



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LAKE TREASURE HOLDINGS, LTD., et al., :  
:  
Plaintiffs, :  
:

v :  
:

FOUNDRY HILL GP, LLC, et al., :  
:  
Defendants, :  
:

and :  
:

FOUNDRY HILL HOLDINGS, LP, :  
:  
Nominal Defendant. :

-----X Civil Action  
FOUNDRY HILL GP, LLC, et al., : No. 6546-VCL  
:

Counterclaim Plaintiffs, :  
:

v :  
:

LAKE TREASURE HOLDINGS, LTD., et al., :  
:  
Counterclaim Defendants. :

- - -  
Chancery Court Conference Room  
New Castle County Courthouse  
500 North King Street  
Wilmington, Delaware  
Tuesday, September 11, 2012  
10:04 a.m.

BEFORE: HON. J. TRAVIS LASTER, Vice Chancellor.  
- - -

OFFICE CONFERENCE ON PLAINTIFFS'/COUNTERCLAIM  
DEFENDANTS' MOTION TO COMPEL, RULINGS OF THE COURT,  
AND CASE MANAGEMENT

-----  
CHANCERY COURT REPORTERS  
New Castle County Courthouse  
500 North King Street - Suite 11400  
Wilmington, Delaware 19801  
(302) 255-0524

1 APPEARANCES:

2 TONI-ANN PLATIA, ESQ.  
Ashby & Geddes, P.A.

3 -and-

4 PETER M. SPINGOLA, ESQ.  
SHANNON T. SMITH, ESQ.  
of the Illinois Bar  
5 Chapman Spingola LLP  
for Plaintiffs/Counterclaim Defendants Lake  
6 Treasure Holdings, Ltd., Kajeer Yar, and  
WaterColor Ventures, LLC

7 "J" JACKSON SHRUM, ESQ.  
8 Archer & Greiner, P.C.

-and-

9 NORMAN J. LERUM, ESQ.  
of the Illinois Bar  
10 Norman J. Lerum P.C.  
for Defendants/Counterclaim Plaintiffs Foundry  
11 Hill GP, LLC, Foundry Hill Electronic Trading,  
LLC, and Ulric Taylor

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1 THE COURT: Good morning, everyone.

2 MR. SHRUM: Good morning.

3 THE COURT: All right. Have a seat.

4 So how is everybody today?

5 MR. SPINGOLA: Great.

6 MR. LERUM: Good.

7 MS. PLATIA: Good; thank you.

8 THE COURT: So, shall we go around?

9 MR. SHRUM: Sure. "J" Jackson Shrum.

10 I'd like to introduce to Your Honor my cocounsel, Norm  
11 Lerum.

12 THE COURT: Welcome.

13 MR. LERUM: Thank you.

14 MR. SHRUM: We're -- we're on the  
15 defense/counterclaimants' side.

16 THE COURT: True enough.

17 MR. SPINGOLA: Peter Spingola and  
18 Shannon Smith from Chapman Spingola in Chicago for the  
19 plaintiffs.

20 MS. PLATIA: Toni-Ann Platia of Ashby  
21 & Geddes.

22 THE COURT: Good to see you,  
23 Ms. Platia.

24 MS. PLATIA: Good morning.

1 THE COURT: So I have read all the  
2 stack of stuff that you have given me. Where do we  
3 stand on this second motion to file the second amended  
4 counterclaims? Is that done?

5 MR. SHRUM: I believe it is done. I  
6 believe we're -- are you talking about the motion that  
7 we had initially filed to have the second amended  
8 counterclaims entered?

9 THE COURT: Was that resolved? Did  
10 you stipulate to that?

11 MR. SHRUM: I believe we did stipulate  
12 to that, Your Honor.

13 THE COURT: So that's off the table.  
14 We don't have to worry about that.

15 So I have read both the verified  
16 complaint and the counterclaims. I'll tell you right  
17 now that some of this is going to survive motions to  
18 dismiss. So discovery is not going to be stayed  
19 pending motion practice.

20 You-all -- one of the things we're  
21 going to figure out today is a schedule to get this  
22 thing moving. The idea that these discovery requests  
23 were served back in November 2011 and really nothing  
24 has happened is not a way to move a case forward.

1 We're going to start moving this case forward.

2           You guys ought to think really hard  
3 about your positions realistically as this case starts  
4 moving forward. It's clear you guys had a business  
5 relationship that was a complete disaster. The causes  
6 of that disaster are unclear. There are certainly  
7 some pled causes of disaster that could conceivably  
8 give rise, if the facts play out, to liability.  
9 Whether you can collect against this dude, I don't  
10 know. He -- his pattern of behavior in this case is  
11 not consistent with a guy with significant free cash  
12 flow. Maybe he's got a lot of assets. Maybe you  
13 really want to be cruel and take his house. But it's  
14 not clear to me, unless the -- I'm going to forget the  
15 name of the -- I don't know how to pronounce --

16           MR. SPINGOLA: Hille.

17           THE COURT: Is it Hille or Hille?

18           MR. SPINGOLA: Hille.

19           THE COURT: Hille. You know, unless  
20 the Hilles are vindictive and just wanted to prove a  
21 point, it's not clear to me what they get at the end  
22 of the rainbow, you know, and we have to find out  
23 about this capital call stuff. It seems to come  
24 pretty late in the game after a lot of things are

1 already done, but that's obviously fact issues.

2           So it's hard for me to believe that  
3 given what went down and given -- you know, unless  
4 this guy has secreted cash funds somewhere or has lots  
5 of money from prior hedge fund experience, things like  
6 that, it's really hard for me to believe the cost of  
7 litigating this case is going to play out. I just  
8 don't see it.

