

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

SECURITIES AND EXCHANGE)
 COMMISSION,)
)
 Plaintiff,)
)
 vs.)
)
 BENJAMIN DANIEL DEHAAN)
 AND)
 LIGHTHOUSE FINANCIAL)
 PARTNERS, LLC.)
)
 Defendant.)
 _____)

CIVIL ACTION
NO.: 1:12-CV-1996-TWT

MOTION FOR PROTECTIVE ORDER

COMES NOW Defendant, **BENJAMIN DANIEL DEHAAN**, by and through his undersigned counsel, and hereby moves for a protective order seeking additional time to review documents prior to their production pursuant to the subpoena served upon Page Perry, LLC and to postpone the taking of Defendant DeHaan’s deposition. In support of this Motion, Defendant shows as follows:

1.

Page Perry, LLC (hereinafter “Page Perry”) served as corporate counsel for Lighthouse Financial Partners, LLC (hereinafter “Lighthouse”) from 2007 until

approximately June 21, 2012. However, during that timeframe, Page Perry also represented Defendant DeHaan (hereinafter “Defendant”) individually in the instant case.

2.

On July 13, 2012, Defendant retained undersigned counsel to replace Page Perry, to represent him in the instant case and to represent him in any related criminal prosecution.

3.

On July 11, 2012, prior to undersigned counsel being retained in this matter, the Receiver in this case served a subpoena upon Page Perry seeking “Any property, business, books, records, accounts, assets, documents, data, media, writings, communications, files, or any other tangible things in the possession and/or control of Page Perry, LLC related to Lighthouse Financial Partners, LLC.” A copy of the subpoena is attached hereto as “Exhibit A” and is incorporated by reference as if fully set forth herein. The subpoena directed Page Perry to comply by July 20, 2012.

4.

In light of Page Perry’s dual representation of both Lighthouse and Defendant, Page Perry was concerned that the production of certain documents might result in the

violation of Defendant's attorney-client privilege. As such, Page Perry consulted with the State Bar of Georgia as to how to proceed and was informed that prior to producing any documents Defendant and his counsel should be allowed to review them so that Defendant could claim certain documents as being privileged and beyond the scope of the subpoena.

5.

Upon being retained, undersigned counsel commenced reviewing the Page Perry documents to determine whether they contained privileged material. Page Perry had indicated to undersigned counsel that its entire file that was related to its representation of Lighthouse and Defendant contained approximately 36,000 pages of documents. Procedurally, what has been transpiring since July 13, 2012 through the date of the filing of this Motion is that after reviewing documents, undersigned counsel has authorized the release of certain documents to the Receiver which Defendant did not believe contained privileged material.

6.

On August 2, 2012, despite having been in communication with undersigned counsel and already receiving thousands of pages of documents, Jim Frenzel (hereinafter "Frenzel"), attorney for the Receiver, emailed a letter to undersigned

counsel and Page Perry threatening to file a motion for contempt if all documents and a privilege log were not delivered to the Receiver by August 3, 2012. A copy of this letter is attached hereto at "Exhibit B" and is incorporated by reference as if fully set forth herein. On August 2, 2012, undersigned counsel responded by requesting until August 17, 2012 to have the documents reviewed and a privilege log delivered to the Receiver. A copy of this letter is attached hereto as "Exhibit C" and is incorporated by reference as if fully set forth herein. On August 3, 2012, Frenzel responded via email letter, refusing undersigned counsel's request; demanding that all documents and a privilege log be delivered to the Receiver by August 13, 2012; and conditioning that extension upon the scheduling of Defendant's deposition by the end of August, 2012. A copy of this letter is attached hereto as "Exhibit D" and is incorporated by reference as if fully set forth herein. On August 9, 2012, Frenzel again sent another letter to undersigned counsel demanding compliance with the subpoena by August 13, 2012 and the scheduling of a deposition by the end of August, 2012. Frenzel again threatened undersigned counsel and Page Perry with the filing of a motion for contempt. A copy of this letter is attached hereto at "Exhibit E" and is incorporated by reference as if fully set forth herein.

7.

