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Federal Trade Commission v. Ameridebt, Inc., et al.
CASE No. 8:06-MC-00012

Receiver's Opposition to Objection to Magistrate Day's Order dated October 12, 2006 and Motion to Reconsider, Modify or Set Aside Filed by John Vipulis and Rachlin, Cohen & Holtz, LLP

Filed November 6, 2006

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
Southern Division

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

AMERIDEBT, *et al.*,

Defendants.

Case No. MC 06-12

RECEIVER'S OPPOSITION TO OBJECTION TO MAGISTRATE JUDGE DAY'S ORDER DATED OCTOBER 12, 2006 AND MOTION TO RECONSIDER, MODIFY OR SET ASIDE FILED BY JOHN VIPULIS AND RACHLIN, COHEN & HOLTZ, LLP

Robb Evans & Associates LLC, Receiver over the assets of DebtWorks, Inc. and Andris Pukke ("Receiver"), submits the following Opposition to the Objection to Magistrate Judge Day's Order Dated October 12, 2006 and Motion to Reconsider, Modify or Set Aside filed by John Vipulis ("Vipulis") and Rachlin, Cohen & Holtz LLP ("Rachlin").

I. INTRODUCTION

In a last-minute effort to derail the Receiver's legitimate investigation into the intricate financial linkage between Andris Pukke ("Pukke") and Vipulis, an Objection has been filed by Vipulis and Rachlin, accountants for Vipulis, to the Memorandum Opinion issued by Magistrate Judge Day denying the motions to quash and motions for a protective order filed by Vipulis and Rachlin. The Objection rests on factually deficient motions originally brought by Vipulis and Rachlin and raises spurious and unavailing assertions of law in a desperate attempt to challenge the Memorandum Opinion and frustrate the Receiver's investigatory efforts. The Objection should be overruled in its entirety and as set forth below, the Memorandum Opinion should be adopted in full, except that the limitation on document production for the period from May 17, 2002 should be eliminated and the Opinion modified to compel production of all documents

sought by the Receiver's subpoena unlimited by date. Under the Receiver's charge to investigate the nature and location of and obtain records pertaining to all Receivership Property as set forth in the Preliminary Injunction Order with Asset Freeze, Appointment of Receiver, Repatriation of Assets, and Other Relief ("Preliminary Injunction Order"), as well as the liberal rules of discovery enunciated by the Federal Rules of Civil Procedure, the close financial ties between Pukke and Vipulis must be discovered and production under the Receiver's subpoena should be made without limitation.

II. STATEMENT OF FACTS

Vipulis' and Rachlin's objection attempts, erroneously, to paint a picture whereby Vipulis and Pukke have no financial connection whatsoever. As demonstrated by the Receiver at the time the motions to quash and for protective order were initially briefed, this is simply and utterly untrue. As has been further uncovered in the nearly one-year period since the Receiver filed its original opposition to these motions, the financial connection between Pukke and Vipulis is extensive and far ranging. Their dealings include their common interest in Internet Opportunity Entertainment Ltd. ("Internet Opportunity"), which has ripened into Pukke's undisclosed multi-million dollar interest in Sportingbet Plc ("Sportingbet"). It is appropriate to summarize the evidence originally presented in opposition to these motions and that which has been uncovered in the eleven months since in order to demonstrate that the challenged subpoena was a reasonable and necessary tool for the Receiver to utilize to attempt to fully uncover the scope and extent of the intricate financial connection between these two lifelong friends.

As set forth in the Receiver's original opposition[1] and noted in the Memorandum Opinion, Vipulis is a close and lifelong personal friend and former college roommate of Pukke.

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[1] Citations to the facts introduced in opposition to these motions will not be repeated here. Citations to evidence subsequently adduced have been introduced as part of the Receiver's recently filed contempt application on October 23, 2006 in the main action *FTC v. Ameridebt*, Civil Action No. PJM-3317, as Document Nos. 525 and 526.

