

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL TRICARICHI,

Appellant,

v.

PRICEWATERHOUSECOOPERS,  
LLP,

Respondent.

Electronically Filed  
Apr 08 2024 10:39 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

Supreme Court No: 86317  
87375  
87835

Appeal from the District Court of Clark County, Nevada  
District Court Case No. A-16-735910-B

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**APPELLANT'S APPENDIX TO OPENING BRIEF**  
**VOLUME 8 of 8**

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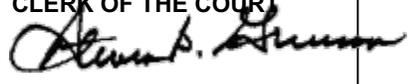
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21 **DISTRICT COURT**  
22 **CLARK COUNTY, NEVADA**

23 MICHAEL A. TRICARICHI,  
24 Plaintiff,  
25 vs.  
26 PRICEWATERHOUSECOOPERS LLP,  
27 Defendant.

CASE NO.: A-16-735910-B  
DEPT. NO.: XXXI

**NOTICE OF ENTRY OF ORDER DENYING  
IN PART AND DEFERRING IN PART  
PLAINTIFF'S MOTION FOR STAY OF  
EXECUTION WITHOUT SUPERSEDEAS  
BOND**

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PLEASE TAKE NOTICE that an *Order Denying in Part and Deferring in Part Plaintiff's Motion for Stay of Execution Without Supersedeas Bond* was entered in the above-captioned matter on December 4, 2023, a copy of which is attached hereto.

Dated: December 4, 2023

SNELL & WILMER L.L.P.

By: /s/ Bradley Austin  
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*Attorneys for Defendant*  
*PricewaterhouseCoopers LLP*

**CERTIFICATE OF SERVICE**

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I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On December 4, 2023, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING IN PART AND DEFERRING IN PART PLAINTIFF’S MOTION FOR STAY OF EXECUTION WITHOUT SUPERSEDEAS BOND** upon the following by the method indicated:

- BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court’s Service List for the above-referenced case.
- BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.
- BY PERSONAL DELIVERY:** by causing personal delivery via messenger service of the document(s) listed above to the person(s) at the address(es) set forth below.
- BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

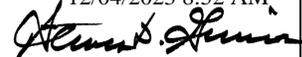
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*Attorneys for Plaintiff*

/s/ Lyndsey Luxford  
An Employee of Snell & Wilmer L.L.P.

4883-9821-6597



CLERK OF THE COURT

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21 **DISTRICT COURT**  
22 **CLARK COUNTY, NEVADA**

23 MICHAEL A. TRICARICHI,  
24  
25 Plaintiff,

26 vs.

27 PRICEWATERHOUSECOOPERS LLP,  
28 Defendant.

CASE NO.: A-16-735910-B  
DEPT. NO.: XXXI

**ORDER DENYING IN PART AND  
DEFERRING IN PART PLAINTIFF'S  
MOTION FOR STAY OF EXECUTION  
WITHOUT SUPERSEDEAS BOND**

AA 001776

1 On November 14, 2023, the Court conducted a hearing on Plaintiff’s Motion for Stay of  
2 Execution Without Supersedeas Bond (“Motion”). Patrick Byrne, Esq. of Snell & Wilmer L.L.P.  
3 and Katharine Roin, Esq. of Bartlit Beck, L.L.P. appeared on behalf of Defendant  
4 PricewaterhouseCoopers LLP (“PwC”). Scott Hessell of Sperling & Slater, LLC and Ariel  
5 Johnson of Hutchinson & Steffen, PLLC appeared on behalf of Plaintiff Michael Tricarichi. The  
6 Court, having reviewed the record, the briefs submitted in support of and in opposition to the  
7 Motion, and the oral arguments of counsel, hereby **DENIES the Motion in part** and **DEFERS**  
8 **the Motion in part** and makes the following Findings of Fact, Conclusions of Law, and Order:

9 **FINDINGS OF FACT**

10 1. On August 25, 2023, the Court entered its Order Granting in Part and Denying in  
11 Part Defendant PwC’s Motion for Attorneys’ Fees and Costs and Order Granting in Part and  
12 Denying in Part Plaintiff Tricarichi’s Motion to Retax and Settle PwC’s Amended Verified  
13 Memorandum of Costs, wherein the Court awarded Defendant PwC \$2,102,754.39 in attorneys’  
14 fees and \$322,955.91 in costs (“Fees and Costs Order”). Dkt. No. 453.

15 2. On September 26, 2023, Plaintiff filed a Notice of Appeal with respect the Fees  
16 and Costs Order.

17 3. On October 12, 2023, Plaintiff Tricarichi filed his Motion (Dkt. No. 462), arguing  
18 that, because Tricarichi was purportedly in such a precarious financial situation that the  
19 requirement to post a bond would place his other creditors – specifically the IRS, who holds a \$35  
20 million judgment against Tricarichi – in an insecure position, the Court should stay execution of  
21 the Fees and Costs Order without requiring Plaintiff Tricarichi to post a bond.

22 **CONCLUSIONS OF LAW**

23 4. NRC 62(d) governs stays pending appeal and provides:

24 (1) **By Supersedeas Bond.** If an appeal is taken, the appellant may obtain a stay by  
25 supersedeas bond, except in an action described in Rule 62(a)(2). The bond may be  
26 given upon or after filing the notice of appeal or after obtaining the order allowing  
the appeal. The stay is effective when the supersedeas bond is filed.

27 (2) **By Other Bond or Security.** If an appeal is taken, a party is entitled to a stay by  
28 providing a bond or other security. Unless the court orders otherwise, the stay takes

1 effect when the court approves the bond or other security and remains in effect for  
2 the time specified in the bond or other security.

3 5. “The purpose of security for a stay pending appeal is to protect the judgment  
4 creditor’s ability to collect the judgment if it is affirmed by preserving the status quo and  
5 preventing prejudice to the creditor arising from the stay.” *See Nelson v. Heer*, 121 Nev. 832, 835,  
6 122 P.3d 1252, 1254 (2005), *as modified* (Jan. 25, 2006).

7 6. In *Nelson*, the Court adopted five factors from the Seventh Circuit for the Court to  
8 consider when analyzing whether to waive the bond and/or accept alternate security in lieu of a  
9 bond:

10 (1) the complexity of the collection process; (2) the amount of time required to  
11 obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that  
12 the district court has in the availability of funds to pay the judgment; (4) whether the  
13 defendant’s ability to pay the judgment is so plain that the cost of a bond would be  
14 a waste of money; and (5) whether the defendant is in such a precarious financial  
15 situation that the requirement to post a bond would place other creditors of the  
16 defendant in an insecure position.

17 *Id.*

18 7. The burden is on the movant to support its request under the foregoing factors and  
19 based on the current record, Plaintiff has not met the initial burden.

20 8. Specifically, in reviewing factors three (“the degree of confidence that the district  
21 court has in the availability of funds to pay the judgment”) and five (“whether the defendant is in  
22 such a precarious financial situation that the requirement to post a bond would place other creditors  
23 of the defendant in an insecure position”), Plaintiff Tricarichi’s declaration does not provide  
24 sufficiently detailed information that would provide the Court the ability to fully analyze the  
25 foregoing factors.

26 9. For these reasons and to allow the Court to evaluate the request better, Plaintiff  
27 Tricarichi’s Motion is denied in part and deferred in part to allow PwC to conduct a judgment  
28 debtor exam of Plaintiff Tricarichi, which the Court hereby orders and will take place within 30  
days of notice of entry of this Order.

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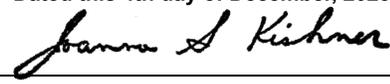
**ORDER**

The Court having made the foregoing findings of fact and conclusions of law, and good cause appearing,

**IT IS HEREBY ORDERED, ADJUDGED, and DECREED** that Plaintiff’s Motion for Stay of Execution Without Supersedeas Bond is **DENIED in part** and **DEFERRED in part**;

**IT IS FURTHER ORDERED** that the judgment debtor exam of Plaintiff Tricarichi shall take place within 30 days of notice of entry of this Order.

Dated this 4th day of December, 2023



55B 2A8 FCE1 6E4E  
Joanna S. Kishner  
District Court Judge

**Submitted by:**

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*PricewaterhouseCoopers LLP*

**Approved as to form and content:**

By: /s/ Scott F. Hessel  
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**To:** Austin, Bradley; Byrne, Pat  
**Cc:** Ariel C. Johnson; Mark Levine; Chris Landgraff  
**Subject:** RE: PwC/Tricarichi - Proposed Order Denying/Deferring Motion to Stay

[EXTERNAL] [shessell@sperling-law.com](mailto:shessell@sperling-law.com)

---

No as to “associated discovery” language.

You have my approval to submit the attached order.

Scott

---

**From:** Austin, Bradley <baustin@swlaw.com>  
**Sent:** Friday, December 1, 2023 9:02 PM  
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**Subject:** RE: PwC/Tricarichi - Proposed Order Denying/Deferring Motion to Stay

Scott,

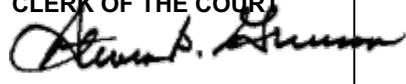
With the previous and below explanation, please let us know if you agree with the revised “associated discovery” language and if we have approval to e-sign and submit.

If you aren’t in agreement, please let us know if we have approval to submit the attached, which removes the stipulated portion. We will let the Court know that the parties are still working on a separate stipulation re: dates. Given today’s submission deadline, please let us know either way by 8:30pm Pacific this evening.

Thank you,

Brad

---



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11 *Attorneys for Plaintiff Michael Tricarichi*

DISTRICT COURT  
CLARK COUNTY, NEVADA

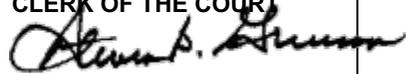
14 MICHAEL A. TRICARICHI, ) CASE NO. A-16-735910-B  
15 ) DEPT NO. XXXI  
16 Plaintiff, )  
17 v. ) **PLAINTIFF'S NOTICE OF**  
18 PRICEWATERHOUSECOOPERS LLP, ) **APPEAL**  
19 Defendant. )  
20 )

21 Notice is hereby given that Plaintiff Michael Tricarichi hereby appeals to the Supreme  
22 Court of Nevada from the special order after final judgment denying Plaintiff's motion pursuant

23 ///  
24 ///  
25 ///  
26 ///  
27 ///  
28 ///







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21 **DISTRICT COURT**  
22 **CLARK COUNTY, NEVADA**

23 MICHAEL A. TRICARICHI,  
24 Plaintiff,  
25 vs.  
26 PRICEWATERHOUSECOOPERS LLP,  
27 Defendant.

CASE NO.: A-16-735910-B  
DEPT. NO.: XXXI

**NOTICE OF ENTRY OF ORDER  
DENYING: (1) PLAINTIFF'S MOTION FOR  
STAY OF EXECUTION WITHOUT  
SUPERSEDEAS BOND AND (2)  
PLAINTIFF'S ORAL MOTION TO STAY  
EXECUTION FOR THIRTY DAYS**

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PLEASE TAKE NOTICE that an *Order Denying: (1) Plaintiff's Motion for Stay of Execution Without Supersedeas Bond and (2) Plaintiff's Oral Motion to Stay Execution for Thirty Days* was entered in the above-captioned matter on March 13, 2024, a copy of which is attached hereto.

