfolio companies and Respondents, including financial and operational reporting, business planning, and discussions concerning portfolio company loans; the platform management function; and the allegations in the Division's Order Instituting Proceedings.
Jean Luc Pelissier	Marc A. Weinstein, Esq. Hughes, Hubbard & Reed LLP	Mr. Pelissier may testify regarding the management and operation of the portfolio companies; his roles and responsibilities and those of others at Patriarch and the portfolio companies; business processes at the portfolio companies; interactions between portfolio companies and Respondents, including financial and operational reporting, business planning, and discussions concerning portfolio company loans; the platform management function; and the allegations in the Division's Order Instituting Proceedings.
Andy Pillado	Respondents' Counsel	Mr. Pillado may testify regarding the management and operation of the portfolio companies; his roles and responsibilities and those of others at Patriarch and the portfolio companies; business processes at the portfolio companies; interactions between portfolio companies and Respondents, including financial and operational reporting, business planning, and discussions concerning portfolio company loans; and the allegations in the Division's Order Instituting Proceedings.

John Sabol	c/o Gibson Dunn	Mr. Sabol may testify regarding the management and operation of the portfolio companies; his roles and responsibilities and those of others at Patriarch and the portfolio companies; business processes at the portfolio companies; interactions between portfolio companies and Respondents, including financial and operational reporting, business planning, and discussions concerning portfolio company loans; and the allegations in the Division's Order Instituting Proceedings.
Carl Schopfer	Marc A. Weinstein, Esq. Hughes, Hubbard & Reed LLP	Mr. Schopfer may testify regarding the management and operation of the portfolio companies; his roles and responsibilities and those of others at Patriarch and the portfolio companies; business processes at the portfolio companies; interactions between portfolio companies and Respondents, including financial and operational reporting, business planning, and discussions concerning portfolio company loans; and the allegations in the Division's Order Instituting Proceedings.
Torben Von Staden	Evan Barr, Esq. Fried, Frank, Harris, Shriver & Jacobson LLP	Mr. Von Staden may testify regarding the management and operation of the portfolio companies; his roles and responsibilities and those of others at Patriarch and the portfolio companies; business processes at the portfolio companies; interactions between portfolio companies and Respondents, including financial and operational reporting, business planning, and discussions concerning portfolio company loans; and the allegations in the Division's Order Instituting Proceedings.
Summary Witness	Respondents' Counsel	A summary witness may testify regarding information recorded in the books and records of various entities, including the Zohar funds, Patriarch Partners LLC, various portfolio companies, and other entities.

Tess Weill	Purrington Moody Weil LLP	Ms. Weill may testify regarding the formation of the Zohar funds; the governing documents; and the allegations in the Order Instituting Proceedings.
Karen Wu	Marc A. Weinstein, Esq. Hughes, Hubbard & Reed LLP	Ms. Wu may testify regarding the management and operation of the Zohar funds; her roles and responsibilities and the responsibilities of other Patriarch personnel; her understanding of the governing documents; interactions with outside parties relating to the Zohar funds; the structured finance function; loan administration processes; and the allegations in the Division's Order Instituting Proceedings.

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of Respondents' Further Amended Witness List, on this 7th day of October, 2016, in the manner indicated below:

United States Securities and Exchange Commission
Office of the Secretary
Attn: Secretary of the Commission Brent J. Fields
100 F Street, N.E.
Mail Stop 1090
Washington, D.C. 20549
Fax: (202) 772-9324
(By Facsimile and original and three copies by Overnight Mail)

Hon. Judge Carol Fox Foelak
100 F. Street N.E.
Mail Stop 2557
Washington, D.C. 20549
(By Overnight Mail)

Dugan Bliss, Esq.
Division of Enforcement
Securities and Exchange Commission
Denver Regional Office
1961 Stout Street, Ste. 1700
Denver, CO 80294
(By Email pursuant to parties' agreement)


Nilly Gezgiri

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October 8, 2016

VIA EXPRESS MAIL, FACSIMILE, AND ELECTRONIC MAIL

The Honorable Carol Fox Foelak
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 26049

Re: *In the Matter of Lynn Tilton, et al. (File No. 3-16462)*

Dear Judge Foelak:

On behalf of Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIV, LLC, and Patriarch Partners XV, LLC (collectively, "Respondents"), please find enclosed a request to issue a subpoena to appear and testify at the hearing beginning October 24, 2016, at 1:00 p.m., to Amy Sumner. We respectfully request that Your Honor execute the enclosed subpoena at Your Honor's earliest convenience.

Respectfully,



Randy M. Mastro

cc: Dugan Bliss, Esq.
Nicholas Heinke, Esq.
Amy Sumner, Esq.





UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
DENVER REGIONAL OFFICE
1961 STOUT STREET
SUITE 1700
DENVER, COLORADO 80294-1961

DIVISION OF
ENFORCEMENT

Direct Number: (303) 844.1071
Facsimile Number: (303) 297.3529

October 10, 2016

Via Email and Facsimile

Honorable Carol Fox Foelak
U.S. Securities and Exchange Commission
100 F Street, NE
Washington DC 25049

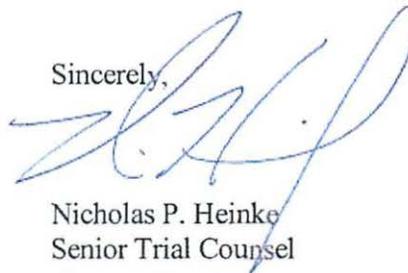
Re: *In the Matter of Lynn Tilton, et al. (File No. 3-16462)*

Dear Judge Foelak:

We write in response to two letters submitted by Respondents on October 9, 2016. The first letter, dated October 8, 2016 and signed by Randy Mastro, requests the issuance of a subpoena to appear and testify at the hearing to Amy Sumner. Ms. Sumner, who was counsel for the Division during the investigation and remains trial counsel for the Division for the upcoming hearing, was not on either party's amended witness list. For that reason (among others), the Division objects to Respondents' request for the issuance of a subpoena to Ms. Sumner.

On October 9, 2016, Respondents also submitted a letter from Susan Brune dated October 6, 2016. This letter appears to simply be a repeat filing of a letter sent to the Court on October 6 requesting a hearing subpoena for Susan DiCicco. As the Division noted in its own letter sent on October 6, the Division objects to Respondents' request for the issuance of this subpoena to Ms. DiCicco.

Sincerely,



Nicholas P. Heinke
Senior Trial Counsel

cc via email:
Randy Mastro, Esq.
Lisa Rubin, Esq.
Susan Brune, Esq.