Pukke testified that Vipulis is his oldest friend, having known him since birth. Pukke's father, Janis Pukke, is Vipulis' godfather. As with many of Pukke's close friends and family, Pukke's ties to Vipulis were financial and not just personal. The Receiver obtained evidence and Vipulis provided documents confirming Pukke's involvement as an officer, director and/or trustee in at least three of Vipulis' entities which are included in the subpoena, JV Descendants Trust ("JV"), Cedar Investments LP dba Maple Ventures International Corp./Cedar Investments Inc. ("Maple") and Bluefish Investments LP/Inc. ("Bluefish"). The Receiver located evidence of direct transfers between Pukke and DebtWorks, on the one hand, and Vipulis or his sister Donna Lacis, on the other, totaling $386,530 between July 2002 and July 2003. JV also transferred funds to Puck Key Investments L-1, LLC, a limited liability company wholly owned by Pukke and constituting Receivership Property. Additionally, Pukke testified at deposition that he has loaned Vipulis between $500,000 and $1,000,000 in the past five years. Vipulis purportedly "repaid" a portion of these transfers, according to Pukke, by transferring funds to Colin and Joan Medhurst, former shareholders in Dolphin Development Company, Ltd. ("Dolphin Development"). Dolphin Development is the entity developing the Belize property known as Sanctuary Bay Estates in which Pukke holds a controlling 60% interest. Pukke has sought to hide and transfer the value of Dolphin Development to another of his childhood friends, Peter Baker ("Baker"), in egregious violation of the Preliminary Injunction Order. Pukke's and Baker's activities regarding Dolphin Development is one of the principal subjects of the Receiver's pending contempt application against Pukke and Baker.

The Receiver demonstrated a further financial nexus between Pukke and Vipulis and the entities identified in the subpoena through Pukke's connection with internet gaming and what was at that time believed to be merely the "potential" connection of Vipulis to internet gaming through Alfred Ballester. Corporate records searches performed by the Receiver indicated that Maple, Bluefish, Angelfish Investments LP/Inc. ("Angelfish"), Goldfish Investments LP/Inc.

("Goldfish") and Spruce Investments LP/Inc. ("Spruce") were all formed with Ballester acting as the original agent for service of process, president, secretary and treasurer. Vipulis succeeded Ballester as president, secretary and treasurer of each of these entities. According to public announcements by Sportingbet in 2001, Ballester became a director of Sportingbet shortly after its acquisition of Internet Opportunity, in September 2001. The announcement advised that: "Mr. Ballester's experience and standing within the gaming fraternity in Gibraltar initially brought him into contact with Internet Opportunity Entertainment, Inc. and Oak Ventures Corporation, owners of Sportsbook, the business recently acquired by Sportingbet."

In 2002, Maple received a transfer of $3,800,000 to its account at Merrill Lynch from "Altheimer & Gray RE Ballester Client Deposit Account." While Pukke was still a Vice President of Maple, $500,000 was transferred from Maple to JV and $20,000 was transferred to Spruce. Of the $3,800,000 deposited from the Ballester Client Deposit Account, $1,200,000 was transferred to an account at Smith Barney in Maple's name, most of which was still in the account when the Receiver was appointed and which has been frozen. An additional $1,480,000 was transferred from Maple to Magnolia Invest Corporation, with $1,479,000 being subsequently transferred within one week from Magnolia to Vipulis. The payment from the Ballester Client Deposit Account to Maple is believed to be in connection with Sportingbet's acquisition of Internet Opportunity.

Of course, at the time the Receiver's opposition to these motions were originally filed, the Receiver had not yet uncovered a direct connection between Pukke and Internet Opportunity or between Vipulis and Internet Opportunity, or more importantly, the huge undisclosed asset that Internet Opportunity became when it was acquired by Sportingbet. However, the Receiver demonstrated Pukke's and DebtWork's substantial connection to internet gaming and to Sportsbook.com. Receivership records evidenced that DebtWorks paid over $3.9 million and another wholly owned Pukke entity, Infinity Resources Group, paid over $2.2 million to Imagine