Dated: March 13, 2024

SNELL & WILMER L.L.P.

By: /s/ Bradley Austin  
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**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On March 13, 2024, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING: (1) PLAINTIFF’S MOTION FOR STAY OF EXECUTION WITHOUT SUPERSEDEAS BOND AND (2) PLAINTIFF’S ORAL MOTION TO STAY EXECUTION FOR THIRTY DAYS** upon the following by the method indicated:

- BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court’s Service List for the above-referenced case.
- BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.
- BY PERSONAL DELIVERY:** by causing personal delivery via messenger service of the document(s) listed above to the person(s) at the address(es) set forth below.
- BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

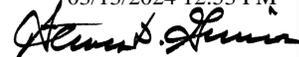
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*Attorneys for Plaintiff*

/s/ Michelle Shypkoski  
An Employee of Snell & Wilmer L.L.P.

4864-4151-1597



CLERK OF THE COURT

**Snell & Wilmer**  
LLP

LAW OFFICES  
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21 **DISTRICT COURT**  
22 **CLARK COUNTY, NEVADA**

23  
24 MICHAEL A. TRICARICHI,  
25 Plaintiff,

26 vs.

27 PRICEWATERHOUSECOOPERS LLP,  
28 Defendant.

CASE NO.: A-16-735910-B  
DEPT. NO.: XXXI

**ORDER DENYING: (1) PLAINTIFF'S  
MOTION FOR STAY OF EXECUTION  
WITHOUT SUPERSEDEAS BOND AND (2)  
PLAINTIFF'S ORAL MOTION TO STAY  
EXECUTION FOR THIRTY DAYS**

AA 001787

1 On February 29, 2024, the Court conducted a hearing on Plaintiff’s Motion for Stay of  
2 Execution Without Supersedeas Bond (“Motion”). Patrick Byrne, Esq. of Snell & Wilmer L.L.P  
3 appeared on behalf of Defendant PricewaterhouseCoopers LLP (“PwC”). Scott Hessell of  
4 Sperling & Slater, LLC and Ariel Johnson of Hutchinson & Steffen, LLC appeared on behalf of  
5 Plaintiff Michael Tricarichi. During the hearing, Plaintiff made an oral motion to stay enforcement  
6 of the Fees and Costs Judgment for 30 days (“Oral Motion to Stay”). The Court, having reviewed  
7 the record, the briefs submitted in support of and in opposition to the Motion, and the oral  
8 arguments of counsel, hereby **DENIES the Motion** and **DENIES the Oral Motion to Stay** and  
9 makes the following Findings of Fact, Conclusions of Law, and Order:

10 **FINDINGS OF FACT**

11 1. On August 25, 2023, the Court entered its Order Granting in Part and Denying in  
12 Part Defendant PwC’s Motion for Attorneys’ Fees and Costs and Order Granting in Part and  
13 Denying in Part Plaintiff Tricarichi’s Motion to Retax and Settle PwC’s Amended Verified  
14 Memorandum of Costs, wherein the Court awarded Defendant PwC \$2,102,754.39 in attorneys’  
15 fees and \$322,955.91 in costs (“Fees and Costs Order”). Dkt. No. 453.

16 2. On September 22, 2023, Plaintiff filed a notice of appeal with respect to the Fees  
17 and Costs Order.

18 3. On October 12, 2023, Plaintiff Tricarichi filed his Motion (Dkt. No. 462), arguing  
19 that, because Tricarichi was allegedly in such a precarious financial situation that the requirement  
20 to post a bond would place his other creditors – specifically the IRS, who holds an approximate  
21 \$35 million judgment against Tricarichi – in an insecure position, the Court should stay execution  
22 of the Fees and Costs Order without requiring Plaintiff Tricarichi to post a bond.

23 4. Following briefing on the Motion, the Court held a hearing on November 14, 2023,  
24 wherein the Court denied in part and deferred in part Plaintiff’s Motion, ordering a judgment  
25 debtor exam, supplemental briefing, and a supplemental hearing on the Motion. Dkt. No. 478.

26 5. Following the judgment debtor exam, Plaintiff filed a supplemental brief in support  
27 of the Motion on February 8, 2024, and PwC filed a supplemental opposition to the Motion on  
28

1 February 21, 2024. The Court conducted a supplemental hearing on the Motion on February 29,  
2 2024, during which, Plaintiff made his Oral Motion to Stay.

3 **CONCLUSIONS OF LAW**

4 6. NRCP 62(d) governs stays pending appeal and provides:

5 (1) **By Supersedeas Bond.** If an appeal is taken, the appellant may obtain a stay by  
6 supersedeas bond, except in an action described in Rule 62(a)(2). The bond may be  
7 given upon or after filing the notice of appeal or after obtaining the order allowing  
8 the appeal. The stay is effective when the supersedeas bond is filed.

9 (2) **By Other Bond or Security.** If an appeal is taken, a party is entitled to a stay by  
10 providing a bond or other security. Unless the court orders otherwise, the stay takes  
11 effect when the court approves the bond or other security and remains in effect for  
12 the time specified in the bond or other security.

13 7. “The purpose of security for a stay pending appeal is to protect the judgment  
14 creditor’s ability to collect the judgment if it is affirmed by preserving the status quo and  
15 preventing prejudice to the creditor arising from the stay.” *See Nelson v. Heer*, 121 Nev. 832, 835,  
16 122 P.3d 1252, 1254 (2005), *as modified* (Jan. 25, 2006).

17 8. In *Nelson*, the Court adopted five factors from the Seventh Circuit for the Court to  
18 consider when analyzing whether to waive the bond and/or accept alternate security in lieu of a  
19 bond:

20 (1) the complexity of the collection process; (2) the amount of time required to  
21 obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that  
22 the district court has in the availability of funds to pay the judgment; (4) whether the  
23 defendant’s ability to pay the judgment is so plain that the cost of a bond would be  
24 a waste of money; and (5) whether the defendant is in such a precarious financial  
25 situation that the requirement to post a bond would place other creditors of the  
26 defendant in an insecure position.

27 *Id.*

28 9. The burden is on the movant to support its request under the foregoing factors.

10. The Court finds that movant Tricarichi fails to support the same.

11. In analyzing factor one (“the complexity of the collection process”), the Court finds  
this factor in favor of PwC. Specifically, the Court finds that the collection process would be  
complex for the reasons articulated via briefing and oral argument and given that there are

1 complexities with respect to community property, competing judgments, and multistate property,  
2 among others.

3 12. In analyzing factor two (“the amount of time required to obtain a judgment after it  
4 is affirmed on appeal”), the Court finds this factor in favor of PwC, as the appeal process will  
5 likely take at least a year.

6 13. In analyzing factor three (“the degree of confidence that the district court has in the  
7 availability of funds to pay the judgment”), the Court finds this factor in favor of PwC, as the  
8 Parties do not dispute the lack of available funds, as further established via Plaintiff’s judgment  
9 debtor exam.

10 14. In analyzing factor four (“whether the defendant’s ability to pay the judgment is so  
11 plain that the cost of a bond would be a waste of money”), the Court finds this factor in favor of  
12 PwC, as Plaintiff argues the opposite – that he does *not* have the ability to pay the Fees and Costs  
13 Judgment.

14 15. In analyzing factor five (“whether the defendant is in such a precarious financial  
15 situation that the requirement to post a bond would place other creditors of the defendant in an  
16 insecure position”), the Court finds this factor in favor of PwC. Specifically, the Court finds that  
17 the IRS – the only other creditor presented to this Court – would not be in an insecure position  
18 were Plaintiff to post a bond because:

- 19 a. First, the IRS already has a judgment.
- 20 b. Second, the IRS is part of the federal government, and is not a private creditor.  
21 While the Court takes no position on whether preemption may or may not apply, it  
22 must take into consideration that the IRS is a bureau of the federal government,  
23 and the instant dispute is a matter of state law in a Nevada state court.
- 24 c. Third, Plaintiff has not presented evidence that: (1) the IRS believes it would be  
25 somehow impacted by the bond, (2) the IRS was put on notice of whether it would  
26 be impacted, or (3) the IRS couldn’t attach any posted bond during the intervening  
27 time that this case would be on appeal.

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**Luxford, Lyndsey**

---

**Subject:** RE: PwC/Tricarichi: Draft Order Denying Motion to Stay

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**From:** Scott F. Hessell <shessell@sperling-law.com>

**Sent:** Tuesday, March 12, 2024 6:37 PM

**To:** Austin, Bradley <baustin@swlaw.com>

**Cc:** Ariel C. Johnson <ajohnson@hutchlegal.com>; Byrne, Pat <pbyrne@swlaw.com>; randyjhart@gmail.com

**Subject:** Re: PwC/Tricarichi: Draft Order Denying Motion to Stay

**[EXTERNAL]** [shessell@sperling-law.com](mailto:shessell@sperling-law.com)

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Brad

Ok to affix sig as to form of revised order.