Although in his letters Frenzel asserts to the contrary, undersigned counsel has diligently been working as quickly as possible to adequately review the remaining documents so that as many documents can be released to the Receiver at the earliest possible time. Specifically, on July 25, 2012, undersigned counsel travelled to the office of Page Perry and after reviewing thousands of pages of documents, authorized the release of 11,696 pages of documents to the Receiver. On July 27, 2012, undersigned counsel authorized the release of an additional 4,277 pages of documents to the Receiver. On August 3, 2012, undersigned counsel authorized the release of an additional 1,393 pages of documents to the Receiver. On August 10, 2012, undersigned counsel authorized the release of an additional 10,927 pages to the Receiver.

8.

As of this date, undersigned counsel has authorized the release of approximately 28,293 pages out of the approximately 36,000 pages of documents requested by the Receiver. Undersigned counsel is reviewing the remaining documents as diligently as possible and will authorize their release or provide a privilege log as soon as undersigned counsel is able to properly accomplish this task, while mindful of protecting all rights afforded to Defendant.

9.

In light of the repeated, unfounded, and borderline abusive threats by Frenzel to file a motion for contempt against undersigned counsel and Page Perry for not complying with the subpoena, Defendant believes it is necessary to file this motion seeking an extension of time to comply with the subpoena. Undersigned counsel has a duty to protect the interests of Defendant and to protect the production of those documents of which undersigned counsel has a good faith opinion that Defendant still maintains a privilege regarding disclosure of the contents of such documents. Undersigned counsel already has been contacted by the United States Attorney's Office for the Northern District of Georgia regarding the commencement of a criminal investigation into Defendant's activities. Given this parallel criminal investigation, undersigned counsel's obligation to protect the privileged communications between Defendant and his predecessor counsel is paramount, despite the abusive threats by Frenzel and the Receiver to hold undersigned counsel and Page Perry in contempt. As such, undersigned counsel seeks the Court's intervention in granting sufficient time to allow undersigned counsel to review the remaining documents and to prepare a privilege log for outlining those documents for which Defendant claims are privileged.

WHEREFORE, for all of the foregoing reasons, Defendant respectfully prays that this Court grant undersigned counsel an additional thirty days from the filing of this Motion, to and including September 10, 2012, within which to review and authorize the release of the Page Perry documents and to provide a privilege log for those documents which Defendant claims are privileged and to postpone the taking of Defendant's deposition until the document production has been completed.

This, the 10th day of August, 2012.

Respectfully submitted,

s/ Howard Jarrett Weintraub

HOWARD JARRETT WEINTRAUB
Georgia Bar No. 746456
Attorney for Benjamin DeHaan

s/ Benjamin Black Alper

BENJAMIN BLACK ALPER
Georgia Bar No. 940406
Attorney for Benjamin DeHaan

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CERTIFICATE OF COMPLIANCE

This is to certify that to the best of my knowledge this document has been prepared with one of the font and point selections approved by the Court in LR 5.1B, pursuant to LR 7. Specifically, the above-mentioned document has been prepared using Times New Roman font, 14 point.

This, the 10th day of August, 2012.

Respectfully submitted,

s/ Howard Jarrett Weintraub
HOWARD JARRETT WEINTRAUB
Georgia Bar No. 746456
Attorney for Benjamin DeHaan

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

SECURITIES AND EXCHANGE)
COMMISSION,)
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Plaintiff,)
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vs.)
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BENJAMIN DANIEL DEHAAN)
AND)
LIGHTHOUSE FINANCIAL)
PARTNERS, LLC.)
)
Defendant.)
_____)

CIVIL ACTION
NO.: 1:12-CV-1996-TWT

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on August 10, 2012, I electronically filed this document with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Edward Sullivan, sullivan@sec.gov

James Frenzel, jcf-bklaw@mindspring.com

This, the 10th day of August, 2012.

Respectfully submitted,

/s Howard Jarrett Weintraub

HOWARD JARRETT WEINTRAUB
Georgia Bar No. 746456
Attorney for Benjamin DeHaan

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AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Georgia

Securities and Exchange Commission,
Plaintiff
v.
Benjamin Daniel DeHaan and Lighthouse Financial Partners, LLC,
Defendant
Civil Action No. 1:12-CV-1996-TWT
(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Page Perry, LLC, c/o J. Steven Parker, 1040 Crown Pointe Parkway, Suite 1050, Atlanta, Georgia 30338

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: Any property, business, books, records, accounts, assets, documents, data, media, writings, communications, files, or any other tangible things in the possession and/or control of Page Perry, LLC related to Lighthouse Financial Partners, LLC.