Communications, Inc. ("Imagine"), the entity which provided marketing and advertising services for Pukke's companies, including DebtWorks. Tina Norris, the founder and sole owner of Imagine, who was the college friend of Pamela Pukke, Pukke's spouse, testified that Imagine, at Pukke's request, paid over $3,000,000 to CBS Sportsline between 2000 and 2003. The Receiver has determined through subpoenaed and other bank records that between September 1998 and May 2001, Imagine paid $3,045,500 to Sportsline USA, Inc. and that the source of those payments was funds paid by Infinity, Ameridebt and DebtWorks. Norris testified that at Pukke's request, she purchased advertising unrelated to consumer credit counseling on Sportsline USA, Inc. to advertise Sportsbook.com (then run by Internet Opportunity) and Placemybet. com, two internet casinos.

If there were any doubt about the intricate financial connection between Vipulis and Pukke which overwhelmingly supports the discovery sought by the Receiver and so vigorously contested by Vipulis and his accountants, the information obtained by the Receiver over the last several months has eradicated it. First, Janis Pukke testified that in 1998 he invested $45,000 in the start-up company Internet Opportunity, that it was Vipulis who formed Internet Opportunity, and that Vipulis solicited his investment. Vipulis has now been directly connected to Internet Opportunity by Pukke's own father. Andris Pukke has now been directly connected to Internet Opportunity by a July 26, 1997 letter sent to Pukke by Patrick Callahan confirming Pukke's acquisition of a 3% ownership interest in Internet Opportunity. The letter was obtained from Pamela Pukke from the Pukke's residence while married and delivered to Pamela Pukke's divorce attorney.

Therefore, despite Andris Pukke's strident and repeated denials, the Receiver has developed compelling evidence demonstrating that in reality it was he who owned a significant stake in Internet Opportunity that later became worth many millions of dollars after it was acquired by Sportingbet. It was Andris Pukke and not his father Janis who held the interest in

Internet Opportunity that would later be acquired by Sportingbet and yield direct payments from Sportingbet and stock sale proceeds totaling $12,798.315, which would all flow through Andris Pukke's bank account in Latvia. It was Andris Pukke and not his childhood friend Peter Baker who liquidated additional Sportingbet stock generating another $4,149,357.75, a substantial amount of which would fund the purchase price on a home in Laguna Beach which Baker bought on Pukke's behalf. It remains to be seen if it was Andris Pukke, rather than his high school friend Stephen Todd Cook who liquidated additional Sportingbet stock generating another $3.3 million. In any event, the loop has now closed, and it is beyond dispute that Vipulis, a founder of Internet Opportunity, had this additional direct financial connection with Pukke. Pukke was a major investor in Internet Opportunity and recipient of at least $16,947,672.75 in hidden proceeds from Internet Opportunity's successor, Sportingbet, and the liquidation of Sportingbet stock. Vipulis and Pukke are inextricably linked.

In the face of this factual background, the legal contentions of Vipulis and Rachlin will now be addressed.

III. THE SUBPOENA IS NOT OVERBROAD, UNREASONABLE OR BURDENSOME

Without any admissible evidence filed in support of the Vipulis and Rachlin motions, they now argue that "[t]he allegations of any connection between Vipulis and Pukke are purely attenuated, speculative, and conjectural." (Objection, p. 8, ll.1-2) This assertion is utterly frivolous, in light of the evidence introduced as part of the original opposition to the motions and as subsequently discovered.

In making the argument, Vipulis and Rachlin ignore not only the broad standard of discovery enunciated under the Federal Rules of Civil Procedure, but the unique role enjoyed by a receiver. The Receiver is a Court-appointed fiduciary, an arm of the Court, and not a representative of any specific creditor or party to the litigation. *Sterling v. Stewart*, 158 F. 3d

1199, 1201, n.1 (11th Cir. 1998). As an arm of the Court, the Receiver is a representative of the receivership estate and administrator of the assets of that estate for the benefit of those parties with legitimate claims against the estate. *Sterling v. Stewart, supra*; *Resolution Trust Corporation v. Bayside Developers*, 43 F. 3d 1230, 1241 n. 8 (9th Cir. 1995).

