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BEFORE THE ARIZONA CORPORAT

IN THE MATTER OF:)
)
TRI-CORE COMPANIES, LLC an Arizona)
limited liability company, et al.,)
)
Respondents.)

DOCKET NO.
S-20867A-12-0459
PROCEDURAL
CONFERENCE

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At: Phoenix, Arizona
Date: February 13, 2014
Filed: **MAR - 7 2014**

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Arizona Corporation Commission
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1 BE IT REMEMBERED that the above-entitled and
 2 numbered matter came on regularly to be heard before the
 3 Arizona Corporation Commission, in Hearing Room 2 of
 4 said Commission, 1200 West Washington Street, Phoenix,
 5 Arizona, commencing at 2:03 p.m., on the 13th of
 6 February, 2014.

7
 8 BEFORE: MARC E. STERN, Administrative Law Judge

9
 10 APPEARANCES:

11 For the Arizona Corporation Commission, Securities
 12 Division:

Ms. Stacy Luedtke
 Staff Attorney, Securities Division
 1300 West Washington Street
 Phoenix, Arizona 85007

15 For Tri-Core Companies, LLC, Tri-Core Business
 16 Development, LLC, and Jason Todd Mogler:

THRASHER JEMSEK
 By Mr. Bobby O. Thrasher, Jr.
 530 East McDowell Road, Suite 107-495
 Phoenix, Arizona 85004

19 For Jason Mogler:

Mr. Jason Mogler, Pro Per
 Tri-Core Companies, LLC
 Tri-Core business Development, LLC
 8800 East Chaparral, Suite 270
 Scottsdale, Arizona 85250

KAREN L. KESSLER, RPR
 Certified Reporter
 Certificate No. 50821

1 ALJ STERN: We'll go back on the record in the
2 matter of Tri-Core Companies, LLC, et al., in Docket
3 No. S-20867A-12-0459. My name is Marc Stern. I'll
4 preside today.

5 At this time, we're here on a couple of motions.

6 I guess, Mr. Thrasher, you're alleging you have
7 some sort of a conflict of interest with your remaining
8 clients in this proceeding, and the filing you made
9 contained the signature of your client, I know, but some
10 other --

11 So before we go further, we're going to take
12 appearances though. So on behalf of the Securities
13 Division.

14 MS. LUEDTKE: Stacy Luedtke.

15 ALJ STERN: Okay. And on behalf of -- I'm not
16 sure who you're on behalf of.

17 MR. THRASHER: I've been thinking about the same
18 thing, Judge. I'll just say Bobby Thrasher. At this
19 point I take the position I don't represent anyone.

20 ALJ STERN: Well, you haven't been --

21 MR. THRASHER: I haven't been -- I understand
22 your position, Judge.

23 ALJ STERN: Do you want to enter an appearance,
24 Mr. Mogler?

25 MR. MOGLER: Yes. I'm here.

1 ALJ STERN: Your here?

2 MR. MOGLER: I'm present. Defending myself,
3 sir.

4 ALJ STERN: All right. Mr. Thrasher, you know,
5 I saw your motion to begin with, and it didn't really
6 comply exactly with the requirements of some of the
7 various rules that govern this area, although it's, you
8 know, this is an administrative proceeding, that doesn't
9 mean we just walk away from these things.

10 The question is, I guess, you had your client,
11 or at least Mr. Mogler, sign, and I don't know whether
12 that document --

13 MR. THRASHER: Judge, I don't believe that it
14 does have a separate signature line for him to sign on
15 behalf of the other two entities, but we would be
16 requesting withdrawal on all matters as stated in the
17 reply.

18 And I do apologize for any substantive or
19 procedural miscues or missteps with regard to the
20 notice. Frankly, I did the best I could. I think the
21 reply explains exactly what's going on in -- I will just
22 add to it, if the Court will allow.

23 After this last hearing in October, we took
24 painstaking steps to make sure that this didn't happen
25 again. And I think those are outlined in the reply. I

1 don't fault Mr. Mogler. I think he was as diligent as
2 he could have been in getting these signatures. But in
3 no uncertain terms, I required these to be done. And I
4 think, unless these signatures by all members of each
5 respective LLCs were had, I have a potential conflict.
6 Actually, I don't have a potential conflict, I have a
7 conflict. I certainly have a conflict if Mr. Mogler and
8 the LLCs are found liable, because I think the remaining
9 members in the LLC itself have claims against
10 Mr. Mogler, and I think representation is directly
11 adverse now.

