

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

APPELLANT'S APPENDIX TO OPENING BRIEF

VOLUME 8 of 8

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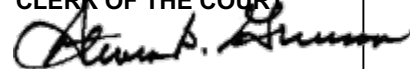
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CERTIFICATE OF SERVICE

I hereby certify pursuant to NRAP 25(c), that on this 8th day of April, 2024, I caused service of a true and correct copy of the above and APPELLANT’S APPENDIX TO OPENING BRIEF pursuant to the Supreme Court Electronic Filing System to the following:

ALL COUNSEL ON SERVICE LIST

/s/ Kaylee Conradi
An employee of Hutchison & Steffen PLLC



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Nevada Bar No. 13064
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DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL A. TRICARICHI,

Plaintiff,

vs.

PRICEWATERHOUSECOOPERS LLP,

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**

AA 001773

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

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.

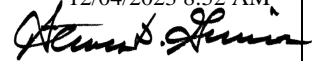
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Attorneys for Plaintiff

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

4883-9821-6597



CLERK OF THE COURT

Snell & Wilmer
LLP

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ORDR

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DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL A. TRICARICHI,

Plaintiff,

vs.

PRICEWATERHOUSECOOPERS LLP,

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

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

FINDINGS OF FACT

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

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

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

CONCLUSIONS OF LAW

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

(1) **By Supersedeas Bond.** If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(2). The bond may be 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.

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

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

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

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

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

Id.

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

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

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

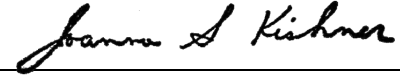
ORDER

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:

By: /s/ Bradley T. Austin
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Attorneys for Defendant
PricewaterhouseCoopers LLP

Approved as to form and content:

By: /s/ Scott F. Hessel
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Attorneys for Plaintiff Michael A. Tricarichi

Austin, Bradley

From: Scott F. Hessell <shessell@sperling-law.com>
Sent: Friday, December 1, 2023 8:16 PM
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

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
To: Byrne, Pat <pbyrne@swlaw.com>; Scott F. Hessell <shessell@sperling-law.com>
Cc: Ariel C. Johnson <ajohnson@hutchlegal.com>; Mark Levine <mark.levine@bartlitbeck.com>; Chris Landgraff <chris.landgraff@bartlitbeck.com>
Subject: RE: PwC/Tricarichi - Proposed Order Denying/Deferring Motion to Stay

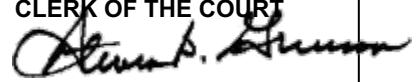
Scott,

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



NOAS

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Attorneys for Plaintiff Michael Tricarichi

DISTRICT COURT
CLARK COUNTY, NEVADA

MICHAEL A. TRICARICHI,)	CASE NO. A-16-735910-B
)	DEPT NO. XXXI
Plaintiff,)	
)	PLAINTIFF'S NOTICE OF
v.)	APPEAL
)	
PRICEWATERHOUSECOOPERS LLP,)	
)	
Defendant.)	
)	

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

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///

1 to NRCP 60(b) based on newly discovered evidence, entered in this action on November 28, 2023,
2 and all other orders rendered appealable by the foregoing.

3 Dated: December 22, 2023

HUTCHISON & STEFFEN, PLLC

4
5 By: /s/ Ariel C. Johnson
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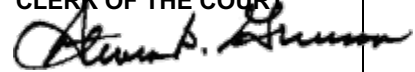
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10 *Attorneys for Plaintiff Michael A. Tricarichi*

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ALL PARTIES ON THE E-SERVICE LIST

AA 001783



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DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL A. TRICARICHI,

Plaintiff,

vs.

PRICEWATERHOUSECOOPERS LLP,

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**

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.

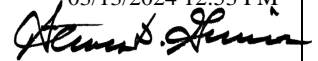
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4864-4151-1597



CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL A. TRICARICHI,

Plaintiff,

vs.

PRICEWATERHOUSECOOPERS LLP,

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

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

FINDINGS OF FACT

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

(1) **By Supersedeas Bond.** If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(2). The bond may be 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.

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

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

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

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

Id.

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.
- 28

16. Therefore, in reviewing the briefs at issue, Nevada case law (including *Nelson*), the case law from other jurisdictions upon which Nevada case law relies, related case law from other jurisdictions (which are not precedential, but are informative in similar situations), and the oral argument of counsel, the Court needs to deny Plaintiff's Motion.