Place: James C. Frenzel, P.C. 3343 Peachtree Road, N.E., Suite 155 Atlanta, GA 30326
Date and Time: 07/20/2012 5:10 pm

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:
Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 07/11/2012

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Handwritten signature of S. Gregory Hays, Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) S. Gregory Hays, as Receiver for Lighthouse Financial Partners, LLC, who issues or requests this subpoena, are:

James C. Frenzel, P.C., 3343 Peachtree Road, N.E., Suite 155, Atlanta Financial Center, East Tower, Atlanta, GA 30326, jcf-bklaw@mindspring.com, 404-266-9961

JAMES C. FRENZEL, P. C.
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ERIC J. SILVA
ejs-bklaw@mindspring.com

August 2, 2012

J. Steven Parker, Esq.
Robert D. Terry, Esq.
Page Perry, LLC
1040 Crown Pointe Parkway, Suite 1050
Atlanta, Georgia 30338
jsparker@pageperry.com
bterry@pageperry.com

via electronic transmission

Howard J. Weintraub, Esq.
Law Offices of Howard J. Weintraub, PC
1355 Peachtree Street NE, Suite 1250
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via electronic transmission

Re: Securities and Exchange Commission v. Benjamin Daniel DeHaan ("DeHaan") and Lighthouse Financial Partners, LLC ("Lighthouse"); Civil Action File No. 1:12-CV-1996; S. Gregory Hays, Receiver (the "Receiver") for Lighthouse

Gentlemen:

Our understanding is that: 1) an electronic version of only one-third of the files (the "Files") maintained by Page Perry, LLC ("Page Perry") related to Lighthouse have been produced to the Receiver; and 2) the remaining Files have been retained by Page Perry subject to review for any claim of individual attorney-client privilege of DeHaan to be asserted by Mr. Weintraub with the understanding that Mr. Weintraub would produce: 1) a privilege log detailing all documents sought to be withheld from production to the Receiver pursuant to a purported privilege asserted by DeHaan; and 2) all Files that are not subject to a claim of privilege would be made available to the Receiver by Page Perry. Because the Receiver has not yet received a privilege log detailing the documents sought to be withheld from production or the remaining documents that are not subject to any asserted privilege, the Receiver is considering options to obtain the production of all of the Files.

The position of the Receiver is that the original version of all Files of Page Perry pertaining to Lighthouse or its principal, DeHaan, should be produced to the Receiver. The attorney-client privilege with regard to the Files belongs to the entity, Lighthouse, and not to any individual formerly employed by or in control of Lighthouse such as DeHaan. See *Standard Forex Polycast Technology Corp. v. Uniroyal, Inc.*, 125 F.R.D. 47, 49 (S.D.N.Y. 1989). As the party authorized to act on behalf of Lighthouse, the Receiver holds the right to assert or waive a privilege on behalf of Lighthouse. See *U.S. v. Plache*, 913 F.2d 1375, 1381 (9th Cir. 1990); *CFTC v. Standard Forex*, 882 F. Supp. 40, 44 (E.D.N.Y. 1995) (a receiver may control the privileges of an entity in the absence of an individual with the right to control such entity); *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 349-357 (1985) ("Individual officers and directors always run the risk that successor management might waive the corporation's attorney-client privilege with respect to prior management's communications with counsel."). Incident to such authority and the authority set forth in the order appointing the Receiver, the Receiver has waived any privilege with regard to the Files.

Because an entity such as Lighthouse may only act through an agent, "courts have held that any privilege that attaches to communications on corporate matters between corporate employees and corporate counsel belongs to the corporation, not to the individual employee, and that employees generally may not prevent a corporation from waiving the attorney-client privilege arising from such communications." *United States v. International Bhd. of Teamsters*, 119 F.3d 210, 215 (2d Cir. N.Y. 1997) (citations omitted). Accordingly, the waiver of any privilege of Lighthouse by the Receiver also waives any privilege that DeHaan may be able to assert in any communications to the extent that such "communications reflected his official duties within the company." *In re Grand Jury Investigation*, 575 F. Supp. 777, 779 (N.D. Ga. 1983) (citations omitted); *Diversified Indus., Inc. v. Meredith*, 572 F.2d 596, 611 n.5 (8th Cir. 1978) (en banc) ("Ordinarily, the privilege belongs to the corporation and an employee cannot himself claim the attorney-client privilege and prevent disclosure of communications between himself and the corporation's counsel if the corporation has waived the privilege.").