This is particularly important in the context of a federal equity receivership in which the receiver is appointed with powers to locate and investigate assets and the receivership party's financial dealings in order to potentially obtain redress for tens of thousands of defrauded consumers. Under the broad powers spelled out in this Court's Preliminary Injunction Order enabling the Receiver to investigate the nature and location of and obtain records pertaining to all Receivership Property, and given the overwhelming evidence of a close personal and financial connection between Vipulis and Pukke, it is readily apparent that the instant subpoena is a proper, indeed necessary, tool for the Receiver to discover potentially undisclosed and hidden assets constituting Receivership Property and to further the investigation into the internet gaming connection between Vipulis and Pukke.

Additionally, as Magistrate Judge Day pointed out in the Memorandum Opinion, even if the Receiver's powers were circumscribed by the federal civil discovery rules, the production of Rachlin's records would still be required. Rule 26(b) of the Federal Rules of Civil Procedure permits the discovery of relevant evidence whether or not that evidence is ultimately admissible at trial so long as the information sought is reasonably calculated to lead to the discovery of admissible evidence. Given the close personal and financial relationship between Vipulis and Pukke, and given further Pukke's demonstrated propensity for using close friends and relatives to hide and shelter his assets, the requested documents are clearly relevant to the Receiver's efforts to locate and recover Receivership Property.

The subpoena is neither unreasonable nor overbroad. Rachlin identified no more than 2000 pages of documents responsive to the subpoena. It was sufficiently specific to enable

Rachlin to identify the documents called for under the subpoena. Nor is the subpoena burdensome. Given the limited amount of documents to be retrieved and produced, and given further that Magistrate Judge Day has required the Receiver to reimburse Rachlin $1,000 for the costs incurred in retrieving and producing them, there is no undue burden, economic or otherwise, on Rachlin to respond. It cannot be plausibly contended that Magistrate Judge Day's ruling was clearly erroneous on this point.

IV. THE TAX RETURNS TO BE PRODUCED UNDER THE SUBPOENA ARE DISCOVERABLE

Vipulis and Rachlin next object that the tax returns are protected from production. In order to make this argument, they ignore the plain language of 26 U.S.C. § 6103 and disregard the United States Supreme Court opinion in *St. Regis Paper Co. v. United States*, 368 U.S. 208, 219, 82 S. Ct. 289, 7 L. Ed. 2d. 240 (1962). In *St. Regis*, the Supreme Court confirmed that while tax returns are confidential and not subject to discovery when in the hands of the "government bureau" they are discoverable in the hands of the taxpayer.

Vipulis and Rachlin cite to *Premium Service Corp. v. Sperry & Hutchinson Co.*, 511 F. 2d 225 (9th Cir. 1975). It is distinguishable and instructive. In *Premium Service*, plaintiff was engaged in antitrust litigation and served its subpoena on a third party individual requiring every document pertaining to dealings between the defendant and the corporation of which such individual was chairman of the board. The Court, in upholding the District Court's order quashing the subpoena, found the requests for documents "sweeping in nature, covering every paper touching on any relationship between [defendant] and [corporation] or [the subpoenaed party] personally" and concluded that the District Court had not abused its discretion in quashing the subpoena. In that context, the Ninth Circuit found that the district court, under the circumstances of the case, could reasonably have based its order to quash the subpoena of tax returns on the public policy against unnecessary public disclosure of tax returns.

In so doing, however, the Court acknowledged that "[t]ax returns do not enjoy an absolute privilege from discovery" citing the Supreme Court decision in *St. Regis*. Further, given that Magistrate Judge Day has ordered the Receiver, Vipulis and Rachlin to craft a protective order to protect sensitive information such as trade secrets and proprietary information from public disclosure, the concern raised in *Premium Service* can be readily addressed by the protective order to be entered, both with respect to tax returns and any other documents which may contain trade secrets or other proprietary information.