12 Having said that, if you look at Rule 1.7, it
13 allows for such representation if all of the, all of the
14 clients, i.e., the LLC and the members of the LLC, were
15 to sign. That's what we tried to do. It didn't get
16 done. And for those reasons, moving forward, I believe,
17 and my conversations with outside counsel and the ethics
18 bar, Ethics Counsel confirmed that it would be a
19 violation of 1.7. And as the Court noted in its
20 procedural, tenth procedural order, I have to comply
21 with Rule 1.16 which prohibits representation moving
22 forward if it violates an ethical rule, and that's what
23 this would do.

24 ALJ STERN: Which ethical rule would it --

25 MR. THRASHER: 1.7, Judge. It's noted in my

1 reply.

2 ALJ STERN: Okay. Now, what's the situation
3 here? You know, I took a look online about these LLCs.

4 MR. THRASHER: Uh-huh.

5 ALJ STERN: Apparently, there hasn't been much
6 activity on behalf of either of them lately. They are
7 not in good standing with the Commission in terms of
8 filing any reports or anything like that. I'm not even
9 sure they're validly in existence anymore, other than in
10 name only at this point.

11 Who are the members? It's Mr. Thrasher and who
12 else?

13 MR. THRASHER: Oh, Mr. Mogler. Let me tell you
14 who they are, Judge.

15 With regard to Tri-Core Companies, the members
16 are Jason Mogler Jim Hinkeldey and Vince Gibbons. With
17 regard to Tri-Core Business Development, the members are
18 Jason Mogler and John Halliday.

19 ALJ STERN: Wait. Mogler, Hinkeldey and --

20 MR. THRASHER: Gibbons, G-I-B-B-O-N-S.

21 With regard to Tri-Core Business Development,
22 Jason Mogler and Jon Halliday are the members.

23 ALJ STERN: Jason Mogler. Okay.

24 So none of these gentlemen will sign off. Is
25 that the situation?

1 MR. THRASHER: Mr. Mogler agreed to sign off and
2 originally agreed to sign off as the manager, but none
3 of the other members would agree to sign.

4 ALJ STERN: Who is the manager of these LLCs?

5 MR. THRASHER: Mr. Mogler is the manager of
6 each.

7 ALJ STERN: He's the manager of each.

8 MR. THRASHER: Uh-huh.

9 ALJ STERN: Doesn't a manager usually make the
10 decisions on the management and payment, representation,
11 et cetera, of these entities?

12 MR. THRASHER: I think he does, Judge. And that
13 was the, excuse me, the position that we originally
14 took, but after the problems that we encountered in
15 October, it became clear that we needed the other
16 members -- certainly there's only, at least in one,
17 there's two members, in the separate one there is only
18 three members -- of them to agree to sign.

19 ALJ STERN: Well, you know, as a matter of
20 practicality, let's say you have an LLC, now LLCs are
21 sort of the in thing instead of corporations because
22 they're a little bit easier to form, et cetera, and
23 there is less reporting requirements, and all of those
24 good things that LLCs can do.

25 MR. THRASHER: Uh-huh.

1 ALJ STERN: What happens if you have a thousand
2 member LLC? Are you going to run around and get a
3 thousand signatures?

4 MR. THRASHER: And, Judge, you have the exact
5 position that I have. That seems impractical, until
6 something happens. Ideally what would happen in this
7 case is, in a perfect world where there were unlimited
8 funds, each member of the LLC would have their own
9 attorney, and the LLC would have their own attorney.
10 When we got into -- and that's, frankly, ideal way to do
11 it. For practical purposes and the funds that were
12 available, that just couldn't happen. And so I was
13 willing to represent all of them as long as they
14 complied with my requirement that everyone, there was
15 full disclosure, everyone was aware of the
16 representation, they were aware of the conflicts, and
17 they waived them via the representation agreement.
18 Without that, Judge, I put myself and my license in a
19 difficult position. I can't do that.

