

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
GREEN BAY DIVISION**

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

Civil Action No: 09-C-506

WEALTH MANAGEMENT LLC,  
JAMES PUTMAN, and SIMONE FEVOLA,

Defendants, and

WML GRYPHON FUND, LLC;  
WML WATCH STONE PARTNERS, L.P.; WML  
PANTERA PARTNERS, L.P.; WML PALISADE  
PARTNERS, L.P.; WML L3, LLC;  
WML QUETZAL PARTNERS, L.P., and  
EMPLOYEE SERVICES OF APPLETON, INC.,

Relief Defendants.

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**MOTION OF FAYE B. FEINSTEIN, RECEIVER FOR WEALTH MANAGEMENT LLC  
AND THE RELIEF DEFENDANTS, TO ALTER OR AMEND  
COURT'S JUDGMENT OF FEBRUARY 15, 2011 [DOCKET NO. 353],  
ON RECEIVER'S MOTION TO COMPEL**

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Faye B. Feinstein, Receiver for Wealth Management LLC ("WM") and the Relief Defendants, hereby asks, pursuant to Fed. R. Civ. P. 59(e), that the Court (a) reconsider its Decision and Order of February 15, 2011 (Docket No. 353) (the "Order"), and, upon such reconsideration, (b) either (i) vacate the Order or (ii) alter and amend it to provide that the Court may exercise personal jurisdiction over Wood, Hat & Silver, LLC ("WHS"), with respect to the Receiver's Motion to Compel Discovery from WHS (Docket No. 315) (the "Motion to Compel") and (c) provide for such further action on the Motion to Compel as the Court deems appropriate.

As discussed below, the Court's conclusion that it does not have jurisdiction over WHS pursuant to 28 U.S.C. §§754 and 1692 ("Section 754" and "Section 1692," respectively) is not

consistent with the authorities cited in the Order, and the Receiver's compliance with the requirements of Sections 754 and 1692 as to the District of Delaware. The Order was entered in reliance upon a manifest error of fact or law. The Receiver therefore asks, pursuant to Fed. R. Civ. P. 59(e), that the Court amend the Order in a manner consistent with this Motion.

### **Background**

1. The captioned enforcement action was initiated by a complaint filed by the SEC. Upon the SEC's motion, the Court appointed Faye B. Feinstein as Receiver for WM and the Relief Defendants (other than Employee Services of Appleton, Inc., which was later added as a relief defendant upon the Receiver's motion).

2. Included in property of the receivership are the limited partnership interests of the Relief Defendants in The Baetis Fund, L.P. ("Baetis"), and the Brown Investment Fund, L.P. ("Brown"), both limited partnerships formed under the laws of the state of Delaware.

3. The Receiver filed a copy of the SEC's complaint and notice of her appointment in the United States District Court for the District of Delaware. WHS has conceded that the Receiver performed the acts necessary to extend this Court's territorial limits for effective service of process to the District of Delaware. *See* WHS Memorandum in Opposition to Motion to Compel (Docket No. 321) at 10-11 & n.6. The Court did not dispute the Receiver's representations or WHS's concession on this point. Order at 3 (discussing Receiver's filing of relevant documents in Delaware).

4. The Receiver issued, from this Court, a document subpoena upon WHS – a Delaware entity (Order at 3) and general partner of Baetis and Brown (Order at 1) – and upon Joseph Aaron ("Aaron") – an agent appointed by WHS for service and the managing member of WHS – seeking information relevant to the interests of certain Relief Defendants as limited

partners in Baetis and Brown. Because WHS and Aaron did not comply with the subpoena, the Receiver filed her Motion to Compel.

5. The Court denied the Motion to Compel solely on the ground that Sections 754 and 1692 did not permit the Court to exercise personal jurisdiction over WHS or Aaron. Order at 2 (first sentence) and 3.

6. The purpose of Fed. R. Civ. P. 59(e) is to "offer district courts an opportunity to correct errors that may have crept into the proceeding, before the case leaves the district court for good." *Sosebee v. Astrue*, 494 F.3d 583, 589 (7th Cir. 2007). Such a motion may be based upon newly-discovered evidence or upon a manifest error of law or fact. *Id.* The Receiver respectfully requests the Court to correct its findings and conclusions that:

- (a) it does not have personal jurisdiction over WHS, a *Delaware* entity, despite the Court's acknowledgment that the Receiver did file in Delaware a copy of the complaint and notice of this Court's appointment order, and that those actions "extend the receiver court's personal jurisdiction over individuals in that district" (Order at 2);
- (b) it does not have jurisdiction to compel WHS to respond to discovery and produce documents if the documents are not located in Delaware or Wisconsin, and
- (c) that the Receiver is attempting "to invoke the jurisdiction of [this Court]" in the Northern District of California without having filed documents there under Section 754.

#### **Relief Requested**

7. Fed R. Civ. P 59(e) provides that a motion to alter or amend a judgment must be filed within 28 days after entry of the subject judgment. The Order was entered on the docket on February 15, 2011, and this Motion is therefore timely.

**A. The Court's Analysis Demonstrates that It May Exercise Personal Jurisdiction over WHS.**

8. The Court's discussion of Sections 754 and 1692 (Order at 2) succinctly describes the interplay of those two Sections and the prerequisites for exercise of the power conferred by them. Relying upon *S.E.C. v. Bilzerian*, 378 F.3d 1100 (D.C. Cir. 2004), this Court aptly summarized that court's holding: compliance with the filing requirements of Section 754, in conjunction with Section 1692, "acts to extend the receiver court's personal jurisdiction over individuals in that district." Order at 2.<sup>1</sup>

9. As noted above, the Court acknowledged that the document subpoena at issue sought documents from WHS (*id.* at 1), that WHS is a Delaware entity (*id.* at 3), and that the Receiver made filings under Section 754 in Delaware (*id.*). The Court's legal conclusion, and the *Bilzerian* case upon which it relies, demonstrate that nothing else is required to extend the Court's territorial jurisdiction to Delaware entities, and its ultimate holding to the contrary with regard to WHS is contradicted by that conclusion and by the authority relied upon by the Court.