Scott

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4		
5		
6	Michael Tricarichi, Plaintiff(s)	CASE NO: A-16-735910-B
7	vs.	DEPT. NO. Department 31
8	PricewaterhouseCoopers LLP,	
9	Defendant(s)	

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order Denying was served via the court's electronic eFile system to all  
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 3/13/2024

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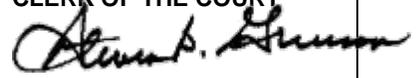
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Capital Reporting Company

<p style="text-align: right;">583</p> <p>1 PROCEEDINGS 2 (9:00 a.m.) 3 THE COURT: Good morning. Please be 4 seated. 5 THE CLERK: Resuming Docket Number 23630- 6 12. Michael A. Tricarichi, Transferee. 7 MS. LAMPERT: Good morning, Your Honor. 8 Heather Lampert for Respondent. Your Honor, this 9 morning we would like to call Richard Stovsky to the 10 stand. 11 THE COURT: Please proceed. 12 WHEREUPON, 13 RICHARD STOVSKY 14 called as a witness, and having been first 15 duly sworn, was examined and testified as follows: 16 THE WITNESS: Yes. 17 THE CLERK: Please state your name and 18 address. 19 THE WITNESS: Richard P. Stovsky. My 20 business address is 200 Public Square, Cleveland, 21 Ohio 44194. 22 THE COURT: Okay. Before we get to you, 23 Mr. Stovsky, I'd like to remind you that you're not 24 allowed to discuss your testimony with anybody else, 25 any other witness in the case, until the case is</p>	<p style="text-align: right;">585</p> <p>1 Q Yes, please. 2 A I went to Ohio State University and majored 3 in accounting, and my degree was a bachelor of 4 science in business administration. 5 From there I went to Cleveland Marshall 6 College of Law, which is a law school at Cleveland 7 State University. Received a law degree from 8 Cleveland State. 9 Q Okay. And do you have any professional 10 licenses? 11 A Yes. I'm a certified public accountant, a 12 member of the Ohio bar. 13 Q Okay. Any other licenses? 14 A Other than associations, no. 15 Q Okay. And can you give me a brief history 16 of your work experience since you finished law 17 school? 18 A Sure. I graduated from law school in 1983, 19 and immediately after the bar started with Coopers 20 and Lybrand, which was the predecessor firm to 21 PricewaterhouseCoopers, one of the two firms. 22 I was admitted to the partnership in 1992. 23 I've always been in the tax area at 24 PricewaterhouseCoopers. I've been a tax partner 25 since 1992.</p>
<p style="text-align: right;">584</p> <p>1 completely complete. Okay? 2 THE WITNESS: Yes. 3 MS. LAMPERT: And, Your Honor, before we 4 get started today, if I may. Can I have 5 Mr. Stovsky's representatives that are here with him 6 today stand up and identify themselves so that we're 7 all clear on who is in the courtroom today? 8 THE COURT: Yes. 9 MS. LAMPERT: Thank you. 10 MR. MARKUS: May it please the Court, Your 11 Honor, my name is Stephen Markus. I'm a partner with 12 the Cleveland law firm of Ulmer and Berne. 13 MR. DEMARCO: I'm Richard DeMarco from the 14 office of general counsel at PricewaterhouseCoopers. 15 THE COURT: Thank you. 16 MS. LAMPERT: Thank you, Your Honor. 17 DIRECT EXAMINATION 18 BY MS. LAMPERT: 19 Q Mr. Stovsky, if it's okay with you, I'm 20 going to sit down while we do our examination today. 21 Can you hear me all right? 22 A Yes. 23 Q Okay. Could you give me a brief 24 description of your educational background? 25 A Sure. Starting with college?</p>	<p style="text-align: right;">586</p> <p>1 I've had various additional roles in the 2 firm. In addition to client service, I was the 3 market -- the Cleveland market leader for private 4 companies, the little market practice. I was also 5 the Midwest region leader for middle market for PwC. 6 I was the office managing partner in Cleveland. And 7 my current role is that I'm the United States private 8 company services leader for PricewaterhouseCoopers. 9 So my practice includes all -- services to 10 most of our private companies in the U.S., all 11 services to those companies. And I'm also a member 12 of our firm's executive -- excuse me, extended 13 leadership team, which is one of the bodies that 14 governs the firm. 15 Q I'm having a little problem hearing you. 16 A Oh, I'm sorry. 17 Q Do you think that you could speak into the 18 microphone? 19 A Sure. Is that better? 20 THE COURT: That's better, yes. 21 THE WITNESS: I'm sorry. 22 BY MS. LAMPERT: 23 Q That's perfect. Thank you. I want to make 24 sure that I hear everything that you say. 25 And in 2003, what were your</p>

Capital Reporting Company

<p style="text-align: right;">595</p> <p>1 THE WITNESS: Correct. The reason why  2 there's two pages, when we produced the file, we  3 produced every --  4 THE COURT: Correct.  5 THE WITNESS: -- piece of paper in the  6 file. And there were two pieces, so I produced both.  7 But these -- but that's exactly right.  8 THE COURT: And what's page 5? Was that --  9 I suppose that was an internal note you made to  10 yourself --  11 THE WITNESS: Yes.  12 THE COURT: -- in the file?  13 THE WITNESS: It was -- it was attached to  14 the page -- it was attached to -- I believe it was  15 attached to page -- this page 2 in the file.  16 THE COURT: And so did -- and that means  17 that the way the opinion -- this was initially issued  18 was as we see on the first page --  19 THE WITNESS: Correct.  20 THE COURT: -- without the strikeout?  21 THE WITNESS: Right.  22 THE COURT: Thank you.  23 BY MS. LAMPERT:  24 Q Can you please turn to Exhibit 25? Can you  25 look through this exhibit for me, please, and when</p>	<p style="text-align: right;">597</p> <p>1 the top left: "red comments," and then the second  2 note says: "pencil comments." So I wrote in red and  3 pencil to identify different meetings that the notes  4 related to.  5 Q And you said this was an internal  6 memorandum?  7 A Yes.  8 Q Was this memo given to anyone outside of  9 PwC?  10 A Not to my knowledge, no.  11 Q And did you draft all parts of this memo?  12 A Yes.  13 Q Did you draft all parts of this mem-- did  14 you have any input from anybody else when you were  15 writing this memo?  16 A Yes. The entire -- anybody who worked on  17 the project. I was collecting -- I was coordinating  18 the project and collecting information as we went  19 through the project.  20 Q Okay. Can you talk to me about who else  21 was on the project at PwC?  22 A Sure. The project had two main components:  23 a federal tax component and a state tax component.  24 The federal side, Tim Lohnes of our Washington  25 National Tax practice led the efforts relative to any</p>
<p style="text-align: right;">596</p> <p>1 you're done, let me know.  2 A (Brief pause.) Okay.  3 Q Do you recognize this document?  4 A I do.  5 Q And can you identify this document for us?  6 A Right. This is my internal memo to the  7 file that I drafted throughout the transaction.  8 Q And there is some handwriting on the first  9 five --  10 A Right.  11 Q -- pages of this exhibit. Pages 1 through  12 5 there's handwriting. Do you recognize this  13 handwriting?  14 A I do.  15 Q And whose handwriting is this?  16 A It's mine.  17 Q It's yours. So these notes are your notes?  18 A They are.  19 Q And it appears that there might be two  20 different writing utensils that were used for some of  21 these notes.  22 A Right.  23 Q Does that -- is that indicative of  24 anything?  25 A Well, if you refer to page 1, it says up in</p>	<p style="text-align: right;">598</p> <p>1 federal tax questions that we were addressing.  2 Tim is a subject-matter expert in our  3 Washington National Tax Practice and specializes in  4 other corporate tax provisions. In addition, Tim  5 relied upon others with the National Tax. But the  6 one that appears in this memo is Don Rookan  7 (phonetic).  8 Don was -- actually, Don had a career with  9 the Internal Revenue Service. He was deputy chief  10 counsel with assistant commissioning. When he went  11 -- when he left the service after years, he joined  12 our firm, and he also had input into this memo.  13 On the state and local side, Ray Turk,  14 who's a partner at PwC, is a state and local tax  15 partner. And he and David Cook, who is a director at  16 our practice, and others, handled the state and local  17 side.  18 So there was input from numerous people  19 because our practice is to go to our experts.  20 Whenever we're doing really any project, we rely on  21 our experts. And in this case, we relied on our  22 National Tax experts, as well as our state and local  23 experts.  24 Q And you might have said this, but I missed  25 what you said. On Don Rookan --</p>



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21 *Attorneys for Plaintiff Michael A. Tricarichi*

22 DISTRICT COURT  
23 CLARK COUNTY, NEVADA

24 MICHAEL A. TRICARICHI, ) CASE NO. A-16-735910-B  
25 ) DEPT NO. XXXI  
26 Plaintiff, )  
27 )  
28 v. ) **NOTICE OF ENTRY OF ORDER**  
29 ) **GRANTING IN PART**  
30 ) **PLAINTIFF MICHAEL**  
31 ) **TRICARICHI'S MOTION FOR**  
32 ) **DISCOVERY SANCTIONS AND**  
33 ) **MOTION FOR LEAVE TO FILE**  
34 ) **UNDER SEAL**  
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TO: ALL INTERESTED PARTIES

NOTICE IS HEREBY GIVEN that an Order Granting In Part Plaintiff Michael Tricarichi's Motion For Discovery Sanctions And Motion For Leave To File Under Seal was entered in the above-entitled action on December 8, 2022, a copy of which is attached hereto.

DATED: December 8, 2022.

HUTCHISON & STEFFEN, PLLC

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**CERTIFICATE OF SERVICE**

Pursuant to NRCp 5(b), I certify that I am an employee of Hutchison & Steffen, PLLC and that on this 8<sup>th</sup> day of December, 2022, I caused the above and foregoing document entitled **NOTICE OF ENTRY OF ORDER GRANTING IN PART PLAINTIFF MICHAEL TRICARICHI'S MOTION FOR DISCOVERY SANCTIONS AND MOTION FOR LEAVE TO FILE UNDER SEAL** to be served through the Court's mandatory electronic service system, per EDCR 8.02, upon the following:

**ALL PARTIES ON THE E-SERVICE LIST**

/s/ Alexandria Jones  
An employee of Hutchison & Steffen, PLLC

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*Attorneys for Plaintiff Michael Tricarichi*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

MICHAEL A. TRICARICHI,  
  
Plaintiff,  
  
vs.  
  
PRICEWATERHOUSECOOPERS LLP,  
  
Defendant.

CASE NO. A-16-735910-B  
DEPT NO. XXXI

**ORDER GRANTING IN PART  
PLAINTIFF MICHAEL TRICARICHI'S  
MOTION FOR DISCOVERY  
SANCTIONS AND MOTION FOR  
LEAVE TO FILE UNDER SEAL**

This Court, having reviewed and considered Plaintiff Michael Tricarichi's Motion for Discovery Sanctions (Dkt. No. 382), Plaintiff's Motion for Leave to File under Seal Plaintiff's Motion for Discovery Sanctions on Order Shortening Time (Dkt. No. 370), and PricewaterhouseCoopers LLP's ("PwC") Opposition to Michael Tricarichi's Motion for Discovery Sanctions, and the oral argument of counsel, hereby enters the following order granting in part and denying in part as moot Mr. Tricarichi's Motion for Discovery Sanctions and Motion for Leave to File under Seal:

1 **I. Findings of Fact**

2 All discovery in this case closed on September 28, 2020 and fact discovery closed before  
3 to allow completion of expert discovery. (Dkt. No. 233 (June 12, 2020, 2d Am. Business Court  
4 Scheduling Order)).