20 These people are still alive. They are able to
21 sign. They refused to sign. And I'm not going to be
22 put in a situation where if Mr. -- they make claims
23 against Mr. Mogler later if Mr. Mogler loses, either as
24 the manager of the LLC or a separate member of the LLC,
25 and then they allege that somehow I didn't have the

1 authority to represent them, and now I better call my
2 carrier because I have got a problem.

3 So I have been put in a difficult situation. I
4 tried to remedy it as early as October. I was diligent,
5 as you can tell from my replies. I understand the
6 Court's concern because it was late. But, frankly, it
7 was late because I continued to try to get these
8 documents. They weren't forthcoming. I can't move
9 forward.

10 ALJ STERN: What is the Division's position on
11 all this?

12 MS. LUEDTKE: Judge, I guess, first of all, I'm
13 a little unclear on what exactly the conflict of
14 interest would be, since this is a manager managed LLC.
15 I think that we were going along the same lines with
16 that. So that would be my first issue.

17 My second issue is these LLCs, as you stated,
18 have not changed in their membership or managerial
19 status since 2007. So I'm not really sure what happened
20 in October that changes anything. He keeps referencing
21 that there was a change in October that made everything
22 different, and I'm not 100 percent sure what that is.

23 And then there's references to speaking with
24 Mr. Hinkeldey about attempting to get this joint
25 representation agreement, but no reference to

1 Mr. Halliday or Mr. Gibbons. I know that Mr. Hinkeldey
2 showed up here on the 8th with Mr. Mogler thinking that
3 there was a hearing still going on.

4 ALJ STERN: The 8th or the 6th, or something --

5 MS. LUEDTKE: I think it was the 8th. Whatever
6 the date the hearing was originally supposed to
7 progress. I'm not sure why he couldn't be here today to
8 talk about this as well.

9 Essentially, if there is a conflict, which I'm
10 having difficulty seeing what the conflict is. Yes, if
11 there was a later proceeding in which the LLC members,
12 you know, did something adverse to Mr. Mogler, I would
13 say he can't represent either of them. But that's not
14 what we're here today about. My only main issue is if
15 there is a conflict, this is something that's been known
16 since October, there should never have been a motion to
17 continue filed on January 31st, or whenever it was, the
18 end of January, by Mr. Thrasher citing a criminal case
19 that he had a conflict with. It should have been raised
20 earlier. He's clearly known that there has been a
21 problem getting these joint representation documents
22 signed. You know, I would say at least since November
23 there looks like there were some month long gaps where
24 nothing happened.

25 But, you know, that shouldn't be left out of the

1 briefing, and we should have known about that. Because
2 we continued to continue this matter based on
3 representations that Mr. Thrasher is representing these
4 individuals and entities and that his appearance here is
5 necessary, when it appears that he's always known that
6 there is a potential for a conflict of interest.

7 So my main concern is getting through this
8 hearing, and not having it delayed again because of
9 things that are coming up at the last minute that could
10 have been taken care of much earlier.

11 MR. THRASHER: Judge, may I respond?

12 ALJ STERN: Well, I just had a question I wanted
13 to ask her before I forget the question.

14 There's, you know, these are, these aren't mega,
15 mega LLCs. These are like mom and pop shops.

16 MS. LUEDTKE: Right.

17 ALJ STERN: Why aren't these other individuals
18 on the notice?

19 MS. LUEDTKE: Jason is the manager.

20 ALJ STERN: He is the manager, but, you know,
21 you named Nicole Kordosky who was a --

22 MR. MOGLER: Secretary.

23 ALJ STERN: -- secretarial type person or
24 clerical person who wrote a letter that said investment
25 counsel or something or other on there. I don't know

1 what -- I forget the --

2 MS. LUEDTKE: Well, she also had over the phone
3 discussions with people about the offerings.

4 ALJ STERN: Well, it would seem to me that the
5 background ownership of Mr. Hinkeldey, Mr. Gibbons, and
6 Mr. Halliday are involved in these offerings, if they're
7 members, and these aren't, like I say, they are not mega
8 sized entities. It looks like one of them there is
9 three partners and one of them there is two partners.
10 Now, I guess if Mr. Hinkeldey and Mr. Gibbons doesn't
11 like what Mr. Mogler is doing, they could have voted him
12 out of office, says you're not the manager anymore. And
13 the other looks like a partnership. So I don't know who
14 controls that in an LLC.