V. FLORIDA'S ACCOUNTANT-CLIENT PRIVILEGE IS INAPPLICABLE IN THIS CASE

Vipulis and Rachlin argue that Florida's recognition of an accountant-client privilege prevents disclosure of the subpoenaed documents. Vipulis and Rachlin do not dispute that there is no accountant-client privilege under federal common law. *See Couch v. United States*, 409 U.S. 322, 335, 93 S. Ct. 611, 34 L. Ed. 2d 548 (1973). Therefore, in order to make this argument, they must argue that the underlying lawsuit presents numerous state law claims and defenses, and that therefore, Florida state law concerning privileges applies. This argument is meritless.

The Federal Trade Commission filed this action under Section 13(b) of the FTC Act to secure permanent injunctive relief and other equitable relief, including rescission, reformation, restitution and disgorgement. To remedy violations of Section 5(a) of the FTC Act, Section 13(b) expressly provides that "[i]n proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction." 15 U.S.C. § 53(b). The authority to grant permanent injunctive relief also includes the power to grant any ancillary relief necessary to accomplish complete justice. *FTC v. Febre*, 128 F. 3d 530, 534 (7th Cir. 1997); *FTC. v. Gem Merch. Corp.*, 87 F. 3d 466, 469-470 (11th Cir. 1996). The power to grant ancillary equitable relief under Section 13(b) includes the power to order equitable monetary relief for consumer

redress through repayment of money, restitution, rescission, or disgorgement of unjust enrichment. *Febre*, 128 F. 3d at 534; *Gem Merch. Corp.*, 87 F. 3d at 469. Similarly, the ancillary equitable remedy of the appointment of a receiver is expressly provided for under the case law construing Section 13(b) of the FTC Act. *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431 (11th Cir. 1984).

Consequently, there are no state law claims presented in this action. This is a quintessentially federal matter, strictly involving a federal statute. As set forth in *Lewis v. Capital Mortgage Investments*, 78 F.R.D. 295, 313 (D. Md. 1977): "Congress expected the federal courts to apply federal law in federal question cases."

Further, to the extent Defendants raised "state law defenses" which Vipulis and Rachlin contend include accord and satisfaction, laches, estoppel and waiver,[2] these purported "state law defenses" do not trump the exclusive use of federal common law. First, Pukke and DebtWorks have already stipulated to a final judgment of permanent injunction and a money judgment of $172 million, rendering all of their affirmative defenses moot. Second, as Magistrate Judge Day pointed, out, "the matter is fundamentally a federal matter and federal common law continues to rule." As this Court has pointed out in *Lewis v. Capital Mortgage*, to allow a pendent state law claim or defense to trigger application of state law, including state privilege law, over the whole litigation "would amount to a case of 'the tail wagging the dog.'" *Lewis*, 78 F.R.D. at 313.

VI. VIPULIS AND RACHLIN FAILED TO MEET THEIR BURDEN IN DEMONSTRATING THE ATTORNEY-CLIENT PRIVILEGE APPLIED TO PREVENT PRODUCTION OF ANY OF THE DOCUMENTS

Finally, Vipulis and Rachlin continue to assert that the attorney-client privilege and work product doctrine should preclude some of the documents from being produced. While they

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[2] These defenses are, in reality, also recognized federal common law defenses and expressly set forth in Rule 8(c) of the Federal Rules of Civil Procedure.

assert that the Memorandum Order was "inconsistent" regarding the applicability of these privilege claims, Magistrate Judge Day was in fact quite clear that Vipulis and Rachlin failed to meet their burden in demonstrating that the attorney-client privilege or work product doctrine applied to any of the documents subject to the Receiver's subpoena.

First, Vipulis and Rachlin never complied with Fed. R. Civ. Proc. 45(d)(2) which provides:

> When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

The burden is on the party asserting the privilege or other basis for not producing information in response to a discovery request to prove that the information falls within a recognized privilege or other valid ground for non-disclosure. *Graham v. Casey's General Stores, Inc.*, 206 F.R.D. 251, 253 (S.D. Ind. 2002). Vipulis and Rachlin never submitted any competent evidence supporting their objections to the production of documents based on claims of attorney-client privilege and the work product doctrine.