In instances such as the present circumstances where an agent of a corporation asserts a privilege with regard to communications to counsel for the corporate entity, some courts have recognized a narrow exception with elements that have yet to be established by DeHaan. As an initial matter, no evidence has been presented to confirm the existence of a joint representation agreement or that corporate counsel, Page Perry, served the dual purpose of representing both DeHaan and Lighthouse. Upon information and belief, all services performed by Page Perry were paid for by Lighthouse and, as such, the all Files retained by Page Perry regarding Lighthouse are the property of Lighthouse and not DeHaan.

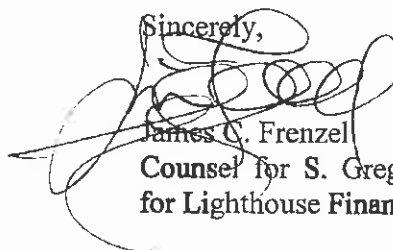
Even if DeHaan can overcome such hurdles, the party asserting a privilege has the burden of establishing the existence of the asserted privilege. See *In Re Grand Jury Subpoena Bierman*, 765 F.2d 1014, 1019 (11th Cir. 1985). In order for a court to potentially recognize that DeHaan may possess a privilege in any of the Files that is separate from any privilege of Lighthouse, DeHaan must establish that: 1) DeHaan approached Page Perry for the purpose of seeking legal advice; 2) DeHaan clearly indicated to Page Perry that DeHaan was seeking legal advice in his individual capacity rather than as a representative of Lighthouse; 3) Page Perry knowingly communicated with DeHaan in his personal capacity knowing that a potential conflict between

Lighthouse and DeHaan could arise; 4) the communications sought to be privileged were confidential; and 5) the substance of the communications sought to be protected does not concern Lighthouse or the general affairs of Lighthouse. *See In re Grand Jury Investigation*, 575 F. Supp. 777, 780 (N.D. Ga. 1983). If DeHaan continues to assert a privilege in any of the Files, the Receiver hereby requests that DeHaan produce any evidence that may be able to establish such elements.

Pending the production of evidence to establish that DeHaan may have an individual privilege with regard to certain Files, the Receiver hereby demands the production of: 1) a privilege log detailing the documents sought to be withheld from production; and 2) all Files that are not subject to a claim of privilege. In the event that such production is not made by Friday, August 3, 2012, the Receiver will consider options to receive full production of the Files involuntarily, including the filing of a motion for contempt of the prior Orders of the District Court and a motion to compel the production of all Files.

Best personal regards.

Sincerely,

A handwritten signature in black ink, appearing to read 'James C. Frenzel', is written over the typed name. The signature is stylized and somewhat messy, with loops and flourishes.

James C. Frenzel
Counsel for S. Gregory Hays, Receiver
for Lighthouse Financial Partners, LLC

Cc (via email): S. Gregory Hays, Receiver for Lighthouse
Edward G. Sullivan, Esq.



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Howard Jarrett Weintraub

Benjamin Black Alper

August 2, 2012

James C. Frenzel, Esq.
Suite 155, East Tower
Atlanta Financial Center
3343 Peachtree Road N.E.
Atlanta, Georgia 30326

Re: Securities and Exchange Commission v. Benjamin Daniel DeHaan, et al.
Civil Action File No. 1:12-CV-1996-TWT

Jim:

I am in receipt of your letter dated August 2, 2012 wherein you demand certain documentation from my office by August 3, 2012. As I have repeatedly explained to you, my office is working as diligently as possible to review and release to you thousands of pages of documents from the files of Page Perry, LLC. I understand your position that as the Receiver for Lighthouse, your client has waived the attorney-client privilege with regard to legal documents in the possession of Page Perry which pertain to their representation of Lighthouse. However, Page Perry has repeatedly explained to you and us that there was a period of time when their firm represented Benjamin DeHaan personally. As such, Lighthouse or the Receiver is not in a position to waive any attorney-client privilege with respect to those documents and communications between Mr. DeHaan and Page Perry that relate to their representation of him personally.