15 MS. LUEDTKE: Judge, we used our discretion as
16 to who to name in the notice. One of the main reasons,
17 as you saw from all the evidence that came in in
18 October, is that Mr. Mogler took an active role. He was
19 a signatory on the papers. He was a signer on all the
20 bank accounts. He was the one directing everything,
21 from our point of view.

22 So, you know, to be honest, I have never seen
23 anything about Mr. Halliday or, you know --

24 ALJ STERN: Well, their names are on the papers.
25 I looked on the Internet today as the --

1 MS. LUEDTKE: Oh, yeah. On the Corporation
2 Commission website?

3 ALJ STERN: Yes.

4 MS. LUEDTKE: Correct.

5 ALJ STERN: And those individuals --

6 MS. LUEDTKE: We don't just name every member of
7 an LLC either.

8 ALJ STERN: I wouldn't think so. But when
9 they're like small entities like this, I sometimes get
10 the impression that those people are involved in the
11 businesses versus one were there's --

12 MS. LUEDTKE: And we have to use our discretion
13 on whether the evidence is going to support a securities
14 violation. So I don't want to get into, as you know, I
15 don't want to get into our confidential investigation,
16 but there are reasons that we name certain people and
17 reasons that we don't. And that's where I'll leave that
18 so that I don't violate any type of confidentiality.

19 But, no, those individuals are not named in the
20 notice, and I don't think that that's a reason for all
21 of this to have happened though.

22 ALJ STERN: Okay. Mr. Thrasher, what's your --

23 MR. THRASHER: Yeah. Number one, Judge, I think
24 counsel is being disingenuous when she says she doesn't
25 see a conflict. There is a clear conflict. And I'm

1 avowing to Your Honor that I have spoke with, again,
2 outside counsel and the State Bar Ethics Counsel, who
3 agreed.

4 The second thing I take umbrage with is I don't
5 even think that she has standing to sit here and object
6 under the circumstances. She certainly can oppose a
7 continuance. I understand that. But whether or not me
8 moving forward is an ethical problem, I don't believe
9 she has any standing to take a position one way or the
10 other.

11 ALJ STERN: Well, again, whether she does or she
12 doesn't, I'm not going to go that far to say she can't
13 object. If it's going to cause a delay in the
14 proceeding, it might be grounds for her to object.

15 My question, sir, is if this problem was
16 existing, you're dealing with the manager of both of
17 these entities. As I said, they're small little
18 entities. We're not talking large entities. If you're
19 dealing with the entity, this guy, Mr. Mogler, who is
20 sitting to your right, can make decisions for those
21 entities, right?

22 MR. THRASHER: Yes, Judge. But if you're
23 dealing with the entities and the members of them, the
24 other members would have, in the event that either Mr.
25 Mogler or the entity is held liable, they would have

1 claims against Mr. Mogler and the entities. It's a
2 clear conflict.

3 ALJ STERN: That's their problem.

4 MR. THRASHER: It's my problem if I'm
5 representing all of them, though, which is why I tried
6 to remedy this.

7 ALJ STERN: You're representing two entities and
8 Mr. Mogler.

9 MR. THRASHER: Two entities and Mr. Mogler, yes.

10 ALJ STERN: Okay. And your assertion is that
11 you need everybody to sign off on you representing those
12 entities who are members?

13 MR. THRASHER: It's not only my assertion, that
14 was the position of the State Bar Ethics Counsel when I
15 spoke with them. I can't be put in a position, Your
16 Honor, to move forward if I believe there's an ethical
17 problem. And that's exactly what I believe is under
18 these circumstances.

19 I understand your concerns about it being
20 delayed, and I apologize to you for that. I did -- I
21 was told that I would be able to, these documents were
22 forthcoming. Unfortunately, they weren't. And that's
23 the sole reason for the delay. I have not done anything
24 other than be diligent throughout, and, unfortunately,
25 you know, we are where we are.