10. Whether the Receiver's subpoena to WHS is viewed as seeking information from Baetis and Brown, through their general partner, WHS, or as seeking information about Baetis and Brown from WHS directly, that distinction is one without a difference, because WHS, Baetis, and Brown are Delaware entities, and the Order itself establishes the Court's territorial jurisdiction to exercise its power over entities in Delaware.

11. The Court's final citation, to *Lancer Management Group* (Order at 3) actually makes the Receiver's point: in that case, the Florida federal district court found that it could exercise personal jurisdiction over an entity called "UNH" that was organized under the laws of the state of New York, because UNH was "subject to personal jurisdiction in the Southern

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<sup>1</sup> The Receiver presumes that the Court's reference to "individuals" was intended to include legal entities, as well as natural persons.

District of New York where the [Florida-court-appointed] Receiver filed the Receivership Order and the Order of Reappointment]" (*id.*). Similarly, because WHS is subject to personal jurisdiction in the District of Delaware, and the Receiver has complied with Section 754 as to the District of Delaware, Sections 754 and 1692 provide the Court with personal jurisdiction over WHS.

**B. Personal Jurisdiction to Enforce a Document Subpoena Does Not Depend Upon the Physical Location of the Information Sought.**

12. It is important to distinguish between the receivership property that justifies the operation of Sections 754 and 1692 – the limited partnership interests of the Relief Defendants in Baetis and Brown, Delaware limited partnerships – and the records and other documents that are the focus of the Receiver's subpoena. The presence of receivership property, *i.e.*, the limited partnership interests, in Delaware triggers Sections 754 and 1692. However, all the subpoena seeks is inspection and copying of documents within the control of WHS; the Receiver does not assert that the information she seeks is actually property of WM or of any Relief Defendant.

13. The Motion to Compel does not require the Court to extend its *in rem* jurisdiction to WHS's physical books and records; the Motion requires only that the Court recognize its jurisdiction to compel the entity *commanded* by the subpoena – WHS – to produce material indisputably under its control. So long as this Court may exercise personal jurisdiction over WHS, and the documents are within WHS's control, the Court may order production, and "the location of the documents is irrelevant." *Dexia Credit Local v. Rogan*, 231 F.R.D. 538, 541 (N.D. Ill. 2004) (citing *In re Uranium Antitrust Litig.*, 480 F. Supp. 1138, 1144 (N.D. Ill. 1979)). This is true "*whether or not* the materials are located within the District or within the territory within which the subpoena can be served". *Hay Group, Inc. v. E.B.S. Acquisition Corp.*, 360

F.3d 404, 412 (3d Cir. 2004) (citing Advisory Committee Notes to Fed. R. Civ. P. 45, 1991 Amendments) (emphasis added).

14. A corporate entity is presumed to have possession and control of its own books and records. *In re Equitable Plan Co.*, 185 F. Supp. 57, 59 (S.D.N.Y. 1960). Moreover, the subject of a document subpoena need not have actual possession of the documents at issue to be deemed to have control of them: a person with "practical and actual managerial control over a corporate organization [has] control sufficient to order production of corporate documents." *Dexia Credit*, 231 F.R.D. at 542 (internal quotation marks and elisions omitted).

15. WHS is presumptively capable of producing material it may have that is responsive to the Receiver's document subpoena, and Aaron, as WHS's managing member, has the power to cause WHS to do so. The fact that documents responsive to the subpoena may be in California does not affect the Court's power to order WHS, a Delaware entity, to produce them.

WHEREFORE, Faye B. Feinstein, as Receiver for WM and the Relief Defendants, respectfully asks the Court to (A) reconsider its Order of February 15, 2011, and, upon that reconsideration, (B) enter an order (1) vacating that Order or amending it to provide that the Court may exercise personal jurisdiction over WHS and (2) providing for such further actions or

proceedings on the Motion to Compel as the Court deems appropriate<sup>2</sup>, and (C) granting the Receiver such other and further relief as the Court deems appropriate.

Respectfully submitted this 10th day of March, 2011.

s/ Christopher Combest  
One of the Receiver's Attorneys

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**CERTIFICATION OF COUNSEL UNDER CIVIL L.R. 7.1(a)**

I, Christopher Combest, counsel for the Receiver in the captioned proceeding, hereby certify, pursuant to Civil L.R. 7.1(a)(2) of this Court, that the Receiver as Movant hereunder does not intend to file a brief or supporting documents with respect to this Motion.

Respectfully submitted this 10th day of March, 2011.

s/ Christopher Combest

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<sup>2</sup> WHS also contested the manner in which the document subpoena was served. The subpoena was served personally upon WHS, through Aaron, its managing member and appointed agent for service of process, at WHS's business address in California. The Receiver believes that such service satisfied the requirements of due process. Where federal statute authorizes nationwide service of process, due process of law requires only that the respondents receive service "reasonably calculated to inform [them] of the pendency of the proceedings against them in order that they might take advantage of the opportunity to be heard in their defense." *Haile v. Henderson Nat'l Bank*, 657 F.2d 816, 826 (6th Cir. 1981) (applying standard of *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950)). If, however, the Court should conclude that the manner selected by the Receiver was ineffective, then, the Receiver respectfully submits that she "should be afforded the opportunity to obtain such service." *Haile*, 657 F.2d at 826 n.11.