9           So -- but I also don't think that your  
10 clients are coming to grips with that fact, which is,  
11 I think, why nothing has happened with the case and  
12 why we're here.

13           So what we're going to come out of  
14 here today with, I'm going to resolve the motion to  
15 compel for you, and then we're going to come out with  
16 a schedule, and we're going to start moving this case  
17 forward, and people are going to have to deal with  
18 this. They're going to have deal with it as a  
19 business matter. They're going to have to deal with  
20 it as a litigation matter, but it's just not going to  
21 sit on my docket.

22           MR. LERUM: Your Honor, if I may.

23           THE COURT: Uh-huh.

24           MR. LERUM: About two or three months

1 ago, on behalf of the defendants/counterplaintiffs we  
2 did serve requests for documents as well. And they've  
3 just been outstanding, literally waiting for a case  
4 management conference.

5 THE COURT: Okay. Well, what I have  
6 in front of me -- do you guys want to tell me -- I've  
7 read the motion to compel. I've read the response.  
8 Do you-all want to tell me any more about it?

9 MR. SPINGOLA: Your Honor, I think  
10 from our perspective -- let me -- let me take a step  
11 back for a moment. I think all of your points are --  
12 are well-taken, and we're aware of a lot of what you  
13 have mentioned. And from our perspective, what we --  
14 what our clients have wanted all along here is  
15 information.

16 THE COURT: Uh-huh.

17 MR. SPINGOLA: We don't know what  
18 happened with this business in many respects. We know  
19 we put in a lot of money. We may or may not get any  
20 of it back, but what we would like is some  
21 understanding of what happened. And that's really  
22 what we've been asking for all along, even  
23 prelitigation. Mr. Lerum wasn't involved at that  
24 time. And that -- that really is the impetus for the

1 lawsuit, because we felt that we weren't getting  
2 information.

3           We had a very good working  
4 relationship with our former opposing counsel, Katten  
5 Muchen. I think the reason why the case sat here is  
6 because counsel on both sides appreciated some of the  
7 comments that you've made, and we were trying to work  
8 through an exchange of information. It was -- we were  
9 making progress, but it was -- it was difficult.  
10 Katten was doing its job, but we were making progress.

11           And then I think -- and I think both  
12 sides felt probably, unstated, that litigating this  
13 case out to the bitter end is not worth it, and that's  
14 why we're still at the pleading stage at this -- at  
15 this point.

16           We filed a motion to compel because,  
17 once again, we're much more interested in getting the  
18 information so we can some clarity and peace here as  
19 to what happened. Whether we get our money back or  
20 not, who knows. I mean, that's why we haven't filed  
21 motions to dismiss and spent money on those kinds of  
22 things.

23           About four months ago, you entered; is  
24 that right? Three months ago?



1 MR. LERUM: That's about right.

2 MR. SPINGOLA: I think it was at that  
3 point we've had very little contact with Mr. Lerum,  
4 very little dialogue. And it's, sort of -- whatever  
5 progress we had made with Katten Muchen just sort of  
6 stopped at that point, and we've made no progress  
7 toward an exchange of information. In fact, I would  
8 say it's gone the other direction. If you read the  
9 response to our motion to compel, there are  
10 accusations in there and things that were not present  
11 at all when I was working with Katten prior.

12 Now to the motion to compel. Again,  
13 this is just our effort to get what we view are the  
14 documents of the partnership. And we're happy to have  
15 a protective order. We don't feel that we've asked  
16 for anything that's -- I don't think there's any  
17 challenge to relevance in the response that --

18 THE COURT: Well, there's some, but  
19 it's -- it's the challenge on things like -- or at  
20 least the objections to relevance were to things like  
21 the actual trading algorithms.

22 MR. SPINGOLA: Right. And that's --  
23 so on that, for example, that's why we mention the  
24 protective order. And we can even have an Attorneys

1 Eyes Only. And we did submit a protective order to  
2 the other side, probably almost a year ago. And it  
3 just sat there.

4 This was Mr. Kemnitz, not you.

5 And so from our standpoint, we would  
6 just like them to put everything on the table. That's  
7 why we brought the motion. We feel it's all relevant  
8 and --

9 THE COURT: Why do you need the  
10 trading algorithms?

11 MR. SPINGOLA: We want to know what's  
12 going on. We paid for it. We'd like to see what --  
13 you know, what the product of our investment is. We  
14 don't even know if they're doing business at this  
15 point. For all we know, they are doing business. And  
16 maybe Mr. Taylor is making money. We don't know how  
17 his lawyers are getting paid. We just -- we just need  
18 full disclosure of information. That's really all --  
19 that's all what we're asking for.

20 THE COURT: Uh-huh.

21 MR. SPINGOLA: And we feel we're  
22 entitled to it.

23 THE COURT: Now, have you gone through  
24 the list of, I almost want to call them supplemental

1 responses that are in pages 5 through 8 of this Ulric  
2 Taylor declaration to decide whether any of these  
3 things, you know, answer your concerns?

4 MS. SMITH: We have reviewed those,  
5 Your Honor. And in reviewing those -- and I think, as  
6 Your Honor probably noticed, many of them, it's from a  
7 layperson's perspective, when he says, Mr. Taylor  
8 says, "Well, I don't" -- "I'm not a lawyer. I'm not  
9 an accountant. I don't know the answers." But there  
10 are accountants who were under the partnership's  
11 control that he could go to for that information.

12 So with that in mind, we do not feel  
13 that those answer many of our issues. On many of the  
14 interrogatories, when we asked for particular  
15 information, when the responses were given back in  
16 December and November of last year, they said that  
17 they would produce additional documents. Those have  
18 never been produced to us, and they still have not.