1 ALJ STERN: Well, let's say, for instance, we go
2 forward.

3 Mr. Mogler, are you representing your LLCs, or
4 going to attempt to represent your LLCs?

5 MR. MOGLER: What I requested respectfully was,
6 I saw her position, thought it sucked, and I wanted her
7 to continue with her presentation, and then after her
8 presentation, give me 30 or 45 days thereafter to come
9 back in two days and go over my case.

10 ALJ STERN: And your -- representing yourself
11 or, and/or the LLC?

12 MR. MOGLER: Yeah, I'm not going to -- I want to
13 get this over with. I need that time to kind of figure
14 out the law and read the law and frame this right and
15 come back, and I'll muddle through it on Monday or
16 Tuesday.

17 ALJ STERN: Are your LLC members in agreement
18 with you representing yourself in this?

19 MR. MOGLER: Mr. Hinkeldey will be here on
20 Tuesday.

21 ALJ STERN: And he's one of your members in the
22 Tri-Core --

23 MR. MOGLER: Companies. Yes, sir.

24 ALJ STERN: Tri-Core Companies.

25 MR. MOGLER: Yeah. He's in agreement for us to

1 represent ourselves.

2 ALJ STERN: And the Tri-Core Business
3 Development, that's Mr. Halliday. Where is he?

4 MR. MOGLER: I have been unable to get ahold of
5 him.

6 ALJ STERN: You've been unable to what?

7 MR. MOGLER: Get ahold of him.

8 ALJ STERN: Oh. Why aren't your businesses, you
9 know, continuing to keep up their records with the
10 Commission?

11 MR. MOGLER: Good question.

12 ALJ STERN: Are you still at the office on
13 Chaparral?

14 MR. MOGLER: No, sir. We moved to Central.

15 ALJ STERN: Maybe you ought to update your
16 records.

17 MR. MOGLER: Okay. We will do that.

18 ALJ STERN: I don't know, Mr. Thrasher, I, I can
19 see sort of where you're coming from, but from now on
20 when you represent every mom and pop and Uncle John LLC,
21 are you going to require them all to sign off on you
22 representing them?

23 MR. THRASHER: Well, I'm not going to be put in
24 this position again. If it's a, like you said, a small
25 entity, 100 percent.

1 ALJ STERN: Hey, Mr. Thrasher, Mr. Mogler is the
2 manager of those two entities. He hasn't been deposed
3 by either his two partners in the Tri-Core Companies,
4 and/or there hasn't been a dissolution of the other LLC,
5 where apparently he and Mr. Halliday are involved in and
6 only he happens to be the manager. So where is your
7 conflict? I'm trying to sort of see where it is.

8 MR. THRASHER: My conflict is claims of the
9 other members against either Mr. Mogler, as manager of
10 the LLC, or, conceivably, the LLC itself.

11 I don't see, again, where --

12 ALJ STERN: What do you care about claims
13 against the LLC? If the case would go adversely against
14 your client --

15 MR. THRASHER: I'm concerned about a malpractice
16 claim against me for trying to represent all of them
17 when I had a conflict of interest that I have tried to
18 resolve. And that was the concern of Ethics Counsel as
19 well. I can't move forward, Judge. I can't.

20 ALJ STERN: Do you have anything in writing
21 from --

22 MR. THRASHER: I don't have anything in writing.
23 I mean, if you want to continue this thing and we'll get
24 an ethics opinion, we certainly can do that. But I'm
25 not in a position to move forward under these

1 circumstances. I just can't. And, frankly, Your Honor,
2 there's a clear conflict.

3 ALJ STERN: Okay. Ms. Luedtke, with respect to
4 Mr. Mogler representing himself and the entities,
5 because there is a section -- I wonder, what's the
6 Division's position on Mr. Mogler going forward. Let's
7 say Mr. Thrasher is no longer here. The proceeding goes
8 forward. Mr. Mogler is here. He's the manager of those
9 two entities. There is a section of the Supreme Court
10 Rules, Rule 31, there's a section 13.

11 Does the Division have any position with him
12 representing those entities since he's the manager?

13 MS. LUEDTKE: I think he is a manager managed,
14 both of them are manager managed entities, and he would
15 make decisions for the entity.