As Mr. Dehaan still maintains a privilege with regard to certain documents in the possession of Page Perry, and as Page Perry has advised these documents are commingled with documents related to their representation of Lighthouse, we have been working as quickly as possible to review and release the documents to which you are entitled. On July 25, 2012, we travelled to the offices of Page Perry and reviewed thousands of pages of documents. On that date, we authorized Page Perry to release to



Law Offices of

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the Receiver 11,696 pages of documents. On July 27, 2012, we further authorized Page Perry to release to the Receiver an additional 4,277 pages documents. We are currently reviewing the remainder of the Page Perry files and will authorize Page Perry to release them to you once we are confident that the documents do not contain privileged information.

We have an ethical and professional obligation to protect the interests of our client, Ben DeHaan. The failure to properly review these documents for privileged material would be a violation of that obligation. As you are well aware, the parallel criminal investigation into these activities requires the utmost diligence and protection of my client's rights as his very freedom will be jeopardized should I fail to comply appropriately with my obligations to my client. Please recognize that Mr. DeHaan and my office have been extremely cooperative in complying with your requests thus far to include executing a Stipulation And Agreement transferring Mr. DeHaan's interest in numerous properties to the Receiver; executing a Quitclaim Deed to the Receiver for specific property in Tennessee; delivering the keys to the Tennessee property to the Receiver; and providing the name and contact information for the broker of the Tennessee property to the receiver.

Also note that it has been less than two weeks since the original production date (which you agreed to modify to allow us to review these documents) and within that time we have released nearly 16,000 pages of documents to the Receiver. Rather than threaten Court action today if we do not comply by tomorrow, I would suggest that we agree on a date certain for our production to be complete. Given my review thus far, I believe that the full production, with a privilege log generically listing those documents to which we contend you are not entitled, can be accomplished by August 17, 2012. Between now and that date, we will continue to authorize the release of documents to which we believe you are entitled. It is our position that this is a reasonable resolution to this issue and adequately protects the rights of my client and the needs of the Receiver. If you disagree, you are free to take whatever action you deem necessary. However, I must stress that any and all delay in our response to your request is due entirely to my need to protect my client's interests and should not be in any way construed by you, or anyone else, to be due to a desire of Ben DeHaan to be uncooperative in this matter. Further, as this delay is entirely the product of my concerns for Mr. DeHaan's interests, any contempt action you wish to take should be directed at me and not at any other attorney associated with this matter, specifically Steve Parker or Bob Terry with Page Perry, LLC., and my associate Benjamin Black Alper.



Law Offices of

HOWARD J. WEINTRAUB, P.C.

HowardJWeintraubPC.com

Sincerely yours,

HOWARD JARRETT WEINTRAUB
Georgia Bar No. 746456
Attorney for Benjamin DeHaan

HJW/ds

cc: Ben DeHaan (via email)
Steve Parker, Esquire (via email)
Bob Terry, Esquire (via email)

JAMES C. FRENZEL, P.C.
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August 3, 2012

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sent via electronic transmission

Re: Securities and Exchange Commission ("SEC") v. Benjamin Daniel DeHaan ("DeHaan") and Lighthouse Financial Partners, LLC ("Lighthouse"); Civil Action File No. 1:12-CV-1996; S. Gregory Hays, Receiver (the "Receiver") for Lighthouse; Document Production of Lighthouse Files (the "Files") by Page Perry, LLC ("Page Perry"); Deposition of DeHaan (the "Deposition")

Howard:

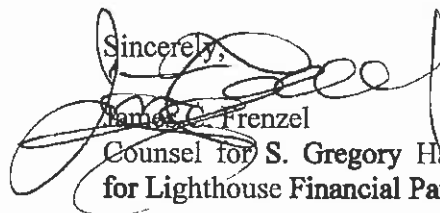
We are in receipt of your letter dated August 2, 2012, regarding the status of the production of the Files maintained by Page Perry. We concur with your comments about cooperation of your client with the Receiver, but also concur that your office has delayed the production of the Files to the Receiver. We understand that less than one half of the Files subject to the subpoena of July 11, 2012, have been produced to date by Page Perry. Although we understand that DeHaan may have consulted Page Perry with regard to personal matters before Page Perry withdrew as counsel for Lighthouse on June 13, 2012, we have confirmed that: 1) Page Perry does not have a joint representation agreement with DeHaan and Lighthouse; 2) Page Perry has an engagement letter only with Lighthouse; and 3) the services rendered by Page Perry to Lighthouse and/or DeHaan and the resulting Files that were produced were paid for by Lighthouse. Furthermore, we have not yet received sufficient evidence to demonstrate that DeHaan will be able to satisfy all elements necessary to establish an individual attorney-client privilege with regard to the Files. Nevertheless, the Receiver has allowed your firm more than three weeks to review the Files, which has delayed the production by Page Perry and the investigation of Lighthouse by the Receiver.

Since an expectation that a party will comply with a subpoena for document production within 30 days is not unreasonable, on the condition that you agree to set a firm date for the deposition of DeHaan not later than either August 30, 2012, or August 31, 2012, the Receiver will agree to allow counsel for DeHaan until August 13, 2012, to: 1) produce a privilege log

detailing all Files sought to be withheld from production to the Receiver pursuant to a purported individual privilege asserted by DeHaan; and 2) provide permission to allow Page Perry to produce all Files that are not subject to such a claim of privilege.

The Receiver reserves any and all rights with regard to the Files and to contest any individual privilege that may be asserted by DeHaan. If the agreement set forth herein is acceptable to you, please confirm our agreement and provide us with a designated date for the deposition of DeHaan during this month.

Sincerely,

A handwritten signature in black ink, appearing to read 'James P. Frenzel', is written over the typed name and title.

James P. Frenzel

Counsel for S. Gregory Hays, Receiver
for Lighthouse Financial Partners, LLC

Cc (via email): S. Gregory Hays, Receiver for Lighthouse
Edward G. Sullivan, Esq., the SEC
J. Steven Parker, Esq., Page Perry, LLC

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August 9, 2012

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mmclaughlin@hptylaw.com

Re: Securities and Exchange Commission ("SEC") v. Benjamin Daniel DeHaan ("DeHaan") and Lighthouse Financial Partners, LLC ("Lighthouse"); Civil Action File No. 1:12-CV-1996-TWT (the "Civil Action"); S. Gregory Hays, Receiver (the "Receiver") for Lighthouse

Howard and Matt:

Our client, the Receiver, is rapidly losing his patience with the process that we have been subjected to with regard to the production of the documents, electronic communications, and other materials (the "Files") of Lighthouse maintained by Page Perry, LLC ("Page Perry").

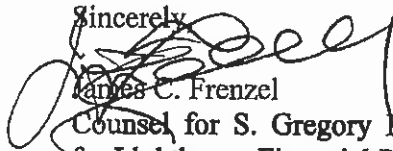
Although the Receiver waived the corporate privilege of Lighthouse with regard to the Files, requested the production of the Files by Page Perry, and, pursuant to the request of Page Perry, issued a Subpoena for the Files approximately a month ago, we still do not have full possession of the Files or, by our understanding, even half of the Files that are to be turned over pursuant to the Orders of the Court entered in the Civil Action. In addition, our proposal to allow counsel for DeHaan an extension of time in order to complete a review of the Files with regard to the assertion of a contested personal privilege in exchange for a definitive date for the deposition of DeHaan by the Receiver has received no response. Although a Notice to Take Deposition was served on DeHaan earlier in the Civil Action, no time has been set for a formal deposition of DeHaan during the month of August.

Because the investigation and performance of the duties of the Receiver of Lighthouse to obtain and review the Files has been slowed and hindered by the process imposed upon us by Page Perry and counsel for DeHaan, unless: a) either the remaining Files are produced with a document privilege log with regard to documents excluded upon grounds of personal privilege by Monday, August 13, or b) all of the Files of Page Perry are produced by that date, we are prepared to file the attached Motion on behalf of the Receiver seeking the entry of an order: 1) compelling the production of all of the Files; 2) finding certain parties in contempt for failure to produce; and 3) scheduling the deposition the DeHaan.