First, there was never any admissible evidence setting forth the nature of any purported attorney-client relationship between Vipulis and the Greenberg Traurig law firm. Even if one assumes such a relationship existed, the Receiver demonstrated through competent evidence that Greenberg Traurig also represented Pukke and various of his entities in 2002 and 2003, and there was no showing that the communications which included the Greenberg Traurig firm, as disclosed on the privilege log, were made in the course and scope of Greenberg's representation of Vipulis alone or companies that Vipulis alone owned. If, in fact, certain of these entities were

owned or controlled by Pukke, in whole or in part, they would constitute Receivership Property and the Receiver would be the holder of the attorney-client privilege with respect to those entities. *Securities and Exchange Commission v. Marker*, 2006 WL 288426 (M.D. NC 2006).

Subsequent to the briefing on these motions, the Receiver has in fact learned that Greenberg Traurig may have also provided legal advice to Baker (Baker's uncle, Joseph Lisa, is a lawyer at the firm) and has represented Patrick Callahan in this very lawsuit[3] as it pertained to the Setai Condominium and Villa C Acquisition Co., LLC. Additionally, a former partner of Greenberg Traurig, Jonathan Gopman, has represented Cook since leaving Greenberg Traurig and it is unknown at this time if Greenberg Traurig represented Cook previously. In light of the extensive involvement Greenberg Traurig has had representing Pukke and numerous of his close friends and business associates and the absence of any evidence demonstrating the circumstances surrounding the communications between and among Greenberg Traurig, Rachlin and Vipulis, the rote assertion of "attorney-client privilege" is unavailing.

Further, the Memorandum Order clearly spells out the detailed factual showing that must be made to support the claim that a derivative attorney-client privilege exists because an agent (purportedly Rachlin) was employed to assist the lawyer in the rendition of professional legal services. In *United States v. Kovel*, the Second Circuit recognized that the attorney-client privilege would extend to communications by an attorney's client to an accountant hired by the attorney to assist the attorney in understanding the client's financial information. However, this concept of "derivative privilege" has been "narrowly interpreted." *Black & Decker v. United States*, 219 F.R.D. 87, 90 (D. Md. 2003). In *United States v. Adlman*, 68 F. 3d 1495, 1500 (2d Cir. 1995), the Court held that "[t]he party claiming the benefit of the attorney-client privilege has the burden of establishing all of the essential elements." The Court in *Black & Decker*

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[3] It may be recalled that Callahan was a key player in Internet Opportunity, having drafted the letter disclosing Pukke's 3% ownership interest in the company.

described numerous exceptions to the applicability of a derivative privilege involving communications between an attorney and the attorney's accountant. These included if counsel furnished information to the accountant to seek the accountant's advice on tax implications; if the accountant's role was not as translator or interpreter of client communications; or if the "accountant is hired merely to give additional legal advice about complying with the tax code even where it assists the attorney in advising the client." *Black & Decker*, 219 F.R.D. at 90. Another critical question is whether the attorney was principally supplying legal advice or business advice. If the latter, the communications would be beyond the scope of the privilege whether the communications were with Vipulis or his accountants. Additionally, Magistrate Judge Day addressed the four factors discussed in *Black & Decker* in order to further analyze the applicability of this narrow derivative attorney-client privilege and explained that Rachlin and Vipulis had failed to (a) describe the documents and (b) explain why the derivative privilege applied to any, let alone all, of the communications purportedly involving Greenberg Traurig.

In the face of this overwhelming case law and Fed R. Civ. Proc. 45(b), which requires that the party seeking invocation of the privilege to meet the burden of establishing why he is entitled to assert it, Vipulis and Rachlin offered nothing. They offered no evidence that Greenberg Traurig represented Vipulis and no others in connection with the communications. They offered no explanation, on a document-by-document basis, as to the nature of the communications and why a derivative attorney-client privilege would apply. They simply repeated the mantra of "attorney-client privilege" or "attorney work product" in an effort to shield all of the documents from disclosure. Magistrate Judge Day properly concluded that Vipulis and Rachlin had not satisfied their burden.