16 ALJ STERN: As far as him representing those
17 entities legally, since he is a nonlawyer, does the
18 Division have any objection to that?

19 MS. LUEDTKE: No, Judge.

20 ALJ STERN: And you're aware of what the law is
21 with respect to administrative matters?

22 MS. LUEDTKE: Right. I know what you're talking
23 about.

24 ALJ STERN: Okay. So since he's a full time --
25 I don't know, I guess they don't have officers or

1 anything like that in LLCs -- but managers or partners,
2 member or manager it says on the limited liability
3 company.

4 MS. LUEDTKE: Right.

5 ALJ STERN: Okay. So the Division doesn't have
6 a problem with that?

7 MS. LUEDTKE: No.

8 ALJ STERN: Okay. So Mr. Thrasher, if you went
9 away, Mr. Mogler could be here for himself and/or the
10 entities.

11 MR. THRASHER: As stated in my reply, I think
12 Mr. Mogler and Mr. Hinkeldey will be here.

13 ALJ STERN: But that's the one entity. And
14 Mr. Hinkeldey, apparently, isn't involved in --

15 MR. THRASHER: Correct. Mr. Halliday, I have
16 not had contact with him. I requested all parties
17 contact me. He did not.

18 MS. LUEDTKE: I think there's also a Mr. Gibbons
19 on one of them.

20 ALJ STERN: Yeah, Mr. Gibbons is -- apparently
21 he's not too active either.

22 Where is Mr. Gibbons, Mr. Mogler?

23 MR. MOGLER: He had medical issues and we lost
24 contact with him shortly thereafter. So I have not
25 spoken to him in a while.

1 ALJ STERN: Well, I think I'm going to take a
2 look at this for a few minutes in my office. So we're
3 going to take a recess for about ten minutes or so, and
4 I will be back and decide where we're going to go with
5 this.

6 (Recess taken from 2:27 p.m. to 2:44 p.m.)

7 ALJ STERN: Now, we're back on the record.
8 Go ahead.

9 MR. THRASHER: With regard to, you had asked me
10 previously about what I perceived the conflict to be.
11 And I was thinking about it during the recess, and I
12 don't think I did a very good job.

13 The point I was trying to make to you, the
14 allegations in this case is that Mr. Mogler committed a
15 fraud, among others. Mr. Mogler, if you find Mr. Mogler
16 responsible of committing that fraud, then the LLC
17 itself and, quite possibly, the members of the LLC, have
18 claims against Mr. Mogler, and they certainly can argue
19 that his acts on behalf of the LLC went far beyond the
20 scope of his ability as a manager to do those things.

21 What I'm trying to tell Your Honor is I can't
22 move forward representing Mr. Mogler and the LLC because
23 of those potential claims. It's directly adverse to
24 each other. Mr. Mogler, I understand, is the manager,
25 but this is kind of a unique situation, because a

1 manager can't sign on behalf of the other members where
2 his interest under these circumstances would be, again,
3 directly adverse to theirs. Which is why I was trying
4 to get all of the other members to sign this thing. And
5 they have -- to sign the joint representation
6 agreement -- and they either refused to contact me or
7 refused to sign it.

8 ALJ STERN: I understand your situation, sir,
9 but the thing is, as I said, if these were large LLCs,
10 and today there are large LLCs not just small LLCs, and
11 you have a thousand members, are you going to have to
12 have all thousand signatures agree, or are 501 going to
13 make your day?

14 MR. THRASHER: I think under those
15 circumstances, there is an operating agreement, there is
16 additional provisions to allow for authority of officers
17 or other managers. Frankly, I have never represented
18 that type of entity. I have represented small entities,
19 and this has never been an issue before. And when it
20 has been an issue, I have withdrawn from the case, which
21 is what I think ethically I'm obligated to do under
22 these circumstances.

23 And if Your Honor is inclined to deny my notice
24 or withdrawal, then I think we need to get an opinion
25 from the State Bar, or we need to appeal this to the

1 Superior Court specifically on this issue, because I'm
2 uncomfortable moving forward under these circumstances.

3 I just think that it's, it's fraught with
4 pitfalls for me, as an attorney. And under Rule
5 1.6(a)(1), it says the representation will result in a
6 violation of the rules of professional conduct. I can't
7 move forward under those circumstances.