19 THE COURT: All right.

20 MR. SPINGOLA: The last point I would  
21 make, Your Honor, is to respond to one other thing  
22 that you said, is that The Hille Foundation, they're  
23 not vindictive people. The desire here is not to, you  
24 know, squeeze every last penny. I think that if we

1 could get responses and discovery and full disclosure  
2 of the information out on the table under cover of  
3 protective order, I think that would go a long way to  
4 resolving the case.

5           THE COURT: Yeah. I assume -- if I  
6 had to guess, the issue from your side in the first  
7 instance is was this a case of venality or was this a  
8 case of incompetence, because people react differently  
9 to those issues. And at least -- I mean, you guys, as  
10 I said, pled stuff that at least parts of the  
11 complaint I think would survive a motion to dismiss.  
12 Some part of it is going to go forward regardless  
13 because some of these things are, as you've plead  
14 them -- and I don't know whether they're true or  
15 not -- conceivably consistent with either. You know,  
16 some of them might just be, as you've plead them, at  
17 least, waste. Some of them might be sort of the type  
18 of -- of stupid decision that is protected by the  
19 business judgment rule and, therefore, we don't  
20 question whether or not it's -- you know, was really,  
21 you know, stupid, in fact, even though it may look  
22 stupid with hindsight. But some of this stuff we  
23 don't know, I mean, as I say. So I imagine that part  
24 of that is -- is where your clients' heads are, at

1 least I would hope where their heads are.

2 MR. SPINGOLA: Yes.

3 THE COURT: All right. So Mr. Shrum  
4 or Mr. Lerum, what's your thoughts on this?

5 MR. LERUM: Thank you, Your Honor.

6 We have a little different view. Same  
7 objectives but different view.

8 My client consistently in the past has  
9 provided full disclosure to Kajeer Yar and to The  
10 Hille Foundation throughout this business  
11 relationship. I think as he said in his affidavit,  
12 there were -- there was at least one and perhaps two  
13 different occasions when Mr. Yar, who officed with, at  
14 least for awhile, with Mr. Taylor in the offices in  
15 Chicago, boxed up all the financial records, brought  
16 them to Tulsa, Oklahoma, for analysis, reorganized  
17 them, then sent them back.

18 There was a meeting, a settlement  
19 conference in December, I believe, or November --  
20 December of 2011. And before that, as you can see  
21 from the e-mails and the attachments to Mr. Taylor's  
22 affidavit, the foundation demanded to see additional  
23 financial records, which he provided them and copies  
24 which were attached. And those included financial

1 statements; expense reports; detailed, itemized  
2 expenses, check numbers. I believe he also gave check  
3 ledgers at the time or he brought them to the meeting.

4           In his affidavit he attests to the  
5 fact that all the financial records of this business,  
6 which, unfortunately, was not very long lived but  
7 maybe a year, year and a half, certainly not more than  
8 two years, are in the hands of the foundation. And it  
9 is burdensome for him because he's now borrowing --  
10 literally borrowing money from his mother to pay his  
11 legal fees. It would be burdensome for him to go back  
12 and completely reproduce everything, Bates-stamp  
13 everything, flyspeck everything, when all those  
14 financial records have been produced.

15           THE COURT: What does he have and  
16 where is it?

17           MR. LERUM: Okay.

18           THE COURT: Does he still have access  
19 to this office space or is it now gone?

20           MR. LERUM: It's now gone.

21           THE COURT: So where are records kept  
22 at this point?

23           MR. LERUM: He has them, and what --  
24 and what he -- what has not been produced are

1 financial records of the business since November of  
2 2011, which he can produce and, as he said in his  
3 affidavit, he's willing to produce. They closed the  
4 doors in May of 2012. They just couldn't operate  
5 anymore. They didn't -- didn't --

6 THE COURT: Okay. Take off the  
7 adjective "financial" from your responses. What does  
8 he have about the business in terms of records that he  
9 has retained?

10 MR. LERUM: He has the e-mails in his  
11 computer which he tells me about 99 percent of which,  
12 except -- well, since -- except when -- when -- except  
13 from the time the lawsuit was filed, copies have been  
14 sent to Kajeer Yar. So a lot of those e-mails are  
15 already in the hands of the foundation. But there  
16 are --

17 THE COURT: We'll get to that. So  
18 he's got -- is this a laptop? Is this a server?

19 MR. LERUM: It's a server, right.

20 THE COURT: It's a server.

21 MR. LERUM: I think it's just a desk  
22 computer, right.

23 THE COURT: Okay. Is there one  
24 computer that he has that all this stuff is on?

1 MR. LERUM: I think so, yes.

2 THE COURT: Okay. Does he have any  
3 hard copy paper files?

4 MR. LERUM: I don't know if he does.  
5 I don't think -- if he does, it's not very much.

6 THE COURT: Okay. Well, the -- the  
7 threshold problem that we're having is that you don't  
8 know this.

9 MR. LERUM: Well, I know about his --  
10 all the e-mails in the computer.

11 THE COURT: Well, actually you didn't  
12 it sounded like you had had perhaps a conversation  
13 with him where he had told you generally that a lot of  
14 this stuff had gone to other people. Is that --

15 MR. LERUM: I'm saying he still -- we  
16 could retrieve the e-mails from his computer, if -- if  
17 that's what you're asking. I know that. We can.

18 THE COURT: Okay.

19 MR. LERUM: Okay? He may have hard  
20 copy -- I believe he does have some -- in terms of  
21 what he's printed up.

22 THE COURT: Not -- but what does he  
23 have? Like, are there -- is there a file cabinet  
24 somewhere? Are there boxes?



