

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

JOHN DeGROOTE SERVICES LLC and JOHN)
DeGROOTE, as liquidating trustee for and on behalf of)
the BEARINGPOINT, INC. LIQUIDATING TRUST,)

Plaintiffs,)

v.)

Case No.11-CV-00959-GBL-TRJ

F. EDWIN HARBACH, ALBERT L. LORD,)
RODERICK C. McGEARY, J. TERRY STRANGE,)
DOUGLAS C. ALLRED, BETSY J. BERNARD,)
SPENCER C. FLEISCHER, JILL KANIN-LOVERS,)
and EDWARD MUNSON,)

Defendants.)

JOINT DISCOVERY PLAN

Pursuant to the Court's September 29, 2011 Order, counsel for each party have conferred with respect to discovery procedures for this matter and submit the following as their proposed Discovery Plan in advance of the pretrial conference set for October 19, 2011 and the currently scheduled hearing on October 28, 2011 on Plaintiffs' Motion for Abstention and Remand and Defendants' Motion to Dismiss on the Ground of Forum Non Conveniens or, in the Alternative, for Transfer Under 28 U.S.C. § 1412:

1. **Certification**: Counsel for Plaintiffs and Defendants certify that they have conferred prior to this conference to consider claims, defenses, possibilities of a prompt settlement, and to arrange for disclosures required by Rule 26(a)(1) pursuant to Rule 26(f) of the Federal Rules of Civil Procedure.

2. **Initial Disclosures under Rule 26(a)(1)**: The disclosures required by Rule 26(a)(1) shall be made on or before November 1, 2011.

3. **Confidentiality Order:** Plaintiffs and Defendants will promptly negotiate a proposed agreed protective order to protect any confidential business information that may be exchanged during the course of discovery, and submit such order for Court approval as soon as possible.

4. **Disclosure or Discovery of Electronically Stored Information:** The parties have agreed that electronically stored information as requested in discovery, or as identified in pre-trial disclosures, will be provided in a non-native electronic .tif format with agreed-upon load files populated with the following metadata: APPLICATION, BEGDOC, ENDDOC, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, SUBJECT, DATE SENT, FROM, TO, CC, BCC, FILE_NAME, FILE_EXT, ORIGINAL_FILEPATH, FILE_AUTHOR, CREATED_DATE, MODIFIED_DATE, FAMILY_DATE, and MD5HASH, to the extent available without manual coding. The parties will immediately begin to meet and confer on reasonable search terms and custodians. Plaintiffs will produce electronically stored information from backup tapes created during the period January 2008 through February 2009 for custodians whose documents are contained on such backup tapes that have been restored as of the date hereof: (i) within three weeks of October 21, 2011 for all search terms on which the parties agree as of that date; and (ii) to the extent the parties disagree about additional search terms as of October 21, 2011, at such time as the Court may order. To the extent Defendants seek electronically stored information for additional custodians or additional backup tapes, Plaintiffs will produce such electronically stored information: (i) within six weeks of reaching agreement on custodians, search terms, and dates of backup tapes or (ii) to the extent that an agreement is not reached by October 21, 2011, at such time as the Court may order. Defendants expressly reserve the right to seek additional electronically stored information during the discovery period.

5. **Depositions and Interrogatory Limits:** The limitation on the number of

interrogatories as set forth in the Court's Order of September 29, 2011 is sufficient at this time. The parties agree that there will be significant discovery of non-party witnesses that are not under the control of any party, necessitating additional non-party depositions. These substantial non-party depositions include, among others:

- At least four third party financial advisors, *see, e.g.*, Compl. ¶¶ 66-76, 80-98;
- At least three outside law firms, *see, e.g.*, Compl. ¶¶ 239, 260-261;
- At least eight former employees, *see, e.g.*, Compl. ¶¶ 175-180, 185-201; and
- Numerous potential buyers, *see, e.g.*, Compl. ¶¶ 150-151, 159, 180.

The parties will meet and confer to determine the appropriate number of non-party, non-expert depositions that each party will be permitted and, if possible, will submit a joint consent order to the Court including a list of proposed deponents for review and approval.

6. **Expert Discovery:** The parties were unable to reach agreement on expert discovery dates. To allow Plaintiffs' expert(s) to review and include factual evidence in the expert report received from Defendants and depositions of non-party witnesses, Plaintiffs propose that that Plaintiffs shall make expert disclosures required by Rule 26(a)(2) and Local Rule 26(D) on or before January 11, 2011. Defendants shall make their expert disclosures on or before February 3, 2012. Plaintiffs shall make rebuttal expert witness disclosures on or before February 15, 2012. Defendants propose that Plaintiffs shall make expert disclosures required by Rule 26(a)(2) and Local Rule 26(D) on or before December 23, 2011. Defendants shall make their expert disclosures on or before January 20, 2012. Plaintiffs shall make rebuttal expert witness disclosures on or before February 6, 2012. All parties agree and request that expert depositions shall be completed by February 24, 2011.