5 PwC identified in its first Nevada Rule of Civil Procedure (“Rule”) 16 initial disclosure in  
6 February 2017 “[d]ocuments and communications concerning the April 2003 Engagement” and  
7 “[d]ocuments and communications concerning the work, research and analysis performed by PwC  
8 pursuant to the April 2003 Engagement” as relevant documents in its possession, custody, or  
9 control. PwC represented to Mr. Tricarichi throughout discovery that it produced documents  
10 relevant to his and Fortrend’s transaction. In August 2017 and March 2020, outside counsel  
11 representing PwC confirmed that it had searched for and produced responsive documents from a  
12 number of custodians (including PwC accountants directly involved with Mr. Tricarichi’s matter,  
13 Richard Stovsky and Timothy Lohnes) that contained the word “Tricarichi.” PwC also reiterated  
14 the scope of the searches for Tricarichi specific documents as the basis to oppose a motion to  
15 compel Mr. Tricarichi filed, which was denied in part based on PwC’s representation. Specifically,  
16 PwC represented that it had “already produced and is supplementing its production with documents  
17 related to general guidance or training on midco transactions.” (Dkt. No. 220 (May 13, 2020,  
18 PwC’s Opp. to Plaintiff’s Mot. to Compel at 6). In denying Mr. Tricarichi’s motion to compel,  
19 Judge Gonzalez specifically cited that “PwC represents that it has produced documents specific to  
20 Tricarichi’s engagement,” as a basis for denying Plaintiff discovery regarding other Midco  
21 transactions PwC reviewed. (Dkt. No. 234 (June 16, 2020, MTC Order at 4:6-8).) Mr. Tricarichi  
22 deposed Mr. Stovsky on September 1, 2020. Mr. Tricarichi had been interested in what if any  
23 conflict check PwC performed in connection with the Tricarichi matter. Mr. Stovsky testified he  
24 completed the required forms for Mr. Tricarichi’s matter but that he did not know if the forms still  
25 existed.

26 On October 19, 2022, twelve days before trial, PwC belatedly produced four responsive  
27 documents from its Tricarichi files. PwC represented to the Court that the failure to previously  
28 produce the documents was not a collection issue, but rather due to technological limitations and

1 human error after the documents had been collected. These documents included PwC's Client  
2 Acceptance Form, PwC's Tax Engagement Checklist for the Tricarichi engagement, a page of Mr.  
3 Stovsky's handwritten notes relating to his testimony in Tricarichi's Tax Court litigation, and a  
4 tax policy proposal relating to shareholders participating in intermediary transactions. PwC offered  
5 to make Mr. Stovsky available for a deposition before trial and during trial before his testimony.  
6 Mr. Tricarichi chose not to depose Mr. Stovsky again. Similarly, Mr. Tricarichi dropped his request  
7 for the deposition of the individual who performed a "second-partner review" referenced in both  
8 the Tax Engagement Checklist and the Client Acceptance Checklist after PwC informed Mr.  
9 Tricarichi that the second-partner reviewer for federal income tax issues was Mr. Lohnes and  
10 retired PwC partner Ronald Padgett performed a second review of the client acceptance checklist  
11 itself.

12 Mr. Tricarichi also requested a Rule 30(b)(6) deposition related to PwC's collection of  
13 documents. Mr. Tricarichi has not offered any concrete evidence that there are other relevant,  
14 unproduced documents in PwC's possession. And, based on this case's long litigation history and  
15 the declaration from counsel documenting PwC's efforts to identify any additional documents, the  
16 Court finds it unlikely that PwC's collection was incomplete, and concludes that the four  
17 documents at issue were missed in production, not in collection. As such, a Rule 30(b)(6)  
18 deposition on PwC's collection efforts at this juncture is not an appropriate or efficient use of  
19 resources. Moreover, neither party has represented to the Court that there is a PwC witness with  
20 the historical knowledge necessary to testify, based on first-hand knowledge, to PwC's compliance  
21 with its collection policies for the last twenty years.

22 With respect to Mr. Tricarichi's Motion for Leave to File Under Seal, the parties agreed,  
23 through their respective counsel, that the only document sought to be filed under seal is Exhibit 11  
24 to Mr. Tricarichi's Motion for Discovery Sanctions which contains a tax engagement checklist  
25 produced in another matter ("Exhibit 11 Tax Engagement Checklist"). Upon review of the papers  
26 and pleadings in file in this matter, as all parties to this matter were properly served, this Court  
27 finds that no opposition was filed to the underlying Motion for Leave to File Under Seal.

28

1 **II. Conclusions of Law**

2 The Court concludes that under Nevada Rule of Civil Procedure (“Rule”) 16, “a party must,  
3 without awaiting a discovery request provide to the other parties a copy—or a description by  
4 category and location—of all documents, electronically stored information, and tangible things  
5 that the disclosing party has in its possession, custody, or control and may use to support its claims  
6 or defenses, including for impeachment or rebuttal, and, unless privileged or protected from  
7 disclosure, any record, report, or witness statement, in any form, concerning the incident that gives  
8 rise to the lawsuit” Rule 16.1(a)(1)(A)(ii).

9 Under Rule 26, a party “may obtain discovery regarding any nonprivileged matter that is  
10 relevant to any party’s claims or defenses and proportional to the needs of the case, considering  
11 the importance of the issues at stake in the action, the amount in controversy, the parties’ relative  
12 access to relevant information, the parties’ resources, the importance of the discovery in resolving  
13 the issues, and whether the burden or expense of the proposed discovery outweighs its likely  
14 benefit. Information within this scope of discovery need not be admissible in evidence to be  
15 discoverable.” Rule 26(b)(1).

16 Further, the Court concludes that, as punishment for failure to comply with Rules 16 and  
17 26, the court may issue an order to include the following:

- 18 (A) directing that the matters embraced in the order or other designated  
19 facts be taken as established for purposes of the action, as the prevailing  
party claims;
- 20 (B) prohibiting the disobedient party from supporting or opposing  
designated claims or defenses, or from introducing designated matters in  
evidence;
- 21 (C) striking pleadings in whole or in part;
- 22 (D) staying further proceedings until the order is obeyed;
- 23 (E) dismissing the action or proceeding in whole or in part;
- (F) rendering a default judgment against the disobedient party; or
- 24 (G) treating as contempt of court the failure to obey any order except an  
order to submit to a physical or mental examination.

25 Rule 37(b)(1)(A)–(G). Further, “[i]f a party fails to provide information . . . required by Rule  
26 16.1(a)(1) . . . the party is not allowed to use that information or witness to supply evidence on a  
27 motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In  
28 addition to or instead of this sanction, the court, on motion and after giving an opportunity to be

1 heard:

2 (A) may order payment of the reasonable expenses, including attorney  
3 fees, caused by the failure;

4 [ . . . ]

5 (C) may impose other appropriate sanctions, including any of the orders  
6 listed in Rule 37(b)(1).

7 Rule 37(b)(1)(A), (C).

8 PwC's failure to produce these materials in a timely fashion deprived Mr. Tricarichi of the  
9 ability to depose PwC regarding these materials before the close of discovery. Moreover, two of  
10 the documents, PwC's Tax Client Acceptance Form and Tax Engagement Checklist for Mr.  
11 Tricarichi, identify and link to PwC policies and procedures applicable to a new client engagement  
12 that PwC had not produced before the close of fact discovery. PwC's failures to produce the four  
13 documents and the identified and linked materials prior to the close of discovery is in violation of  
14 Rules 16 and 26, and punishable under Rule 37.

15 Pursuant to EDCR 2.20(e), the Court concludes that Mr. Tricarichi's Motion for Leave to  
16 File Under Seal is deemed unopposed. Therefore, the Court having considered Mr. Tricarichi's  
17 Motion for Leave to File Under Seal, and PwC's assertions that the Exhibit 11 Tax Engagement  
18 Checklist is confidential and that confidentiality requirements imposed by law apply to certain  
19 types of business practices and former clients, the public interest in privacy outweighs the public  
20 interest of public disclosure in accordance with Rule 3(4) of the Nevada Supreme Court's Rules  
21 Governing Sealing and Redacting of Court Records ("SRCR").

22 **ORDER**

23 **IT IS HEREBY ORDERED** as follows:

24 Mr. Tricarichi's Motion for Discovery Sanctions and Motion for Leave to File Under Seal  
25 are both **GRANTED IN PART AND DENIED AS MOOT IN PART**, as follows:

26 By agreement of the parties, PwC has produced additional PwC policy documents  
27 referenced in the Tax Client Acceptance Form and Tax Engagement Checklist.

28 With the parties' agreement, certain of those documents marked for identification as  
Plaintiff's Exhibits 84 through 89 are added to Mr. Tricarichi's exhibit list and admitted for all

1 purposes.

2 Because argument on the instant motion took place on October 31, 2022, at the outset of  
3 the trial in this case, the Court holds open Mr. Tricarichi's request for a further Rule 30(b)(6)  
4 deposition related to PwC's collection of documents or other, unspecified relief throughout the  
5 parties' trial, in the event that the Court deems it appropriate to revisit those requests in light of  
6 unanticipated harm or prejudice arising during the trial based on the late produced documents.<sup>1</sup>

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27 <sup>1</sup> The trial concluded on November 10, 2022, without any such prejudice being brought to the  
28 Court's attention.

1 As Mr. Tricarichi withdrew his request for the deposition of Mr. Stovksy and the “second-  
2 partner” reviewer, the remainder of the relief sought by Mr. Tricarichi is denied as moot.

3 In accordance with SRCR 3(5)(b), Exhibit 11 Tax Engagement Checklist shall be SEALED  
4 as filed with the Court.

5  
6 DATED: \_\_\_\_\_

Dated this 8th day of December, 2022



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639 2B5 9912 997C  
Joanna S. Kushner  
District Court Judge

11 Respectfully submitted by:  
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13 By: /s/ Ariel C. Johnson  
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22 Chicago, IL 60603  
23 *Attorneys for Plaintiff Michael*  
24 *Tricarichi*

Approved as to form and content:  
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*PricewaterhouseCoopers LLP*

---

**From:** Austin, Bradley <baustin@swlaw.com>  
**Sent:** Wednesday, December 7, 2022 5:01 PM  
**To:** Ariel C. Johnson; Blake Sercye; Kate Roin; Scott F. Hessell  
**Cc:** Mark Levine; Chris Landgraff; Rob Addy; Alexandra Genord; Alexandria Jones  
**Subject:** RE: Tricarichi v. PwC (A735910): Health Update

Hi Ariel,

No objection to that addition. You may affix my e-signature to the proposed order.