We look forward to hearing from both of your offices that the process is being completed, that either the remaining Files will be produced or that a substantial number of the remaining Files will be produced in addition to a privilege log by Monday, August 13, and with regard to an agreed upon date, time, and location for the formal deposition of DeHaan as previously noticed.

If you have any questions, please feel free to call upon us.

Sincerely,



James C. Frenzel
Counsel for S. Gregory Hays, Receiver
for Lighthouse Financial Partners, LLC

Cc (via email): S. Gregory Hays, Receiver for Lighthouse
Edward G. Sullivan, Esq., the SEC

DRAFT

BACKGROUND

1. From 2007 until June 21, 2012, Page Perry served as corporate counsel for Lighthouse and accumulated certain property, business, books, records, accounts and assets of Lighthouse in such capacity.
2. The services rendered by Page Perry that resulted in the generation and/or retention of the Files by Page Perry were paid for by Lighthouse.
3. The Files maintained by Page Perry are the property of Lighthouse.
4. At all times relevant hereto, DeHaan: a) served as an officer, agent, and employee of Lighthouse; and b) did not have an engagement letter with Page Perry or any kind of joint representation agreement with Lighthouse.
5. On July 2, 2012, the Receiver was appointed pursuant to a certain Order Appointing S. Gregory Hays as Receiver for Lighthouse Financial Partners, LLC and Continuation of Asset Freeze (the "Appointment Order") to administer, preserve, and protect the assets of Lighthouse (the "Receivership Estate").
6. Pursuant to Paragraph VII of the Appointment Order, all persons acting for or on behalf of the Receivership Estate or receiving notice of the Appointment Order are required to deliver to the Receiver any property, business, books, records, accounts or assets of the Receivership Estate in the possession of such party.
7. Page Perry has received notice of the Appointment Order and, as such, is required to produce the Files pursuant to Paragraph VII of the Appointment Order.
8. Although not necessary to obtain the production of the Files pursuant to the terms of the Appointment Order, at the request of Page Perry, the Receiver: a) requested that DeHaan

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- consent to the production of the Files by Page Perry; and b) subpoenaed the Files on July 11, 2012.
9. Page Perry subsequently produced a portion of the Files to the Receiver; however, a majority of the Files: a) were retained by Page Perry; b) have not been produced to the Receiver; and c) have been delivered by Page Perry for inspection and prior review by counsel for DeHaan, Howard Weintraub, in order to be reviewed by counsel for DeHaan with regard to a purported claim of individual attorney-client privilege asserted by DeHaan.
 10. Counsel for DeHaan has failed to produce: a) a privilege log detailing the Files sought to be withheld from production to the Receiver pursuant to an individual privilege asserted by DeHaan; and b) the remaining Files that are not subject to a claim of privilege by DeHaan.
 11. Paragraph VIII of the Appointment Order requires DeHaan to cooperate with and assist the Receiver in the administration of the Receivership Estate..
 12. On July 11, 2012, the Receiver issued a notice to take the deposition of DeHaan on Wednesday July 25, 2012.
 13. At the request of DeHaan, the deposition of DeHaan did not occur as scheduled on July 25, 2012.
 14. Despite several requests by counsel for the Receiver to schedule the deposition of DeHaan, counsel for DeHaan has not yet agreed to a date for the deposition of DeHaan as requested by the Receiver.

REQUESTED RELIEF

15. Pursuant to this Motion, the Receiver requests that the Court: a) compel the production of all Files by Page Perry; b) enter a finding of contempt against Page Perry and DeHaan for their

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failure to comply with the terms of the Appointment Order; and c) schedule and compel DeHaan to appear and testify at a deposition of DeHaan to be conducted by the Receiver.