VII. THE MEMORANDUM OPINION SHOULD BE MODIFIED TO PROVIDED THAT ALL DOCUMENTS RESPONSIVE TO THE SUBPOENA BE PRODUCED

Magistrate Judge Day imposed one substantive limitation on the document production, providing that "production of documents under the subpoena should be limited to the period from May 17, 2002 to present." (Memorandum Opinion, p. 8) Magistrate Judge Day utilized this date because section II.B of the Preliminary Injunction Order provided that Pukke and DebtWorks were required to provided a verified statement under oath of all payments, transfers of or assignments of Assets in the amount of $10,000 or more, since May 17, 2002.

However, while the verified statements to be provided by Pukke and DebtWorks as to asset transfers were limited to the period since May 17, 2002, there is no reason why the Receiver's discovery should be so limited. If documents predating May 17, 2002 may uncover assets constituting Receivership Property, then the Receiver should be entitled to them. By way of example, the letter produced by Claudia Pott Sherman which proves that Pukke held an undisclosed interest in Internet Opportunity, which later was transformed into an interest in Sportingbet which has yielded at least $16.9 million, is dated July 26, 1997. Under the limitation imposed by the Memorandum Opinion, the Receiver would not have been able to obtain such a document. There is no justification to hamstring the Receiver's discovery efforts based on a date in the Preliminary Injunction Order which was merely intended to limit Pukke's obligation to describe transfers.

In fact, Pukke's duplicitous conduct in concealing assets once he became aware that the FTC and other regulatory authorities were intensively investigating his violations of the FTC Act and after he became estranged from his wife Pamela Pukke are events which occurred in the 2001-2002 time frame. As a result, it is imperative that the Receiver be given access to documents which pre-date that time frame when Pukke had no incentive to engage in such misconduct. It is those older documents, such as the one produced by Pamela Pukke's divorce

attorney, which may disclose or lead to the disclosure of other hidden assets constituting Receivership Property. Once he began to conceal assets, the likelihood that Pukke or his close friends and business associates such as Vipulis created a paper trail of their financial dealings diminished.

VIII. CONCLUSION

With the exception of the elimination of the May 17, 2002 restriction as to the documents to be produced, Magistrate Judge Day's Memorandum Opinion properly recognizes that the Receiver's subpoena is a reasonable exercise of its investigatory powers, is neither unduly overbroad or burdensome, compensates Rachlin for its time and expense in retrieving and produces the documents, and allows Rachlin, Vipulis and the Receiver to jointly craft a proposed protective order that prevents unnecessary public disclosure of trade secrets or other proprietary information. The Receiver respectfully requests that the objection filed by Vipulis and Rachlin be overruled in its entirety and that the Memorandum Opinion be adopted as this Court's discovery order with the exception that the production of documents under the subpoena not be limited to the period from May 17, 2002 to the present.

Dated: November 6, 2006

McKENNA LONG & ALDRIDGE LLP

By: /s/

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Dated: November 6, 2006

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Responses and Replies

8:06-mc-00012 Federal Trade Commission v. Ameridebt, Inc. et al

U.S. District Court

District of Maryland

Notice of Electronic Filing

The following transaction was entered by Carroll, Christina on 11/6/2006 at 4:23 PM EST and filed on 11/6/2006

Case Name: Federal Trade Commission v. Ameridebt, Inc. et al
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Docket Text:
RESPONSE in Opposition re [48] Joint MOTION Objection to Magistrate Day's Order Dated October 12, 2006 and Motion to Reconsider Modify or Set Aside *Receiver's Opposition to Objection to Magistrate Judge Day's Order Dated October 12, 2006 and Motion to Reconsider, Modify or Set Aside Filed by John Vipulis and Rachlin, Cohen & Holtz, LLP* filed by Robb Evans & Associates, LLC.Replies due by 11/20/2006. (Carroll, Christina)

8:06-mc-12 Notice has been electronically mailed to:

Christina Marleen Carroll ccarroll@mckennalong.com

James M Timmerman jtimmerman@milesstockbridge.com

8:06-mc-12 Notice will not be electonically delivered to:

The following document(s) are associated with this transaction:

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[STAMP dcecfStamp_ID=1046883720 [Date=11/6/2006] [FileNumber=1266478-0
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