Thanks,

Brad

---

**From:** Ariel C. Johnson <ajohnson@hutchlegal.com>  
**Sent:** Wednesday, December 7, 2022 3:18 PM  
**To:** Blake Sercye <bsercye@sperling-law.com>; Kate Roin <kate.roin@bartlitbeck.com>; Scott F. Hessell <shessell@sperling-law.com>  
**Cc:** Mark Levine <mark.levine@bartlitbeck.com>; Chris Landgraff <chris.landgraff@bartlitbeck.com>; Rob Addy <rob.addy@bartlitbeck.com>; Alexandra Genord <alexandra.genord@bartlitbeck.com>; Austin, Bradley <baustin@swlaw.com>; Alexandria Jones <ajones@hutchlegal.com>  
**Subject:** RE: Tricarichi v. PwC (A735910): Health Update

**[EXTERNAL]** [ajohnson@hutchlegal.com](mailto:ajohnson@hutchlegal.com)

---

Brad (and All),

The Court recently rejected the proposed Order on Tricarichi's Motion for Discovery Sanctions and Motion for Leave to File Under Seal on the basis that it did not include a signature from or proof of agreement to the proposed Order from PwC's counsel.

As such, I have revised the signature page to appear with a line "Approved as to form and content:" followed by your signature block. Please see the attached.

Would you please confirm whether you are agreeable to this minor alteration so that we can re-submit the proposed Order with your electronic signature for the Court's review and approval?

Thanks!

Ariel

---

**From:** Blake Sercye <bsercye@sperling-law.com>  
**Sent:** Friday, December 2, 2022 3:46 PM  
**To:** Kate Roin <kate.roin@bartlitbeck.com>; Scott F. Hessell <shessell@sperling-law.com>; Ariel C. Johnson <ajohnson@hutchlegal.com>

**Cc:** Mark Levine <mark.levine@bartlitbeck.com>; Chris Landgraff <chris.landgraff@bartlitbeck.com>; Rob Addy <rob.addy@bartlitbeck.com>; Alexandra Genord <alexandra.genord@bartlitbeck.com>; Brad Austin <baustin@swlaw.com>

**Subject:** RE: Tricarichi v. PwC (A735910): Health Update

Please see the attached clean version. This reflects our agreement per my conversation with Kate.

This is ready to be filed.

Thanks,  
Blake

Blake Sercye  
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55 W. Monroe Street, Suite 3200  
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---

**From:** Kate Roin <[kate.roin@bartlitbeck.com](mailto:kate.roin@bartlitbeck.com)>

**Sent:** Friday, December 2, 2022 5:40 PM

**To:** Blake Sercye <[bsercye@sperling-law.com](mailto:bsercye@sperling-law.com)>; Scott F. Hessell <[shessell@sperling-law.com](mailto:shessell@sperling-law.com)>; Ariel C. Johnson <[ajohnson@hutchlegal.com](mailto:ajohnson@hutchlegal.com)>

**Cc:** Mark Levine <mark.levine@bartlitbeck.com>; Chris Landgraff <chris.landgraff@bartlitbeck.com>; Rob Addy <rob.addy@bartlitbeck.com>; Alexandra Genord <alexandra.genord@bartlitbeck.com>; Brad Austin <baustin@swlaw.com>

**Subject:** Re: Tricarichi v. PwC (A735910): Health Update

Blake,

We are really close. See attached accepting your edits and adding a couple additional edits for clarification and also fixing a citation.

I will call you now.

Kate

**BartlitBeck** LLP

KATE ROIN | p: 312.494.4437 | c: 847.858.1417 | [Kate.Roin@BartlitBeck.com](mailto:Kate.Roin@BartlitBeck.com) | Courthouse Place, 54 West Hubbard Street, Chicago, IL 60654  
This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4		
5		
6	Michael Tricarichi, Plaintiff(s)	CASE NO: A-16-735910-B
7	vs.	DEPT. NO. Department 31
8	PricewaterhouseCoopers LLP,	
9	Defendant(s)	

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order Granting Motion was served via the court's electronic eFile  
system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/8/2022

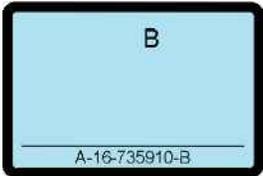
15	Brad Austin .	baustin@swlaw.com
16	Docket .	DOCKET_LAS@swlaw.com
17	Gaylene Kim .	gkim@swlaw.com
18	Jeanne Forrest .	jforrest@swlaw.com
19	Lyndsey Luxford .	lluxford@swlaw.com
20	Maddy Carnate-Peralta .	maddy@hutchlegal.com
21	Patrick Byrne .	pbyrne@swlaw.com
22	Scott F. Hessell .	shessell@sperling-law.com
23	Thomas D. Brooks .	tbrooks@sperling-law.com
24	Todd Prall .	tprall@hutchlegal.com
25	Tom Brooks	tdbrooks@sperling-law.com

26  
27  
28  
AA 001810

1	Blake Sercye	bsercye@sperling-law.com
2	Katharine Roin	kate.roin@bartlitbeck.com
3	Ariel Johnson	ajohnson@hutchlegal.com
4	Todd Prall	tprall@hutchlegal.com
5	Danielle Kelley	dkelley@hutchlegal.com
6	Brenoch Wirthlin	bwirthlin@hutchlegal.com
7	Christopher Landgraff	chris.landgraff@bartlitbeck.com
8	Mark Levine	mark.levine@bartlitbeck.com
9	Daniel Taylor	daniel.taylor@bartlitbeck.com
10	Krista Perry	krista.perry@bartlitbeck.com
11	Alexandra Genord	alexandra.genord@bartlitbeck.com
12	Rob Addy	rob.addy@bartlitbeck.com
13	Alexandria Jones	ajones@hutchlegal.com
14	Morgan Johnson	mjohnson@swlaw.com
15		
16		
17		
18		
19		
20		
21		
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25		
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28		

# **Exhibit 51**

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**The time you have to file a petition with the court is set by law and cannot be extended or suspended.** Thus, contacting the Internal Revenue Service (IRS) for more information, or receiving other correspondence from the IRS will not change the allowable period for filing a petition with the Tax Court.

**If you decide not to file a petition with the Tax Court,** please sign the enclosed waiver form and return it to us at the IRS address on the top of the first page of this letter. This will permit us to assess the liability quickly and can help limit the accumulation of interest.

**If you decide not to sign and return the waiver,** and you do not file a petition with the Tax Court within the time limit, the law requires us to assess and bill you for the liability after 90 days from the date of this letter (150 days if this letter is addressed to you outside the United States).

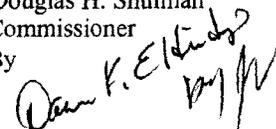
If you have questions about this letter, you may write or call the contact person whose name, telephone number, and IRS address are shown on the first page of this letter. If you write, please include your telephone number, the best time for us to call you if we need more information, and a copy of this letter to help us identify your account. Keep the original letter for your records. If you call and the telephone number is outside your local calling area, there will be a long distance charge.

The contact person can access your tax information and help answer your questions. You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures such as the formal appeals process. The Taxpayer Advocate is not able to reverse legally correct tax determinations, nor extend the time fixed by law that you have to file a petition with the Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this Notice of Liability. See the enclosed Notice 1214, *Helpful Contacts for Your "Notice of Deficiency,"* for Taxpayer Advocate telephone numbers and addresses.

Thank you for your cooperation.

Sincerely,

Douglas H. Shulman  
Commissioner  
By

  
Darwin K. Eldridge, Acting Territory Manager  
Technical Services, Gulf States Area

Enclosures:  
Explanation of tax changes  
Waiver  
Notice 1214

**Letter 902-T (12-2008)**  
Catalog Number 52444G

**ADMIN\_TRI02605**

TRICAR-NV0027038  
**AA 001814**  
**APPX0678**

JUN 25 2012

Form <b>870-T</b> (Rev. September 2009)	Department of the Treasury — Internal Revenue Service <b>Waiver of Restrictions on Assessment and Collection of Transferee or Fiduciary Liability</b>	Date received by Internal Revenue Service
--	--	--

Transferee or Fiduciary name, address and identification number  Michael Tricarichi, Transferee 20 Hawk Ridge Dr. Las Vegas, NV 89135  <div style="border: 1px solid black; padding: 2px; width: fit-content;">Redaction</div>	Taxpayer name, address and taxpayer identification number
--	---

**Liability of the above transferee or fiduciary for the following liability(ies) of the above taxpayer,  
subject to the limitation below.**

*This represents the undersigned's liability as a transferee of assets of West Side Cellular, Inc. (EIN: 34-1685059), 1155 W Fourth St., #225-18, Reno, NV 89503, for the unpaid income tax, penalties/additions to tax, plus interest as provided by law, due from West Side Cellular, Inc. to the extent of the net value of the assets received, plus interest thereon as provided by law. It has been determined that the net value of the assets received by the above referenced transferee is \$35,199,372.00.*

Tax period ended	Tax		Penalties	
	Deficiency	IRC 6662(c)-(d)	IRC 6662(h)	
December 31, 2003	\$15,186,570.00	\$61,851.00	\$5,950,926.00	

*(For instructions, see back of form)*

**Consent to Assessment and Collection**

I consent to the immediate assessment and collection of any liability shown above. I understand that by signing this waiver, I will not be able to contest this liability in the United States Tax Court, except as additional transferee or fiduciary liability is determined for these years.

<b>TRANSFEREE OR FIDUCIARY SIGNATURE HERE</b>		Date
<b>TRANSFEREE OR FIDUCIARY REPRESENTATIVE HERE</b>		Date
<b>CORPORATE NAME</b>		Date
<b>CORPORATE OFFICER(S)</b>	Title	Date
<b>SIGN HERE</b>	Title	Date

**ADMIN\_TRI02606**

TRICAR-NV-10-001815  
**APPX0679**

Form <b>870-T</b> (Rev. September 2009)	Department of the Treasury — Internal Revenue Service <b>Waiver of Restrictions on Assessment and Collection                  of Transferee or Fiduciary Liability</b>	Date received by Internal Revenue Service
--	---	--

Transferee or Fiduciary name, address and identification number  Michael Tricarichi, Transferee 20 Hawk Ridge Dr. Las Vegas, NV 89135  <div style="border: 1px solid black; padding: 2px; width: fit-content;">Redaction</div>	Taxpayer name, address and taxpayer identification number
--	---

**Liability of the above transferee or fiduciary for the following liability(ies) of the above taxpayer,  
subject to the limitation below.**

This represents the undersigned's liability as a transferee of assets of West Side Cellular, Inc. (EIN: 34-1685059), 1155 W Fourth St., #225-18, Reno, NV 89503, for the unpaid income tax, penalties/additions to tax, plus interest as provided by law, due from West Side Cellular, Inc. to the extent of the net value of the assets received, plus interest thereon as provided by law. It has been determined that the net value of the assets received by the above referenced transferee is \$35,199,372.00.