AUTHORITY

16. Pursuant to the Appointment Order, a party such as Page Perry with notice of the Appointment Order, shall deliver to the Receiver any property, business, books, records, accounts or assets of the Receivership Estate in the possession of such party.
17. The attorney-client privilege with regard to the Files belongs to the entity, Lighthouse, and not to any individual formerly employed by or in control of Lighthouse, DeHaan. *See Standard Forex. Polycast Technology Corp. v. Uniroyal, Inc.*, 125 F.R.D. 47, 49 (S.D.N.Y. 1989).
18. As the only party currently authorized to act on behalf of Lighthouse, the Receiver holds the right to assert or waive a privilege on behalf of Lighthouse. *See U.S. v. Plache*, 913 F.2d 1375, 1381 (9th Cir. 1990); *CFTC v. Standard Forex*, 882 F. Supp. 40, 44 (E.D.N.Y. 1995) (a receiver may control the privileges of an entity in the absence of an individual with the right to control such entity); *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 349-357 (1985) ("Individual officers and directors always run the risk that successor management might waive the corporation's attorney-client privilege with respect to prior management's communications with counsel."). Incident to such authority and the authority set forth in the Appointment Order, the Receiver has waived any privilege with regard to the Files.
19. Because an entity such as Lighthouse may only act through an agent, "courts have held that any privilege that attaches to communications on corporate matters between corporate employees and corporate counsel belongs to the corporation, not to the individual employee,

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and that employees generally may not prevent a corporation from waiving the attorney-client privilege arising from such communications.” *United States v. International Bhd. of Teamsters*, 119 F.3d 210, 215 (2d Cir. N.Y. 1997) (citations omitted).

20. Accordingly, the waiver of any privilege of Lighthouse by the Receiver also waives any privilege that DeHaan may be able to assert in any communications to the extent that such “communications reflected his official duties within the company.” *In re Grand Jury Investigation*, 575 F. Supp. 777, 779 (N.D. Ga. 1983) (citations omitted); *Diversified Indus., Inc. v. Meredith*, 572 F.2d 596, 611 n.5 (8th Cir. 1978) (en banc) (“Ordinarily, the privilege belongs to the corporation and an employee cannot himself claim the attorney-client privilege and prevent disclosure of communications between himself and the corporation’s counsel if the corporation has waived the privilege.”).
21. In instances such as the present circumstances where an agent of a corporation asserts a privilege with regard to communications to counsel for the corporate entity, some courts have recognized a narrow exception with elements that have yet to be established by DeHaan.
22. In order for a court to potentially recognize that DeHaan may possess an individual privilege in any of the Files that is separate from any privilege of Lighthouse, DeHaan must establish that: a) DeHaan approached Page Perry for the purpose of seeking legal advice; b) DeHaan clearly indicated to Page Perry that DeHaan was seeking legal advice in his individual capacity rather than as a representative of Lighthouse; c) Page Perry knowingly communicated with DeHaan in his personal capacity knowing that a potential conflict between Lighthouse and DeHaan could arise; d) the communications sought to be privileged were confidential; and e) the substance of the communications sought to be protected does

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not concern Lighthouse or the general affairs of Lighthouse. *See In re Grand Jury Investigation*, 575 F. Supp. 777, 780 (N.D. Ga. 1983).

23. The party asserting a privilege has the burden of establishing the existence of the asserted privilege. *see In Re Grand Jury Subpoena Bierman*, 765 F.2d 1014, 1019 (11th Cir. 1985).
24. Although counsel for DeHaan has retained a majority of the Files based on a purported individual privilege asserted by DeHaan and has delayed the production of such Files to the Receiver, DeHaan has yet to present any evidence to indicate that DeHaan has an individual privilege with regard to any of the Files.
25. Under the circumstance, neither Page Perry nor DeHaan has any right to further delay the production of all Files to the Receiver.

WHEREFORE, the Receiver respectfully requests that the Court enter an Order:

1. Granting this Motion;
2. Compelling Page Perry to produce all of the Files to the Receiver immediately;
3. Finding Page Perry and/or DeHaan in contempt for comply with an order of this Court by failing to deliver property of Lighthouse and produce the Files as required by the Appointment Order;
4. Scheduling a deposition of DeHaan on August 30, 2012, and compelling DeHaan to appear and testify at such deposition;
5. Taxing Page Perry and/or DeHaan with all costs incurred by the Receiver and his professionals with regard to this Motion and the production sought herein; and
6. Granting the Receiver such other and further relief as is just and proper.

Respectfully submitted, this the ___ day of August, 2012.

/s/
James C. Frenzel

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