8 And if you'll look at Rule 1.7, it says under
9 ER 1.7(a), except as provided in paragraph (b), a lawyer
10 shall not represent a client if the representation
11 involves a concurrent conflict of interest. A current
12 conflict of -- excuse me -- a concurrent conflict of
13 interest exists if, subparagraph (1), the representation
14 of one client will be directly adverse to the other.
15 That's the situation that we have here.

16 If you go down to subparagraph (b), it allows
17 for such representation if there's informed consent.
18 That's what I have tried to do. That's what we don't
19 have.

20 Under those circumstances, moving forward
21 violates 1.16.

22 ALJ STERN: Okay. Mr. Mogler, let me ask you a
23 question.

24 You signed Mr. Thrasher's original notice to
25 withdraw here.

1 MR. MOGLER: Yes, sir.

2 ALJ STERN: You were signing, you signed that
3 individually. I assume you were also signing as the
4 manager of these two entities.

5 MR. MOGLER: Presumably so.

6 ALJ STERN: Is that true?
7 You're the manager, right?

8 MR. MOGLER: Yeah. Yes.

9 ALJ STERN: So you make managerial decisions for
10 these two LLCs?

11 MR. MOGLER: With my members, with Jim and --
12 not all the decisions, but yeah.

13 ALJ STERN: Are --

14 MR. MOGLER: I mean, when I hired him, he asked
15 me -- he told me the situation. He said you need to
16 sign this because there is a conflict, so I signed it.
17 I mean, that's just --

18 ALJ STERN: Are your LLCs operating anymore?

19 MR. MOGLER: Yes.

20 ALJ STERN: They're still breathing entities?

21 MR. MOGLER: Yeah.

22 ALJ STERN: Even though the Commission doesn't
23 have records of where your at?

24 MR. MOGLER: No. Yeah, we're still working on
25 our properties.

1 ALJ STERN: Okay. All right.

2 Division, do you have anything else to say?

3 MS. LUEDTKE: The only thing that I do want to
4 correct from the record is that the same fraud is
5 asserted against the LLCs as Mr. Mogler as the control
6 person of those LLCs. So just so that there's no
7 confusion with that, I know that the fraud appears to be
8 the big issue. So as long as that's clear.

9 Like I said, I'm not here to stop a withdrawal
10 if there actually is a conflict. I'm having the same
11 problem as you with seeing what the actual conflict is
12 even after that discussion. However, my main concern is
13 for that of my witnesses who are, have been prepared
14 three different times, and the amount of times that the
15 Division has prepared, and not having any further delays
16 in this case, especially given what you can see as a
17 timeline for all this happening.

18 ALJ STERN: Okay. And the Division is prepared
19 to go forward on Tuesday, right?

20 MS. LUEDTKE: Of course.

21 ALJ STERN: And, now, we left off last back in
22 October with Mr. Thrasher raising his issue of the
23 initial conflict with the --

24 MS. LUEDTKE: Actually, he was in the middle of
25 crossing Annalisa.

1 ALJ STERN: Well, that's where I assume we'll
2 come back to.

3 And, Mr. Mogler, I assume you might have some
4 questions for Ms. Weiss, if you review the transcript or
5 whatever.

6 Are you going to cross-examine Ms. Weiss?

7 MR. MOGLER: Presumably so, yes.

8 ALJ STERN: Okay. Then we will -- you have how
9 many more witnesses?

10 MS. LUEDTKE: I have, I believe there are six or
11 seven, but they're all, like our last hearing, brief.

12 ALJ STERN: Brief.

13 MS. LUEDTKE: Yeah. They're not going to sit up
14 there for two and three hours.

15 ALJ STERN: Okay.

16 MS. LUEDTKE: I think I need probably about, you
17 know, depending on the length of cross, mine won't go
18 anymore than three more days.

19 ALJ STERN: Well, we'll see where we are at, but
20 here's the situation.

21 Mr. Thrasher, I will put out an order, and
22 you're going to be granted authorization to withdraw.

23 Mr. Mogler, you as yourself and/or the manager
24 of these entities can plan on being back here on
25 Tuesday, I think it's 10 o'clock in the morning that

1 we're scheduled, and bring along any of your members
2 that you want, and we'll proceed with your, the rest of
3 your case.