Tax period ended	Tax	Penalties			
	Deficiency	IRC 6662(c)-(d)	IRC 6662(h)		
December 31, 2003	\$15,186,570.00	\$61,851.00	\$5,950,926.00		

*(For instructions, see back of form)*

**Consent to Assessment and Collection**

I consent to the immediate assessment and collection of any liability shown above. I understand that by signing this waiver, I will not be able to contest this liability in the United States Tax Court, except as additional transferee or fiduciary liability is determined for these years.

<b>TRANSFEREE OR FIDUCIARY SIGNATURE HERE</b>		Date
<b>TRANSFEREE OR FIDUCIARY REPRESENTATIVE HERE</b>		Date
<b>CORPORATE NAME</b>		Date
<b>CORPORATE OFFICER(S)</b>	Title	Date
<b>SIGN HERE</b>	Title	Date

**ADMIN\_TRI02607**

TRICAR-NV0027040  
**APPX0680**

Name of Transferee or Fiduciary and Name of Taxpayer: Michael Tricarichi, Transferee

Identification Number of transferee or fiduciary and taxpayer: Redaction

Form 870-T page 2

### Instructions

#### General Information

If you consent to the assessment of the transferee or fiduciary liability shown in this waiver, please sign and return the form in order to limit any interest charge and expedite the adjustment to your account. Your consent will not prevent you from filing a claim for refund (after you have paid the liability) if you later believe you are so entitled. It will not prevent us from later determining, if necessary, that you owe additional liability; nor extend the time provided by law for either action.

If you later file a claim and the Service disallows it, you may file suit for refund in a district court or in the United States Claims Court, but you may not file a petition with the United States Tax Court.

#### Who Must Sign

If this waiver is for a corporation, it should be signed with the corporation name, followed by the signatures and titles of the corporate officers authorized to sign. An attorney or agent may sign this waiver provided such action is specifically authorized by a power of attorney which, if not previously filed, must accompany this form.

If this waiver is signed by a person acting in a fiduciary capacity (for example, an executor, administrator, or a trustee) Form 56, Notice Concerning Fiduciary Relationship, should, unless previously filed, accompany this form.

ADMIN\_TRI02608

TRICAR-NVA-2004-1817  
APPX0681

Notice of Liability Statement

Exhibit – 1.0

Michael Tricarichi, Transferee

TIN: [Redaction]

West Side Cellular, Inc., Transferor

EIN: 34-1685059

1155 W. Fourth St., #225-18

Reno, NV 89503

Income tax liability for the taxable year ended December 31, 2003:

Income Tax Liability	\$15,186,570.00
Accuracy-Related Penalty IRC 6662(c) / (d)	61,851.00
Accuracy-Related Penalty IRC 6662(h)	5,950,926.00
Total	\$21,199,347.00

Michael Tricarichi, Transferee

TIN [Redaction]

20 Hawk Ridge Dr.

Las Vegas, NV 89135

It has been determined that West Side Cellular, Inc. has been liquidated and that its assets were transferred to you in 2003.

The above amount, plus interest as provided by law, is your liability as a transferee of the assets of West Side Cellular, Inc., for an income tax deficiency and penalties for the taxable year ended December 31, 2003.

It has been determined that the transaction, in which you purportedly sold your shares of stock in West Side Cellular, Inc., is not respected for tax purposes. See, e.g., Owens v. Commissioner, 568 F.2d 1233 (6th Cir. 1977). Rather, the purported stock sale is a sham that lacks substance. The purported stock sale should be disregarded under the substance-over-form doctrine, and/or the economic substance doctrine and/or the step transaction doctrine. The purported stock sale is recast, in substance, as a liquidating distribution to you as shareholder.

Assets Transferred to Michael Tricarichi – West Side Cellular Inc.: Transferor

Assets	Value
Cash	\$34,621,594.00
Check – (amount of shareholder loan)	\$577,778.00
Total Transfers	\$35,199,372.00

ADMIN\_TRI02609

TRICAR-NV0027042

AA 001818  
APPX0682

**Notice of Liability Statement**

**Exhibit – 1.0**

**Michael Tricarichi, Transferee**

TIN

Redaction

The amounts listed above reflect the transfer of assets West Side Cellular Inc. made to you. Because the total amount of the assets transferred to you exceeds the amount unpaid by West Side Cellular, Inc., your liability as a transferee for the income tax and penalties due from West Side Cellular, Inc. equals \$21,199,347.00, plus interest as provided by law.

---

**ADMIN\_TRI02610**

TRICAR-NW027043  
**AA-001819**  
**APPX0683**



## Helpful Contacts for Your “Notice of Deficiency”

The IRS office whose phone number appears at the top of the notice can best address and access your tax information and help get you answers.

You may be eligible for help from the Taxpayer Advocate Service (TAS) if you have tried to resolve your tax problem through normal IRS channels and have gotten nowhere, or you believe an IRS procedure just isn't working as it should. TAS is your voice at the IRS. TAS helps taxpayers whose problems are causing financial difficulty or significant cost, including the cost of professional representation (this includes businesses as well as individuals).

You can reach TAS by calling the TAS toll-free number at 1-877-777-4778 or by contacting the local Taxpayer Advocate office, whose address and phone numbers are listed here. To learn more about TAS and your basic tax responsibilities, visit [www.taxpayeradvocate.irs.gov](http://www.taxpayeradvocate.irs.gov).

The Taxpayer Advocate Service can't reverse a legally correct tax determination or extend the time you have to file a petition in the United States Tax Court (that time is set by law). TAS can help you resolve tax problems that you haven't been able to resolve on your own.  
*The worst thing you can do is nothing at all!*

**ALABAMA**  
**Birmingham Office**  
Taxpayer Advocate  
801 Tom Martin Drive, Stop 151  
Birmingham, AL 35211  
(205) 912-5631

**ALASKA**  
**Anchorage Office**  
Taxpayer Advocate  
949 East 36th Avenue, Stop A-405  
Anchorage, AK 99508  
(907) 271-6877

**ARIZONA**  
**Phoenix Office**  
Taxpayer Advocate  
4041 N. Central Avenue, MS 1005  
Phoenix, AZ 85012  
(602) 636-9500

**ARKANSAS**  
**Little Rock Office**  
Taxpayer Advocate  
700 West Capitol Avenue  
Stop 1005 LIT  
Little Rock, AR 72201  
(501) 396-5978

**CALIFORNIA**  
**Laguna Niguel Office**  
Taxpayer Advocate  
24000 Avila Road, Room 3361  
Laguna Niguel, CA 92677  
(949) 389-4804

**Los Angeles Office**  
Taxpayer Advocate  
300 N. Los Angeles Street  
Room 5109, Stop 6710  
Los Angeles, CA 90012  
(213) 576-3140

**Oakland Office**  
Taxpayer Advocate  
1301 Clay Street, Suite 1540-S  
Oakland, CA 94612  
(510) 637-2703

**Sacramento Office**  
Taxpayer Advocate  
4330 Watt Avenue, Stop SA5043  
Sacramento, CA 95821  
(916) 974-5007

**San Jose Office**  
Taxpayer Advocate  
55 S. Market Street, Stop 0004  
San Jose, CA 95113  
(408) 817-6850

**COLORADO**  
**Denver Office**  
Taxpayer Advocate  
1999 Broadway, Stop 1005 DEN  
Denver, CO 80202  
(303) 603-4600

**CONNECTICUT**  
**Hartford Office**  
Taxpayer Advocate  
135 High Street, Stop 219  
Hartford, CT 06103  
(860) 756-4555

**DELAWARE**  
**Newark Office**  
Taxpayer Advocate  
1352 Marrows Road, Suite 203  
Newark, DE 19711  
(302) 286-1654

**DISTRICT OF COLUMBIA**  
**Washington DC Office**  
Taxpayer Advocate  
77 K Street, NE  
Suite 1500  
Washington, DC 20002  
(202) 874-7203

**FLORIDA**  
**Ft. Lauderdale Office**  
Taxpayer Advocate  
7850 SW 6th Court, Room 265  
Plantation, FL 33324  
(954) 423-7677

**Jacksonville Office**  
Taxpayer Advocate  
400 West Bay Street  
Room 535A, MS TAS  
Jacksonville, FL 32202  
(904) 665-1000

**GEORGIA**  
**Atlanta Office**  
Taxpayer Advocate  
401 W. Peachtree Street  
Room 510, Stop 202-D  
Atlanta, GA 30308  
(404) 338-8099

**HAWAII**  
**Honolulu Office**  
Taxpayer Advocate Service  
1099 Alakea Street, Floor 22  
Mail Stop H2200  
Honolulu, HI 96813  
(808) 566-2950

**IDAHO**  
**Boise Office**  
Taxpayer Advocate  
550 West Fort Street, MS 1005  
Boise, ID 83724  
(208) 389-2827 x276

**ILLINOIS**  
**Chicago Office**  
Taxpayer Advocate  
230 S. Dearborn Street  
Room 2820, Stop-1005 CHI  
Chicago, IL 60604  
(312) 566-3800

**Springfield Office**  
Taxpayer Advocate  
3101 Constitution Drive  
Stop 1005 SPD  
Springfield, IL 62704  
(217) 862-6382

**INDIANA**  
**Indianapolis Office**  
Taxpayer Advocate  
575 N. Pennsylvania Street  
Stop TA771  
Indianapolis, IN 46204  
(317) 685-7840

**IOWA**  
**Des Moines Office**  
Taxpayer Advocate  
210 Walnut Street, Stop 1005  
Des Moines, IA 50309  
(515) 564-6888

**KANSAS**  
**Wichita Office**  
Taxpayer Advocate  
271 West 3rd Street North  
Stop 1005 WIC  
Wichita, KS 67202  
(316) 352-7506

**KENTUCKY**  
**Louisville Office**  
Taxpayer Advocate  
600 Dr. Martin Luther King Jr. Place  
Mazzoli Federal Building, Room 325  
Louisville, KY 40202  
(502) 582-6030

**LOUISIANA**  
**New Orleans Office**  
Taxpayer Advocate  
1555 Poydras Street  
Suite 220, Stop 2  
New Orleans, LA 70112  
(504) 558-3001

**MAINE**  
**Augusta Office**  
Taxpayer Advocate  
68 Sewall Street, Room 313  
Augusta, ME 04330  
(207) 622-8528

**MARYLAND**  
**Baltimore Office**  
Taxpayer Advocate  
31 Hopkins Plaza, Room 900A  
Baltimore, MD 21201  
(410) 962-2082

**MASSACHUSETTS**  
**Boston Office**  
Taxpayer Advocate  
15 New Sudbury Street, Room 725  
Boston, MA 02203  
(617) 316-2690