1 MR. LERUM: I would say that he -- he  
2 has --

3 THE COURT: Do you know?

4 MR. LERUM: I don't.

5 THE COURT: See, this is the problem.

6 MR. LERUM: Okay.

7 THE COURT: Because when someone makes  
8 burdensomeness objections, one actually has to, as an  
9 attorney, have a good faith basis for that, which  
10 means one actually has to have assessed the burden.

11 MR. LERUM: With respect --

12 THE COURT: You're not -- you are not  
13 in a position to tell me whether or not this is  
14 burdensome.

15 MR. LERUM: If -- if I may, Your  
16 Honor, I have been to his office and I have seen the  
17 stacks of financial records in files which he showed  
18 to me, and he said, "I have already sent these records  
19 to the foundation." So I have seen them.

20 THE COURT: Where is his office?

21 MR. LERUM: Well, he has moved. He's  
22 now an employee of a trading firm.

23 THE COURT: What firm?

24 MR. LERUM: I don't have it off the

1 top of my head, Your Honor.

2 THE COURT: Okay. Where did you meet  
3 with him?

4 MR. LERUM: I met with him at the --  
5 at the offices of Foundry Hill before those offices  
6 closed.

7 THE COURT: All right.

8 MR. LERUM: So -- so --

9 THE COURT: Is that where he showed  
10 you these -- these financial records?

11 MR. LERUM: Yes, Your Honor.

12 THE COURT: What was the volume of  
13 those financial records?

14 MR. LERUM: I would say the volume  
15 would consist of two, maybe three file cabinets. I  
16 mean, they were -- they were stacked up on the floor  
17 when I saw them. In files. I mean --

18 THE COURT: What happened to those  
19 records when the offices were shut down?

20 MR. LERUM: I believe he took them  
21 home. I mean, he still has them. He tells me he  
22 still has them.

23 THE COURT: But you haven't seen them  
24 since that meeting.

1 MR. LERUM: I have not seen them.

2 THE COURT: When did that meeting take  
3 place?

4 MR. LERUM: That meeting took place in  
5 the spring of 2012, before the offices closed. So I  
6 have seen those records. I mean, they -- they are  
7 voluminous. So, I mean ... And, you know, I mean,  
8 when he talks about the -- I mean, all the -- the  
9 check ledgers, the receipts; and then he showed me how  
10 they were reorganized and sent back to him --

11 THE COURT: Why is that a problem?

12 MR. LERUM: Well, it's -- if we've got  
13 to go through them and redo everything all over,  
14 again, I mean, it's just -- it's burdensome from the  
15 standpoint of Bates-stamping them and then referring  
16 them in answers to interrogatories, when they already  
17 have the documents.

18 THE COURT: Why can't you make them  
19 available to your friends to review? They'll identify  
20 for you what they want to copy.

21 MR. LERUM: Oh, we can make them  
22 available to review. I have no problem with that.

23 THE COURT: Have haven't you done  
24 that, then?

1                   MR. LERUM: They haven't -- Your  
2 Honor, they really haven't made an effort to confer  
3 with me and ask me to do that.

4                   THE COURT: I don't buy that. Look,  
5 you need to start working this case, and you need to  
6 talk to Mr. Shrum about what this Court expects,  
7 because this is not being handled the way this Court  
8 expects.

9                   All right. First of all, as a general  
10 matter, I'm granting the motion to compel. There was  
11 not a persuasive argument made in response to any of  
12 the categories of documents requested or the  
13 interrogatories requested. The general objections  
14 that were lodged were boilerplate, nonspecific and  
15 effectively said nothing whatsoever.

16                   So just to take some examples. No. 2,  
17 "Defendants object to these Interrogatories to the  
18 extent they seek information that is solely in the  
19 possession, custody or control of any person other  
20 than [the] Defendants." That's fine.

21                   Next one. "Defendants object to these  
22 Interrogatories as unduly burdensome and oppressive  
23 insofar as they already" -- "as they seek information  
24 already in the possession, custody or control of

1 Plaintiffs."

2                   That's not a valid objection. It's  
3 not. It's not a valid objection for two reasons.  
4 First of all, unless your client is psychic, he  
5 doesn't know what is in the possession of the other  
6 side. He may think he sent something to the other  
7 side during the course of the business, but he doesn't  
8 know if they still have it. And if the shoe was on  
9 the other foot and they were making this objection and  
10 you thought they had the only copy of the document --  
11 perhaps you had it once, but you no longer have it --  
12 you would be incensed that they would be withholding a  
13 document based on their belief that you must still  
14 have it somewhere. This, sort of, you know, again,  
15 psychic  
16 we-know-you-must-have-it-even-though-we-don't-know-  
17 what-you-have objection is not valid.

18                   "Defendants object to these  
19 Interrogatories, including any" -- this is No. 5.  
20 "Defendants object to these interrogatories, including  
21 any definitions, instructions or other matter  
22 contained therein, to the extent they purport to  
23 impose obligations beyond those established by the  
24 Federal Rules of Civil Procedure."

1                   MR. LERUM: I didn't write that. I  
2 don't know who.

3                   THE COURT: I mean, you might have  
4 fixed it. This is a Delaware court. The Federal  
5 Rules don't apply. That's sloppiness on forwarding  
6 counsel. That's sloppiness on Delaware counsel.

7                   It's also not a good objection because  
8 that doesn't say anything. You actually have to tell  
9 people what you're planning not to do. If you think  
10 something is an obligation beyond those established by  
11 the applicable rules, in what way is that? This is  
12 simply -- this is the type of objection that forces  
13 your friends to write a letter saying "What do you  
14 mean by that?" and you to write a letter saying "It's  
15 a standard objection" and them to write a letter  
16 saying "Well, did you withhold anything about it?" and  
17 then you to write a letter saying "Well, no, but we  
18 reserved our rights to." All right? Well, then,  
19 you've just sent four letters and spent God knows how  
20 much time establishing something you should have  
21 addressed in your first response.