17. The Court makes this ruling under an NRCP 62(d)(1) analysis, as NRCP 62(d)(2) (*i.e.*, alternate security) was not proposed by Plaintiff, and Plaintiff argues that no adequate alternate security exists.

18. For the same reasons set forth above, the Court finds that there is no basis to grant Plaintiff's Oral Motion to Stay (made during the February 29th Hearing, and requesting to stay enforcement of the Fees and Costs Order for 30 days while Plaintiff petitions the Appellate Court and to which Pwc objected *Joanna S. Kishner* for stay relief) and denies the same.

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**.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Plaintiff's Oral Motion to Stay is **DENIED**.

Dated this 13th day of March, 2024

Joanna S. Kishner

CC2 536 6EBB EB4A
Joanna S. Kishner
District Court Judge

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Luxford, Lyndsey

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

From: Scott F. Hessel <shessel@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] shessel@sperling-law.com

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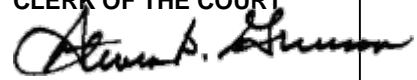
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583	<p>1 PROCEEDINGS</p> <p>2 (9:00 a.m.)</p> <p>3 THE COURT: Good morning. Please be</p> <p>4 seated.</p> <p>5 THE CLERK: Resuming Docket Number 23630-</p> <p>6 12, Michael A. Tricarichi, Transferee.</p> <p>7 MS. LAMPERT: Good morning, Your Honor.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

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<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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bsercye@sperling-law.com

Attorneys for Plaintiff Michael A. Tricarichi

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL A. TRICARICHI,

Plaintiff,

v.

**PRICEWATERHOUSE COOPERS, LLP,
COÖPERATIEVE RABOBANK U.A.,
UTRECHT-AMERICA FINANCE CO.,
SEYFARTH SHAW LLP and GRAHAM R.
TAYLOR,**

Defendants.

) **CASE NO. A-16-735910-B**

) **DEPT NO. XXXI**

) **NOTICE OF ENTRY OF ORDER**

) **GRANTING IN PART**

) **PLAINTIFF MICHAEL**

) **TRICARICHI'S MOTION FOR**

) **DISCOVERY SANCTIONS AND**

) **MOTION FOR LEAVE TO FILE**

) **UNDER SEAL**

///

///

///

AA 001798

1 TO: ALL INTERESTED PARTIES

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

5 DATED: December 8, 2022.

6 HUTCHISON & STEFFEN, PLLC

7
8 /s/ Ariel C. Johnson

9 Mark A. Hutchison (4639)
10 Brenoch R. Wirthlin (10282)
11 Ariel C. Johnson (13357)
12 10080 West Alta Drive, Suite 200
13 Las Vegas, NV 89145

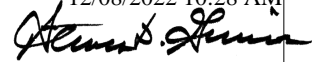
14 Scott F. Hessell (*Pro Hac Vice*)
15 Blake Sercye (*Pro Hac Vice*)
16 SPERLING & SLATER, P.C.
17 55 West Monroe, Suite 3200
18 Chicago, IL 60603

19 *Attorneys for Plaintiff Michael A. Tricarichi*
20
21
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ALL PARTIES ON THE E-SERVICE LIST

AA 001800


CLERK OF THE COURT

OGM

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bsercye@sperling-law.com

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:

AA 001801

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.

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
20 party claims;
21 (B) prohibiting the disobedient party from supporting or opposing
22 designated claims or defenses, or from introducing designated matters in
23 evidence;
24 (C) striking pleadings in whole or in part;
25 (D) staying further proceedings until the order is obeyed;
26 (E) dismissing the action or proceeding in whole or in part;
27 (F) rendering a default judgment against the disobedient party; or
28 (G) treating as contempt of court the failure to obey any order except an
 order to submit to a physical or mental examination.