**MICHIGAN**  
**Detroit Office**  
Taxpayer Advocate  
500 Woodward  
Stop 07, Suite 1000  
Detroit, MI 48226  
(313) 628-3670

ADMIN\_TRI02611

TRICAR-NV0204  
AA 001820  
APPX0684

**MINNESOTA**

**St. Paul Office**  
Taxpayer Advocate  
Wells Fargo Place, Suite 817  
30 East 7th Street, Stop 1005  
St. Paul, MN 55101  
(651) 312-7999

**MISSISSIPPI**

**Jackson Office**  
Taxpayer Advocate  
100 West Capitol Street, Stop 31  
Jackson, MS 39269  
(601) 292-4800

**MISSOURI**

**St. Louis Office**  
Taxpayer Advocate  
Robert A. Young Building  
1222 Spruce Street, Stop 1005 STL  
St. Louis, MO 63103  
(314) 612-4610

**MONTANA**

**Helena Office**  
Taxpayer Advocate  
10 West 15th Street, Suite 2319  
Helena, MT 59626  
(406) 441-1022

**NEBRASKA**

**Omaha Office**  
Taxpayer Advocate  
1615 Capitol Avenue, Suite 182  
Stop 1005  
Omaha, NE 68102  
(402) 233-7272

**NEVADA**

**Las Vegas Office**  
Taxpayer Advocate  
110 City Parkway, Stop 1005  
Las Vegas, NV 89106  
(702) 868-5179

**NEW HAMPSHIRE**

**Portsmouth Office**  
Taxpayer Advocate  
80 Daniel Street, Federal Office Bldg  
Portsmouth, NH 03801  
(603) 433-0571

**NEW JERSEY**

**Springfield Office**  
Taxpayer Advocate  
955 South Springfield Avenue  
3rd Floor  
Springfield, NJ 07081  
(973) 921-4043

**NEW MEXICO**

**Albuquerque Office**  
Taxpayer Advocate  
5338 Montgomery Boulevard NE  
Stop 1005 ALB  
Albuquerque, NM 87109  
(505) 837-5505

**NEW YORK**

**Albany Office**  
Taxpayer Advocate  
11A Clinton Avenue, Suite 354  
Albany, NY 12207  
(518) 427-5413

**Brooklyn Office**

Taxpayer Advocate  
10 Metro Tech Center  
625 Fulton Street  
Brooklyn, NY 11201  
(718) 488-2080

**Buffalo Office**

Taxpayer Advocate  
Niagara Center  
130 South Elmwood Avenue  
Buffalo, NY 14202  
(716) 961-5300

**Manhattan Office**

Taxpayer Advocate  
290 Broadway, 5th Floor  
Manhattan, NY 10007  
(212) 436-1011

**NORTH CAROLINA**

**Greensboro Office**  
Taxpayer Advocate  
2303 W. Meadowview Road, MS#1  
Greensboro, NC 27407  
(336) 378-2180

**NORTH DAKOTA**

**Fargo Office**  
Taxpayer Advocate  
657 Second Avenue North  
Stop 1005 FAR, Room 244  
Fargo, ND 58102  
(701) 237-8342

**OHIO**

**Cincinnati Office**  
Taxpayer Advocate  
550 Main Street, Room 3530  
Cincinnati, OH 45202  
(513) 263-3260

**Cleveland Office**

Taxpayer Advocate  
1240 East 9th Street, Room 423  
Cleveland, OH 44199  
(216) 522-7134

**OKLAHOMA**

**Oklahoma City Office**  
Taxpayer Advocate  
55 North Robinson, Stop 1005 OKC  
Oklahoma City, OK 73102  
(405) 297-4055

**OREGON**

**Portland Office**  
Taxpayer Advocate  
100 S.W. Main Street, Stop O-405  
Portland, OR 97204  
(503) 415-7003

**PENNSYLVANIA**

**Philadelphia Office**  
Taxpayer Advocate  
600 Arch Street, Room 7426  
Philadelphia, PA 19106  
(215) 861-1304

**Pittsburgh Office**

Taxpayer Advocate  
1000 Liberty Avenue, Room 1400  
Pittsburgh, PA 15222  
(412) 395-5987

**RHODE ISLAND**

**Providence Office**  
Taxpayer Advocate  
380 Westminster Street, Room 550  
Providence, RI 02903  
(401) 528-1921

**SOUTH CAROLINA**

**Columbia Office**  
Taxpayer Advocate  
1835 Assembly Street  
Room 466, MDP-03  
Columbia, SC 29201  
(803) 253-3029

**SOUTH DAKOTA**

**Aberdeen Office**  
Taxpayer Advocate  
115 4th Avenue Southeast  
Stop 1005 ABE, Suite 413  
Aberdeen, SD 57401  
(605) 377-1600

**TENNESSEE**

**Nashville Office**  
Taxpayer Advocate  
801 Broadway, Stop 22  
Nashville, TN 37203  
(615) 250-5000

**TEXAS**

**Austin Office**  
Taxpayer Advocate  
300 East 8th Street, Stop 1005 AUS  
Austin, TX 78701  
(512) 499-5875

**Dallas Office**

Taxpayer Advocate  
1114 Commerce Street  
MC 1005 DAL  
Dallas, TX 75242  
(214) 413-6500

**Houston Office**

Taxpayer Advocate  
1919 Smith Street, MC 1005 HOU  
Houston, TX 77002  
(713) 209-3660

**UTAH**

**Salt Lake City Office**  
Taxpayer Advocate  
50 South 200 East, Stop 1005 SLC  
Salt Lake City, UT 84111  
(801) 799-6958

**VERMONT**

**Burlington Office**  
Taxpayer Advocate  
Courthouse Plaza  
199 Main Street, Suite 300  
Burlington, VT 05401  
(802) 859-1052

**VIRGINIA**

**Richmond Office**  
Taxpayer Advocate  
400 North 8th Street  
Room 916, Box 25  
Richmond, VA 23219  
(804) 916-3501

**WASHINGTON**

**Seattle Office**  
Taxpayer Advocate  
915 2nd Avenue, Stop W-405  
Seattle, WA 98174  
(206) 220-6037

**WEST VIRGINIA**

**Parkersburg Office**  
Taxpayer Advocate  
425 Juliana Street, Room 2019  
Parkersburg, WV 26101  
(304) 420-8695

**WISCONSIN**

**Milwaukee Office**  
Taxpayer Advocate  
211 West Wisconsin Avenue  
Room 507, Stop 1005 MIL  
Milwaukee, WI 53203  
(414) 231-2390

**WYOMING**

**Cheyenne Office**  
Taxpayer Advocate  
5353 Yellowstone Road  
Cheyenne, WY 82009  
(307) 633-0800

**TAXPAYERS LIVING ABROAD OR IN U.S. TERRITORIES**

**International**  
Taxpayer Advocate  
City View Plaza  
48 Carr 165, Suite 2000  
Guaynabo, PR 00968  
(787) 522-8600 Spanish  
(787) 522-8601 English

**CAMPUSES**

**Andover**  
Taxpayer Advocate  
310 Lowell Street, Stop 120  
Andover, MA 01812  
(978) 474-5549

**Atlanta**

Taxpayer Advocate  
4800 Buford Highway, Stop 29-A  
Chamblee, GA 30341  
(770) 936-4500

**Austin**

Taxpayer Advocate  
3651 South Interregional Highway  
Stop 1005 AUSC  
Austin, TX 78741  
(512) 460-8300

**Brookhaven**

Taxpayer Advocate  
1040 Waverly Avenue, Stop 02  
Holtsville, NY 11742  
(631) 654-6686

**Cincinnati**

Taxpayer Advocate  
201 West Rivercenter Boulevard  
Stop 11G  
Covington, KY 41011  
(859) 669-5316

**Fresno**

Taxpayer Advocate  
5045 East Butler Avenue, Stop 1394  
Fresno, CA 93888  
(559) 442-6400

**Kansas City**

Taxpayer Advocate  
333 West Pershing, Stop 1005 S2  
Kansas City, MO 64108  
(816) 291-9001

**Memphis**

Taxpayer Advocate  
5333 Getwell Road, Stop 13  
Memphis, TN 38118  
(901) 395-1900

**Ogden**

Taxpayer Advocate  
1973 North Rulon White Boulevard  
Stop 1005  
Ogden, UT 84404  
(801) 620-7168

**Philadelphia**

Taxpayer Advocate  
2970 Market Street  
Mail Stop 2-M20-300  
Philadelphia, PA 19104  
(267) 941-2427

Form 977  
(Rev. 5/2001)

Consent to Extend the Time To Assess  
Liability at Law or in Equity for Income, Gift, and  
Estate Tax Against a Transferee or Fiduciary

In reply refer to:

AP:AO:OH:CL:PRS

Taxpayer Identification Number

Redaction

Michael A. Tricarichi  
(Name)

a transferee or fiduciary,

of 341 Arbour Garden Ave., Las Vegas, NV 89148  
(Number, Street, Town or City, State, and ZIP Code)

and the Commissioner of Internal Revenue hereby consent and agree as follows:

The amount of the liability, at law or in equity, of the transferee or fiduciary named above for any income, gift, or estate taxes (including interest, additional amounts, and additions to the tax provided by law) imposed against or due from

West Side Cellular, Inc.

for the tax periods ended December 31, 2003 may be assessed at any time on or before June 30, 2012.

However, if a notice of liability is sent to the transferee or fiduciary on or before that date, the time for assessing the tax will be further extended by the number of days during which the assessment is prohibited and for an additional 60 days.

TRANSFEEE OR FIDUCIARY  
(OTHER THAN CORPORATE)  
SIGN HERE

1/20/2011

(Date signed)

TRANSFEEE'S OR FIDUCIARY'S  
REPRESENTATIVE  
SIGN HERE

(Date signed)

CORPORATE NAME OF  
TRANSFEEE OR  
FIDUCIARY

CORPORATE  
OFFICER(S)  
SIGN HERE

(Title)

(Date signed)

(Title)

(Date signed)

INTERNAL REVENUE SERVICE SIGNATURE AND TITLE

Diane S. Ryan

(Division Executive Name - see instructions)

Chief, Appeals

(Division Executive Title - see instructions)

BY

*Patricia A. Segalite, Appeals Team case leader*

(Authorized Official Signature and Title - see instructions)

2/2/2011

(Date signed)

Signature instructions are on the back of this form.