22                   Answer No. 2, I don't know what this  
23 objection is to the idea that it seeks a narrative  
24 response. Interrogatories are allowed to seek

1 narrative responses.

2           You are absolutely wrong in terms of  
3 your view of Rule 33(d). The idea that you don't have  
4 to take specific -- identify specific documents is  
5 fundamentally incorrect. It's fundamentally incorrect  
6 based on the cases that they cited. It's so  
7 fundamentally incorrect that one call to Mr. Shrum  
8 should have disabused you of that notion. You are not  
9 absolved from the positions he takes. You are equally  
10 responsible for the positions he takes.

11           MR. SHRUM: Yes, Your Honor.

12           THE COURT: All right. It's clear to  
13 me that -- that one of the questions in this case is  
14 whether Mr. Taylor actually did anything. In other  
15 words -- or -- or -- or what he did. This man was  
16 hired, as alleged in the complaint, and he made  
17 promises about the development of code and a series of  
18 algorithms. One of the questions is whether he  
19 actually used any of the money to deploy and develop  
20 meaningfully those algorithms or whether he, in fact,  
21 spent it all on expensive leases for space that he, as  
22 alleged in the complaint, didn't need or on things  
23 like -- you know, I looked at some of the -- one of  
24 the receipts that was -- I think actually you put in.

1 There's a lot of travel and meals on there. Maybe  
2 it's legitimate, but I don't know. It sure isn't a  
3 trading algorithm.

4 Now, I see in your -- your LP  
5 agreements that he was entitled to a \$10,000-a-month  
6 draw. Maybe some of his meals could have come out of  
7 that. I also saw in his -- in your LP agreements that  
8 he was entitled to reasonable business expenses.  
9 Maybe those were reasonable business expenses.

10 But when you're a fiduciary for  
11 someone, as he was -- and these agreements, they limit  
12 you to all duties that are -- to only duties that are  
13 in the agreement, but then they say in the agreement  
14 that you have the same duties as a director. So your  
15 fellow, Mr. Taylor, has full-boat fiduciary duties,  
16 including a full duty to account for this information.  
17 He's -- he's the guy who's got to come forward and  
18 say, "You know what. When I had all those meals and  
19 when I took those trips that show up on that credit  
20 card, that was a legitimate expense."

21 But what got me on this is the  
22 objection to the idea that you don't have to produce  
23 information about the algorithms or, you know, what  
24 people were doing with the algorithms, et cetera.



1 That is overruled.

2 Now, it is not at all clear to me --  
3 hold on. Let's keep going through this.

4 All right. We'll get to scheduling,  
5 but when somebody says they're going to produce  
6 documents, you actually have to produce documents.  
7 You don't wait a year and have a motion-to-compel  
8 hearing without having produced anything.

9 So, you know, Interrogatory No. 12,  
10 your answer was you're going to produce documents. If  
11 when you got into the case you wanted to take the  
12 position that identifying expenses "... by month, that  
13 the Defendants contend are properly attributable to  
14 category (i) of the Certificate's definition of Class  
15 A Expenses, since April ... 2010," you know, if you  
16 wanted to make some different objection to that and  
17 say "No, we're not producing that," you could have  
18 done that. Nobody did it.

19 All right. You will also supplement  
20 Interrogatory No. -- your answer to Interrogatory  
21 No. 14 and answer to Interrogatory No. 15. These  
22 answers say nothing. So Interrogatory No. 14 said,  
23 "Identify the precise percentage or other calculation  
24 used for the allocation to WCV of the overhead,

1 operating and other expenses described in category  
2 (ii) of the Certificate's definition of Class A  
3 Expenses, for the 2010 fiscal year."

4           After your general objections, all of  
5 which were meaningless, and then you say,  
6 "Notwithstanding the foregoing specific objections,"  
7 of which the only objection, specific objection, was  
8 another relevance objection, which stated in exactly  
9 the same words as one of your general objections, you  
10 say, "... Defendants state that WCV was allocated a  
11 proportional amount of overhead, operating and other  
12 expenses based on its consumption and usage as  
13 reflected in documents ...."

14           Proportionate to what? Proportionate  
15 to its original investment in the funds that were  
16 specifically allocated to one trading algorithm?  
17 Proportionate to its investment in the overall  
18 venture? Proportionate to the number of employees  
19 that were working on the one trading algorithm for  
20 which WCV's funds were supposedly being used? That is  
21 a nonanswer. So you will supplement that.

22           The same analysis applies to No. 15,  
23 which also asks for allocation issues.

24           And I really think you ought to go

1 back and look at all these, because I thought the  
2 interrogatory answers were woefully inadequate.

3           In terms of the document requests.  
4 Okay, general objection No. 4: "Defendants object to  
5 the Document Requests to the extent they seek  
6 documents that are: (a) a matter of public record  
7 ...."

8           What does that mean? Mr. Lerum, what  
9 does that mean?

10           MR. LERUM: Your Honor, I -- without  
11 looking at 4 directly, I believe --

12           THE COURT: Well, your guy is  
13 asserting it as an objection, which means -- I mean,  
14 you're asserting -- you're asserting it as an  
15 objection. What does it mean --

16           MR. LERUM: Does 4 ask for documents  
17 that --

18           THE COURT: No. This is a general  
19 objection. If you look -- just to help you get to  
20 where you're supposed to be, plaintiffs' opening  
21 brief, Exhibit C.

22           MR. LERUM: I'm going there, Judge.

23           Your Honor, I can only surmise that  
24 the Katten Muchen firm at the time believed that the

1 document requests asked for documents that were of a  
2 public nature.