7. **Discovery Close:** Subject to the terms of Paragraph (6) above, and pursuant to

the Court's September 29, 2011 Order, all discovery must be concluded by **February 10, 2012** and requests must be served in sufficient time that responses will be due on or before **February 10, 2012**.

8. **Dispositive Motions**: Dispositive motions shall be filed no later than **March 14, 2012**.

9. **Final Pretrial Conference**: Pursuant to the Court's September 29, 2011 Order, the Final Pretrial Conference will be held on **February 16, 2012**.

10. **Claims of Privilege or protection of trial preparation materials**: All claims of privilege and/or work product protection must be made in accordance with Rule 26(b)(5). The parties agree it shall not be necessary to include on any privilege log communications exclusively among any party and counsel in this case, or between Plaintiffs and Bingham McCutchen, after the date on which the Complaint was filed as an exhibit in the United States Bankruptcy Court for the Southern District of New York on November 29, 2010, but that all other information to which privilege is claimed will be identified on a log. Moreover, the Agreed Protective Order will include a claw back provision for the inadvertent disclosure of confidential or privileged materials consistent with Federal Rule of Evidence 502(b).

11. **Preserving of Discoverable Information**: The parties agree to preserve discoverable material.

12. **Discovery if Case Remanded or Transferred**: Should these proceedings be remanded or transferred to another court, the parties will meet and confer regarding appropriate adjustments to the discovery schedule and each party reserves the right to seek modification of the deadlines contained herein. However, the parties will not be required to re-serve discovery and due dates for served discovery requests in existence at the time of remand or transfer will remain in effect upon remand or transfer.

13. **Service of Papers:** The Parties consent to service of discovery by electronic means (*i.e.*, facsimile and/or email). The Parties further agree that the transmission of discovery, notices, motions, briefs, and exhibits by electronic means (*i.e.*, facsimile and/or e-mail) or through the CM/ECF system shall be treated as if service was made by hand delivery pursuant to Fed. R. Civ. P. 5(b)(2)(A) that same day so long as the electronic transmission is completed before 5:00 p.m. If the electronic transmission is completed between 5:01 p.m. and 11:59 p.m., it shall be treated as if service was made by hand delivery the following day.

14. **Magistrate Judge:** The parties do not consent to proceeding to trial before a Magistrate Judge.

Respectfully submitted,

/s/ Andrew J. Terrell
Andrew J. Terrell (VSB No. 30093)
WHITEFORD, TAYLOR & PRESTON L.L.P.
3190 Fairview Park Drive, Suite 300
Falls Church, Virginia 22042
Telephone: (703) 280-9260
Facsimile: (703) 280-9139
aterrell@wtplaw.com

-and-

Kevin G. Hroblak (pro hac vice)
William F. Ryan, Jr. (pro hac vice)
WHITEFORD, TAYLOR & PRESTON L.L.P.
Seven Saint Paul Street
Baltimore, Maryland 21202
Telephone: (410) 347-9405
Facsimile: (410) 223-4305

-and-

Lewis T. LeClair (pro hac vice)
Robert M. Manley (pro hac vice)
MCKOOL SMITH P.C.
300 Crescent Court, Suite 1500
Dallas, Texas 75201
Telephone: (214) 978-4000
Facsimile: (214) 978-4044

Counsel for Plaintiffs

-and-

/s/ William B. Porter
William B. Porter (VSB No. 41798)
Laurie L. Proctor (VSB No. 75320)
BLANKINGSHIP & KEITH, P.C.
4020 University Drive, Suite 300
Fairfax, Virginia 22030
Telephone: (703) 691-1235
Facsimile: (703) 691-3913

-and-

Robert A. Van Kirk (pro hac vice)
George A. Borden (pro hac vice)
Lauren K. Collogan (pro hac vice)
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
Telephone: (202) 434-5163

Counsel for Defendant F. Edwin Harbach

-and-

/s/ Dion W. Hayes
Dion W. Hayes (VSB No. 34304)
Sean F. Murphy (VSB No. 28415)
Warren E. Zirkle (VSB No. 15321)
MCGUIREWOODS LLP
1750 Tysons Boulevard, Suite 1800
Tysons Corner, Virginia 22102-4215
Telephone: (703) 712-5000
Facsimile: (703) 712-5050

-and-

Paul C. Curnin
William T. Russell, Jr.
Paul C. Gluckow
Craig S. Waldman
SIMPSON THACHER & BARTLETT LLP
425 Lexington Avenue
New York, New York 10017-3954
Telephone: (212) 455-2000
Facsimile: (212) 455-2502

*Counsel for Defendants Albert L. Lord, Roderick
C. McGearry, J. Terry Strange, Douglas C. Allred,
Betsy J. Bernard, Spencer C. Fleischer, Jill Kanin-
Lovers and, Edward Munson*

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