4 We have a few exhibits we'll have to deal with
5 yet. I think those were the recording exhibits or
6 something, right?

7 MS. LUEDTKE: Right. I think we --

8 ALJ STERN: Whatever, Mr. Thrasher is out of the
9 picture now. He doesn't have to worry about it.
10 Mr. Mogler will be here to do whatever he does.

11 So are there any other matters? And we'll be
12 here, I believe in Hearing Room 2.

13 MS. LUEDTKE: Was there a ruling on the, I
14 believe of --

15 ALJ STERN: Well, the continuance Mr. Mogler has
16 requested is not unreasonable. You'll present your part
17 of the case; we'll come back for the defense.

18 He says he needs about two days. Right?

19 MR. MOGLER: Two days in total to present, yes,
20 sir.

21 MS. LUEDTKE: And I don't have to bring back my
22 witnesses, though --

23 ALJ STERN: Your witnesses -- your part of the
24 case is going to be pretty much over, I think, next
25 week. If you only have six witnesses or so, and you say

1 they are going to be brief, Tuesday, Wednesday,
2 Thursday, maybe, and then we'll take a recess until we
3 get Mr. Mogler's end of the case scheduled in about,
4 probably sometime in April or the very beginning of May
5 we'll be able to slot that in. So that should pretty
6 well do it.

7 MS. LUEDTKE: Okay. I just wanted to make sure,
8 because I have witnesses that are telephonic in
9 different states. I can't force them to come back. So
10 as long as we're only doing Mr. Mogler's witnesses
11 during the continuance, I'm fine with that.

12 ALJ STERN: Right. His witnesses will be after
13 the continuance.

14 MS. LUEDTKE: Right.

15 ALJ STERN: Okay. Anything else?

16 Okay. Mr. Mogler, I want to make sure I have a
17 current address for you. Are you 8800 East Chaparral,
18 or no?

19 MR. MOGLER: Our business address, no. We have
20 an executive office on Central, and I don't know the
21 address off the top of my head. But I'll get it for
22 you. I'll shoot it to you.

23 ALJ STERN: No. You won't shoot it to me. We
24 don't like shooting.

25 MR. MOGLER: I'm sorry.

1 ALJ STERN: There is an armed guard at the door.
2 He might have a problem --

3 MR. MOGLER: I will email it to you or to Stacy,
4 or I will get --

5 ALJ STERN: Mr. Mogler, we shouldn't talk over
6 each other. It's hard for the court reporter.

7 What will happen is now that you're your own
8 representative here, and/or your entities, assuming you
9 have the authority to act on their behalf, you file an
10 original and 13 copies with the Commission's docket
11 control, and you put the case number on, which I'm sure
12 Mr. Thrasher will be only too happy to give you, and you
13 file where your current address is; business address,
14 home address. I want an address where if we send
15 something it's not going to come back unclaimed or not
16 at this address.

17 MR. MOGLER: No problem.

18 ALJ STERN: Okay. Otherwise, the Division is
19 going to have to track you down.

20 So that's about it. Anything else?

21 All right. We'll see you next week on Tuesday.

22 Thank you.

23 (The proceedings concluded at 2:54 p.m.)

24

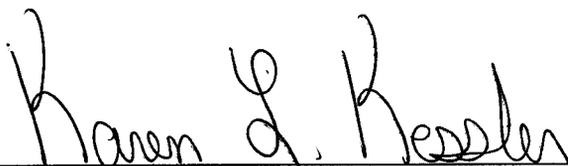
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1 STATE OF ARIZONA)
) ss.
 2 COUNTY OF MARICOPA)

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I, KAREN L. KESSLER, RPR, Certified Reporter
 No. 50821 for the State of Arizona, do hereby certify
 that the foregoing printed pages constitute a full, true
 and accurate transcript of the proceedings had in the
 foregoing matter, all done to the best of my skill and
 ability.

WITNESS my hand this 3rd day of March, 2014.



 KAREN L. KESSLER, RPR
 Certified Reporter
 Certificate No. 50821