3 THE COURT: Like what?

4 MR. LERUM: I -- again, I don't have  
5 the opening brief in this pleadings binder.

6 THE COURT: Next time let's be a  
7 little bit better prepared. Next time let's be a  
8 little more knowledgeable about the case. Next time  
9 let's be a little bit more knowledgeable about the  
10 issues that are going to be discussed.

11 When you object because something is a  
12 matter of public record, that is not a valid objection  
13 unless you say "These are the documents, such as SEC  
14 public filings, that we are not producing because they  
15 are voluminous and a matter of public record." Okay?  
16 If you tell people what you're not producing, that's a  
17 valid objection. Something that is a matter of public  
18 record could range anything from court filings to  
19 information about somebody that you might be able to  
20 find on Facebook, to, you know, again, public  
21 documents with agencies.

22 I mean, it is a nonsubstantive  
23 objection. And I don't even know why people make it.  
24 They don't even follow it. Why? Because when you've

1 got stuff that's public record, you like to produce it  
2 because it makes your production look better. You  
3 produce all these thousands of pages of public junk so  
4 you can then come in to me and say "We produced 20,000  
5 pages," notwithstanding the 18,000 of it were publicly  
6 available chaff. So this is an objection that is  
7 nonsensical and is overruled.

8 (b) is the psychic objection we've  
9 already discussed.

10 (c), "equally available to Plaintiffs  
11 under applicable federal state law," that's another  
12 one I don't get. So if either of you could make a  
13 FOIA request but you happen to have it in your files,  
14 you're not going to produce it because they could make  
15 their own FOIA request. Again, there's no -- no  
16 telling what you're withholding or not withholding  
17 from this.

18 "Obtainable from another source that  
19 is more convenient, less burdensome or less  
20 expensive," again, you're not telling them anything.  
21 If you identify the source, if you say "We are not  
22 going to go collect documents from Katten because you  
23 could just as easily serve a subpoena on Katten and  
24 get their files," that's telling them "Hey, if you

1 want Katten documents, you got to go get them  
2 yourself." This is just noise.

3 5, without explaining what you think  
4 isn't relevant or reasonably calculated to discovery  
5 of admissible evidence, it's noise.

6 "To the extent the requests are vague,  
7 ambiguous, or overly broad," that's noise.

8 "To the extent they're unduly  
9 burdensome or oppressive" without saying how, that's  
10 noise.

11 "Cumulative or duplicative of other  
12 discovery requests . . .," that's noise.

13 Then we've got -- at least you guys  
14 reference the right rule to the Court in this request  
15 as opposed to the other one.

16 All right. So, again, Response No. 1  
17 is a "we won't produce." That's overruled, because  
18 stuff is -- the source code and similar material is  
19 relevant because part of the question here is what  
20 your guy did. Did he actually do anything other than  
21 rent office space?

22 You-all need to figure out the end  
23 date for your requests. I'm not going to enforce  
24 something that says "to the present." It ought to be

1 something like "to the end of the business."

2 MR. SPINGOLA: As long as we're -- we  
3 would agree with that, Your Honor, as long as we feel  
4 comfortable that we know the end date of the business.  
5 Up until now we haven't even known if they were  
6 conducting business or not.

7 THE COURT: Then pick -- talk to  
8 Mr. Lerum, pick a date.

9 MR. SPINGOLA: Sure.

10 THE COURT: All right. Now, I'm not  
11 going to go through all of these document requests  
12 like I did the interrogatories, but none of them were  
13 terribly offensive to me.

14 Mr. Ulric -- Mr. Taylor, Ulric Taylor,  
15 needs to realize that he's now in litigation. The  
16 fact that he previously provided financial records  
17 does not absolve him of his obligations in litigation.  
18 His counsel needs to realize that he has obligations  
19 in litigation, including an obligation to cooperate  
20 with the other side to conduct discovery so that I  
21 don't have to do something like this.

22 So if -- if it is burdensome for your  
23 person, because of his financial status, to copy and  
24 Bates-number all these documents, he can tell your

1 friends that they are free to come and image his  
2 computer and they are free to come and make their own  
3 copy of whatever documents they want. That is a  
4 cost-effective way to produce the information, okay?  
5 It is not your -- you are not fulfilling your  
6 obligations if in response to a request for documents  
7 you say you are going to produce documents and then  
8 you sit like the immoveable object until your friends  
9 have to file a motion to compel.

10 MR. LERUM: Your Honor, in all due  
11 respect, as you probably know from the documents, I  
12 was brought into the case --

13 THE COURT: Yeah. And they gave you  
14 time and you -- you said you were going to take three  
15 weeks --

16 MR. LERUM: Right.

17 THE COURT: -- to get up to speed, and  
18 then what happened?

19 MR. LERUM: Well, three weeks, I  
20 underestimated the time -- but believe me, as you can  
21 see from these documents -- about the nature of the  
22 case and the complexity of the case. And I just  
23 didn't feel like I had enough of a command over the  
24 case within that three weeks.



1           But what I learned after that initial  
2 conference was that there was, in fact, this block of  
3 missing documents taken from the offices of Katten  
4 Muchen. And I really wanted to know what they were,  
5 which is why I -- I said I'd be happy to confer once I  
6 saw those documents and what they were. The motion  
7 was filed. Those documents weren't produced to me  
8 until much later, until, like, a month or so later.

9           So, you know, I mean, again, I'm  
10 inheriting problems created by other lawyers, other  
11 situations; but I felt that I couldn't really make an  
12 intelligent decision about what was produced, what was  
13 not produced without seeing those documents.

14           So that explained why there wasn't a  
15 communication, because the motion was filed before I  
16 had an opportunity to receive those documents and we  
17 didn't have copies of those documents.