Form 977-c (Rev. 5/2001)

ADMIN\_TRI02613

TRICAR-NV-2011-001822  
APPX0686

# Exhibit 3

## Global TLS Risk Management

### Risk Management Tool - USA

23.5.106

Regulated services

Notice 2001-16 - IRS warning on "intermediary transactions"

### US-TLS Policy Guidance - Tools

#### Tax Shelter Registration and Corporate Disclosure

Notice 2001-16 - IRS warning on "intermediary transactions"

Transaction is a Listed Transaction for Regulations under §§6011, 6111, & 6112

### WNTS Tax Developments WNTS Alert

## IRS warning on "intermediary transactions" (Notice 2001-16)

#### *Overview*

The IRS has warned (**Notice 2001-16**) that it may challenge the purported tax benefits of certain "intermediary transactions" that are being marketed to taxpayers "for the avoidance of federal income taxes." The Notice also alerts taxpayers and taxpayer representatives of responsibilities relating to their participation in such transactions.

A transaction that is the same or substantially similar to the transactions described in Notice 2001-16 is considered a "listed transaction" for purposes of Temp. Regs. Sec. 1.6011-4T(b)(2) and also may be subject to the tax shelter registration and list maintenance requirements under the Section 6111 and 6112 regulations.

#### *Intermediary transactions*

The IRS states that these transactions generally involve four parties: seller (X) who desires to sell stock of a corporation (T), an intermediary corporation (M), and buyer (Y) who desires to purchase the assets (and not the stock) of T. Pursuant to a plan, the parties undertake the following steps. X purports to sell the stock of T to M. T then purports to sell some or all of its assets to Y. Y claims a basis in the T assets equal to Y's purchase price. Under one version of this transaction, T is included as a member of the affiliated group that includes M, which files a consolidated return, and the group reports losses (or credits) to offset the gain (or tax) resulting from T's sale of assets. In another form of the transaction, M may be an entity that is not subject to tax, and M liquidates T (in a transaction that is not covered by Section 337(b)(2) or Treas. Regs. Sec. 1.337(d)-4), resulting in no reported gain on M's sale of T's assets.

The IRS may challenge these transactions on the grounds that (1) M is an agent for X, and consequently for tax purposes T has sold assets while T is still owned by X; (2) M is an agent for Y, and consequently for tax purposes Y has purchased the stock of T from X; or (3) the transaction otherwise is properly recharacterized (e.g., to treat X as having sold assets or to treat T as having sold assets while T is still owned by X). Alternatively, the IRS may examine M's consolidated group to determine whether it properly may offset losses (or credits) against the gain (or tax) from the sale of assets.

## ***Penalties***

The IRS states that participants and promoters of such transactions may be subject to the accuracy-related penalty under Section 6662, the return preparer penalty under Section 6694, the promoter penalty under Section 6700, and the aiding and abetting penalty under Section 6701.

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Notice 2001-16 is scheduled to appear in Internal Revenue Bulletin 2001-9, dated Feb. 26, 2001.

### **Part III - Administrative, Procedural, and Miscellaneous**

#### **Intermediary Transactions Tax Shelter**

##### **Notice 2001-16**

The Internal Revenue Service and the Treasury Department have become aware of certain types of transactions, described below, that are being marketed to taxpayers for the avoidance of federal income taxes. The Service and Treasury are issuing this notice to alert taxpayers and their representatives of certain responsibilities that may arise from participation in these transactions.

These transactions generally involve four parties: seller (X) who desires to sell stock of a corporation (T), an intermediary corporation (M), and buyer (Y) who desires to purchase the assets (and not the stock) of T. Pursuant to a plan, the parties undertake the following steps. X purports to sell the stock of T to M. T then purports to sell some or all of its assets to Y. Y claims a basis in the T assets equal to Y's purchase price. Under one version of this transaction, T is included as a member of the affiliated group that includes M, which files a consolidated return, and the group reports losses (or credits) to offset the gain (or tax) resulting from T's sale of assets. In another form of the transaction, M may be an entity that is not subject to tax, and M liquidates T (in a transaction that is not covered by §337(b)(2) of the Internal Revenue Code or §1.337(d)-4) of the Income Tax Regulations, resulting in no reported gain on M's sale of T's assets.

Depending on the facts of the particular case, the Service may challenge the purported tax results of these transactions on several grounds, including but not limited to one of the following: (1) M is an agent for X, and consequently for tax purposes T has sold assets while T is still owned by X, (2) M is an agent for Y, and consequently for tax purposes Y has purchased the stock of T from X, or (3) the transaction is otherwise properly recharacterized (e.g., to treat X as having sold assets or to treat T as having sold assets while T is still owned by X). Alternatively, the Service may examine M's consolidated group to determine whether it may properly offset losses (or credits) against the gain (or tax) from the sale of assets.

The Service may impose penalties on participants in these transactions, or, as applicable, on persons who participate in the promotion or reporting of these transactions, including the accuracy-related penalty under §6662, the return preparer penalty under §6694, the promoter penalty under §6700, and the aiding and abetting penalty under §6701.

Transactions that are the same as or substantially similar to those described in the Notice 2001-16 are identified as "listed transactions" for the purposes of §1.6011-4T(b)(2) of the Temporary Income Tax Regulations and §301.6111-2T(b)(2) of the Temporary Procedure and Administration Regulations. See also §301.6112-1T, A-4. It should be noted that, independent of their classification as "listed transactions" for purposes of §§1.6011-4T(b)(2) and 301.6111-2T(b)(2), such transactions may already be subject to the tax shelter registration and list maintenance requirements of §§6111 and 6112 under the regulations issued in February 2000 (§§301.6111-2T and 301.6112-1T, A-4). Persons required to register these tax shelters who have failed to register the shelters may be subject to the penalty under §6707(a) and to the penalty under §6708(a) if the requirements of §6112 are not satisfied.

For further information regarding this notice, contact Theresa Abell, of the Office of Associate Chief Counsel (Corporate), on (202)622-7700 (not a toll-free call). 

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***Warning on use of this information!***

***This document was created solely for the use of the Partners & Staff of PricewaterhouseCoopers. The guidance contained should be applied with care and further advice sought where appropriate.***

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Created by Daniel Noakes/US/TLS/PwCon 01/19/2001  
Last modified by Michael Tonks/UK/TLS/PwC on 21/07/2003  
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# Exhibit 4

**TLS RISK MANAGEMENT ALERT---January 31, 2001  
INTERMEDIARY & CONTINGENT LIABILITY TRANSACTIONS  
ARE NOW LISTED TRANSACTIONS**

As noted in recent WNTS Alerts, the IRS issued Notices 2001-16 and 2001-17 describing certain contingent liability transactions and certain intermediary transactions, respectively, as “listed transactions” for purposes of the temporary tax shelter regulations.

This means that liability management company or intermediary (midco) transactions that are substantially similar to those described by the IRS must be tested under the effective date rules for disclosure, list maintenance, and tax shelter registration. 1999 and 2000 transactions may be subject to disclosure as newly designated listed transactions. 2001 and subsequent transactions may also be subject to disclosure, list maintenance and registration.

**Disclosure.** Temp. Treas. Reg. §1.6011-4T(b)(2) provides that a “listed transaction” is a reportable transaction (assuming the projected tax effect test is met---\$1 million of Federal income tax reduction in a single year or \$2 million in any combination of years). The regulation further provides that a listed transaction is **not reportable** if it has affected the taxpayer’s Federal income tax liability as reported on any tax return filed on or before February 28, 2000.

Paragraph (d)(1) of this regulation provides that the disclosure statement must be attached to the Federal corporate income tax return for **each** taxable year for which the liability is affected by the transaction **and** a copy of the first disclosure statement must be sent to the IRS National Office. If a transaction becomes a reportable transaction on or after the date the taxpayer has filed its return for the first taxable year, the disclosure statement must be attached to the next filed return. The taxpayer must also retain all documents (marketing materials, analyses, correspondence, and agreements) related to the transaction until the statute of limitations expires for the first taxable year of disclosure.

Consequently, a **1999** transaction that is substantially similar to either of those described in the notices that has not been reflected in a return filed by February 28, 2000, would be reportable in the **next return** by a corporation that has participated, **directly or indirectly**, in the transaction. [A **1998** or earlier transaction described above would not be treated as a reportable transaction if it has affected the taxpayer’s Federal income tax liability in any return filed on or before February 28, 2000.]

The regulations at paragraph (c) include a sample statement to satisfy the disclosure requirements. That initial disclosure statement must be attached to the return and a copy filed with the IRS National Office. The statement must include: (1) the name of the transaction; (2) whether the transaction has been registered; (3) brief description of the principal elements of the transaction giving rise to the tax benefits; (4) description of the expected tax benefits; (5) identification of the estimated amount of tax benefits by taxable year; and (6) names and addresses of promoters, sellers, and other participants in the



promoter/organizer group. If the transaction affects more than one taxable year, disclosure statements must be attached to each affected year's return.

For the above listed transactions entered into in **2000 or subsequent years**, the disclosure statement must be attached to the first year's return for which the corporate federal income tax liability is affected by the transaction. The IRS National Office copy should be filed at that time. Disclosure statements must also be attached to each additional affected year's return.

**Registration.** Temp. Treas. Reg. §301.6111-2T(e)(1)(ii)(B) provides that if a transaction becomes a listed transaction (after the first offering for sale after February 28, 2000), the transaction must be registered if interests are again offered for sale and there is a condition of confidentiality.

Because conditions of confidentiality are not authorized for TLS consulting on Federal income tax matters without TLS Risk Management advanced approval, it seems highly unlikely that the registration requirement would be triggered by either of the notices.

[Exclusivity arrangements have been characterized as conditions of confidentiality in the August 2000 modifications to the temporary regulations. However, they will not be treated as such if the current Terms and Conditions for Tax Consulting Engagements in ARMOR are used due to the addition of specific language from the regulations to forgive the condition.]

**List Maintenance.** Temp. Treas. Reg. §301.6112-1T Q&A – 22 provides that an organizer or seller must maintain a list for any interest acquired by an investor in a potentially abusive tax shelter after February 28, 2000. If a transaction becomes a potentially abusive tax shelter after investors acquire their interests, an organizer or seller must maintain a list for any interest(s) **subsequently acquired in the transaction**. [Note: this rule differs from the time for providing disclosure above. Clients may be obligated to attach disclosure statements to returns for transactions entered into in 1999. However, our obligation to maintain a list would not apply unless interests in those transactions have been acquired (by clients paying fees to us) **on or after January 18, 2001** for liability management company or midco transactions.]

It is important to note that we have an ethical obligation to discuss the implications of the IRS notices with each client who entered into transactions similar to those in the notices whether we are tax advisers or tax preparers. Our list maintenance responsibility will turn on whether we are considered to be an organizer or seller within the meaning of the regulations.

Questions regarding this alert can be referred to Dan Mendelson (202-414-1034) or any other member of the TLS Risk Management Team.