 Rule 37(b)(1)(A)–(G). Further, “[i]f a party fails to provide information . . . required by Rule
16.1(a)(1) . . . the party is not allowed to use that information or witness to supply evidence on a
motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In
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.¹

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

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

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

DATED: _____

Dated this 8th day of December, 2022



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

Respectfully submitted by:

HUTCHISON & STEFFEN, PLLC

By: /s/ Ariel C. Johnson

Brenoch Wirthlin (10282)
Ariel C. Johnson (13357)
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

Scott F. Hessel (*Pro Hac Vice*)
Blake Sercye (*Pro Hac Vice*)
SPERLING & SLATER, P.C.
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Chicago, IL 60603

*Attorneys for Plaintiff Michael
Tricarichi*

Approved as to form and content:

By: /s/ Bradley T. Austin

Patrick Byrne, Esq.

Bradley T. Austin, Esq.

SNELL & WILMER L.L.P.

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Christopher D. Landgraff, Esq. (*Admitted Pro
Hac Vice*)

Katharine A. Roin, Esq. (*Admitted Pro Hac Vice*)
Alexandra R. Genord, Esq. (*Admitted Pro Hac
Vice*)

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Chicago, IL 60654

Sundeep K. (Rob) Addy, Esq. (*Admitted Pro Hac
Vice*)

Daniel C. Taylor, Esq. (*Admitted Pro Hac Vice*)
BARTLIT BECK LLP
1801 Wewatta Street, Suite 1200
Denver, CO 80202

*Attorneys for Defendant
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

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
Sperling & Slater
55 W. Monroe Street, Suite 3200
Chicago, Illinois 60603
Direct: (312) 445-4937
Mobile: (773) 255-2694

From: Kate Roin <kate.roin@bartlitbeck.com>

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

To: Blake Sercye <bsercye@sperling-law.com>; Scott F. Hessel <shessel@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

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 | 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:

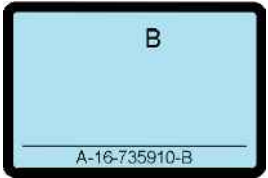
14 Service Date: 12/8/2022

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
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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
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Exhibit 51



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.

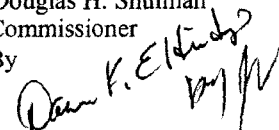
The contact person can access your tax information and help answer your questions. You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures such as the formal appeals process. The Taxpayer Advocate is not able 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 **870-T**
(Rev. September 2009)Department of the Treasury — Internal Revenue Service
**Waiver of Restrictions on Assessment and Collection
of Transferee or Fiduciary Liability**Date received by
Internal Revenue Service

Transferee or Fiduciary name, address and identification number

Taxpayer name, address and taxpayer identification number

Michael Tricarichi, Transferee
20 Hawk Ridge Dr.
Las Vegas, NV 89135

Redaction

**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.

TRANSFEREE OR FIDUCIARY SIGNATURE HERE		Date
TRANSFEREE OR FIDUCIARY REPRESENTATIVE HERE		Date
CORPORATE NAME		Date
CORPORATE OFFICER(S)	Title	Date
SIGN HERE	Title	Date

Catalog Number 52446C

www.irs.gov

Form **870-T** (Rev. 09-2009)

ADMIN_TRI02606

TRICAR-NV-1001815
APPX0679

JUN 25 2016

Form 870-T (Rev. September 2009)	Department of the Treasury — Internal Revenue Service Waiver of Restrictions on Assessment and Collection of Transferee or Fiduciary Liability	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		Taxpayer name, address and taxpayer identification number
Redaction		

**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.

TRANSFEREE OR FIDUCIARY SIGNATURE HERE		Date
TRANSFEREE OR FIDUCIARY REPRESENTATIVE HERE		Date
CORPORATE NAME		Date
CORPORATE OFFICER(S)	Title	Date
SIGN HERE	Title	Date

Catalog Number 52446C

www.irs.gov

Form **870-T** (Rev. 09-2009)

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-NV-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, TransfereeTIN: 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)	<u>\$577,778.00</u>
Total Transfers	\$35,199,372.00

ADMIN_TRI02609TRICAR-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-NV0027043
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.

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-NV0020044
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
1616 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.

TRANSFeree OR FIDUCIARY
(OTHER THAN CORPORATE)
SIGN HERE



1/20/2011

(Date signed)

TRANSFeree'S OR FIDUCIARY'S
REPRESENTATIVE
SIGN HERE

(Date signed)

CORPORATE NAME OF
TRANSFeree 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

Diane S. Ryan, 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-2004-001822
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.

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.