18           THE COURT: When did you receive them?

19           MR. LERUM: Not until the day before I  
20 agreed to the briefing schedule for the motion to  
21 compel.

22           THE COURT: So what date was that?

23           MR. LERUM: It's -- I know there have  
24 been several extensions, but it was ... Well, I'm sure

1 you have a date.

2 MS. SMITH: I do. It was May 11th.

3 THE COURT: Okay. What date is it  
4 now?

5 MR. LERUM: I know. I mean, there  
6 have been --

7 THE COURT: What's been happening in  
8 the intervening time?

9 MR. LERUM: A lot of extensions to  
10 file a reply brief.

11 THE COURT: Why haven't you -- now  
12 that you had gotten the documents, of which there was  
13 not -- it was what, 350-some -- like --

14 MS. SMITH: 395. But, Your Honor --

15 THE COURT: Hold on. That's not an  
16 overwhelming amount of documents. If your  
17 predilection, your initial prediction, your -- your  
18 view was that you couldn't meet and confer with these  
19 folks until you got those documents, you had them for  
20 six months. Once you had them, you actually had to  
21 sit down and do what you said you'd do.

22 MR. LERUM: And I did that with my  
23 client, and I think we made a good faith effort to --  
24 to respond to the interrogatories and the document

1 requests in his affidavit. In other words, we  
2 basically answered a lot of these things in detail in  
3 the response.

4 THE COURT: Yeah, but -- but -- see,  
5 this is, one, you definitely provided some information  
6 in the response. You continued to maintain this  
7 financial versus nonfinancial distinction, you know.  
8 But, again, your -- your conclusion was apparently at  
9 that point "We don't have to produce any more  
10 documents, and we're not going to try to resolve any  
11 of these other disputes."

12 What -- what one would have wanted in  
13 that -- in that instance is not for you to lob all  
14 this stuff in in your opposition to the motion to  
15 compel but actually sit down with these folks and work  
16 through it and say, "You know what. I've looked at  
17 these 350 documents now. And you've got this. You  
18 don't have this. I'll get you this. Why do you need  
19 this?" A meet-and-confer should not be handled  
20 through briefing. A meet-and-confer should be handled  
21 at a table like this where I'm not there. It  
22 shouldn't be handled through an opening brief, an  
23 answering brief, and a reply brief.

24 Now, honestly, I think you need to

1 make -- start making more use out of Mr. Shrum.

2                   And, Mr. Shrum, I think you need to be  
3 sufficiently involved in the case so you don't have to  
4 see what side of the V you're on when you come in;  
5 clear?

6                   MR. SHRUM: Yes, Your Honor.

7                   THE COURT: Because we've got  
8 discovery expectations in this Court. You're not  
9 meeting them.

10                   So I'm granting the motion to compel.  
11 I am shifting fees.

12                   Where -- let's talk scheduling. How  
13 soon can you-all put answers to the claims and  
14 counterclaims on file?

15                   MR. SPINGOLA: 21 days.

16                   THE COURT: Why do you need that long?

17                   MR. SPINGOLA: 14 days.

18                   THE COURT: Let's do two weeks. All  
19 right.

20                   MR. SPINGOLA: It may be a motion --

21                   THE COURT: Well, you can -- you  
22 can -- answer what -- again, I've looked at these  
23 things. The -- the -- whether or not you guys  
24 complied with -- timely with your obligation to

1 provide additional capital is a fact issue. I have to  
2 give him the inference at the pleading stage. I'm not  
3 interested in a useless motion to dismiss.

4 MR. SPINGOLA: Understood.

5 THE COURT: Now, what you can do, if  
6 you really think that there's some argument there as a  
7 matter of law, answer and then assert it as a matter  
8 of law. Do it as a 12(c), judgment on the pleadings;  
9 but I'm not wasting time with motions to dismiss.

10 And the same way the other way. You  
11 know, there -- I read these agreements. There's a lot  
12 of agreements. And I would love for you-all to come  
13 up with names for these entities that were not  
14 three-letter acronyms. Let's -- like, use some  
15 functional names, like call them electronic trading  
16 and high -- I guess it would be high velocity trading  
17 and superhigh velocity trading. I don't know.  
18 Something that is functional so that I don't have to  
19 go back and remember that FHC is Ulrich's entity and  
20 FHT is somebody -- is a different entity in the  
21 structure and FHET is a third entity in the structure  
22 and Holding Company is someplace else, et cetera; all  
23 right? Let's, like, use names that I can figure out  
24 and remember. Ms. Platia can probably help with that;

1 right?

2 Now -- so if you guys want to file  
3 motions, let's do the motions contemporaneously with  
4 discovery, and I'll give you a hearing on the motions  
5 within 60 days. So get them briefed.

6 MR. LERUM: Judge -- excuse me, Your  
7 Honor. I'm going to join my opposing counsel on the  
8 21 days.

9 THE COURT: No.

10 MR. LERUM: Okay.

11 THE COURT: Particularly no for you,  
12 who has had this pleading for forever.

13 Now, how many months do you-all need  
14 to discover the case? Let me ask -- let's break it  
15 down. Let's do document discovery first. Now that  
16 Mr. Lerum and Mr. Shrum are going to get in the game  
17 and start working on documents for you-all, how much  
18 time do you need to gather documents, review them, et  
19 cetera?

20 MR. SPINGOLA: A couple of months,  
21 two, three months.

22 THE COURT: Okay. How about from your  
23 side?

24 MR. SHRUM: About the same. We can do

1 it at the same time.

2 THE COURT: Okay. Let's say since --  
3 sounds like at least the big thing is going to be this  
4 man's server. That's where I predict most of the  
5 volume will be.

6 MR. LERUM: What about their servers?

7 THE COURT: What about you serving  
8 some discovery requests --

9 MR. LERUM: I did. We did.

10 THE COURT: -- and making a motion if  
11 you can't talk about them? I mean, look, what I have  
12 in front of me today is your intransigence. If  
13 they've been intransigent, that's a problem; but I  
14 would suspect that, particularly after today, they're  
15 going to have a good sense what they have to do in  
16 terms of producing documents and collecting documents  
17 and not making silly objections.

18 So let's do -- let's do two months for  
19 paper discovery and electronic discovery. And then  
20 let's do two months for depositions. And then once  
21 you get to that point, why don't you call my chambers  
22 and get a date -- get some dates for trial, because at  
23 that point you'll have a better sense.

24 Again, hopefully, you-all will have

1 resolved this, because this seems to me like one of  
2 those colossal business disasters that everyone should  
3 probably put in their rearview mirror and move on.  
4 But if, indeed, there is some self-dealing that would  
5 result in, you know, recovery and you think you've got  
6 a meaningful chance of recovery from this fellow,  
7 sure, I'll decide what I have to decide and we'll --  
8 it'll shake out however it shakes out. But I'm going  
9 to be -- I'm going to be really surprised. Again,  
10 this -- we'll -- we'll see, but -- but -- we'll see  
11 what happens.

12           And I'm not predetermining any of the  
13 facts yet. It could be that -- that this was not  
14 anything like what's alleged in the complaint. That  
15 does happen, but it sure seems like one of these  
16 classic situations where somebody got in over their  
17 head when -- where both sides weren't communicating  
18 perhaps as well as they could and where, you know, big  
19 dreams turned into disaster and now we're trying to  
20 fight about the pieces. And I'm not sure that  
21 there's -- you guys all have to decide whether there's  
22 pieces to fight about.

23           Mr. Lerum.

24           MR. LERUM: Yes, Your Honor. Back to



1 the algorithm. As you know, I didn't have a chance to  
2 address that this morning. And if I may, just a  
3 couple comments.

4 I know that you've ruled. But, at the  
5 very least, could your order today include a condition  
6 that the parties have entered a protective order  
7 cloaking these algorithmic codes with protection from  
8 any distribution to any party but for the lawyers?  
9 And counsel offered that today, Attorneys Eyes Only.

10 As you know from the pleadings, there  
11 are allegations -- and we do have evidence that will  
12 surface during discovery -- that one of the employees,  
13 a man by the name of Chris Preston, worked closely  
14 with Mr. Kajeer Yar, who was a limited partner, to  
15 basically take some of the intellectual property  
16 developed by the partnership and then developed a  
17 business plan with the foundation to compete with this  
18 business. We don't know how much of it was taken, but  
19 there's no contractual right that the limited partner  
20 has to this IP. They've conceded that in their reply  
21 brief. The documents were set up in that way.

22 And to guard against any further  
23 distribution or usage of this, I think a protective  
24 order is really important.

1 THE COURT: Ms. Platia, what do we  
2 normally do in this Court in this situation?

3 MS. PLATIA: A protective order is a  
4 routine tool.

5 THE COURT: And what do we normally  
6 have in a confidentiality stipulation in this Court  
7 when somebody says that a category of information is  
8 not just confidential but has real trade secret  
9 implications?

10 MS. PLATIA: Attorneys Eyes Only.

11 THE COURT: Do you think that you can  
12 manage to navigate this with Mr. Shrum and do the  
13 normal Delaware thing?

14 MS. PLATIA: Yes, Your Honor.

15 THE COURT: Great.

16 MR. LERUM: Thank you, Your Honor.  
17 Appreciate it.

18 THE COURT: All right. Any questions  
19 on anything else that we can solve for you-all today?

20 MR. SHRUM: Nothing here, Your Honor.

21 THE COURT: All right.

22 MR. SPINGOLA: Not for plaintiffs,  
23 Your Honor.

24 THE COURT: If you can't agree on an

1 amount of fees you get, put in an affidavit. There's  
2 a rule that covers it. Look at Aveta in terms of  
3 level of information you need to provide to the other  
4 side so that I can -- I don't have to send you back to  
5 provide more information and I can actually give you a  
6 ruling.

7 MR. SPINGOLA: Sure.

8 THE COURT: And, again, you know, I'll  
9 be surprised if everything you want isn't on this  
10 server. I would -- you know, who knows, but I would  
11 be willing to bet a lot of money that you image this  
12 server. I mean, this is a computer dude; right?

13 MR. SPINGOLA: Yeah.

14 THE COURT: That's where it's all  
15 going to be. So image the server, look at it, talk to  
16 your clients, figure out what's here.

17 Ms. Platia, the other thing I'd like  
18 you and Mr. Shrum to put together is an order putting  
19 in these dates --

20 MS. PLATIA: Uh-huh.

21 THE COURT: -- as a scheduling order  
22 so that they will hold. Clear?

23 MS. PLATIA: Yeah.

24 THE COURT: Great. Thank you,

1 everyone, for coming in.

2 MR. SHRUM: Thank you.

3 MR. SPINGOLA: Thank you, Your Honor.

4 (The proceedings concluded at 10:54 a..m.)

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CERTIFICATE

I, NEITH D. ECKER, Official Court Reporter for the Court of Chancery of the State of Delaware, do hereby certify that the foregoing pages numbered 3 through 44 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated, except for the rulings at pages 20 through 36, which were revised by the Vice Chancellor.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 24th day of September 2012.

/s/ Neith D. Ecker

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Official Court Reporter  
of the Chancery Court  
State of Delaware

Certificate Number: 113-PS  
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