

Filing # 50617047 E-Filed 12/29/2016 04:31:00 PM

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR  
PALM BEACH COUNTY, FLORIDA**

CASE NUMBER:

JOHN LEOPOLDO FIORILLA,  
as trustee f/b/o JOHN LEOPOLDO  
FIORILLA TRUST U/A/D 06-25-2003;

Plaintiff,

v.

KLAYMAN & TOSKES, P.A., a Florida  
Corporation; LAWRENCE L. KLAYMAN;  
and STEVEN D. TOSKES;

Defendants.

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**PLAINTIFF'S FIRST REQUEST FOR PRODUCTION  
OF DOCUMENTS TO DEFENDANT KLAYMAN & TOSKES, P.A.**

Plaintiff, JOHN LEOPOLDO FIORILLA, as trustee f/b/o JOHN LEOPOLDO FIORILLA TRUST U/A/D 06-25-2003, pursuant to Florida Rule of Civil Procedure 1.350, requests Defendant KLAYMAN & TOSKES, P.A. identify, produce, and permit inspection and copying of the documents and things requested within forty-five (45) days from the date of service of this Request:

**I. DEFINITIONS & INSTRUCTIONS**

1. The term "Plaintiff" refers to Plaintiff, JOHN LEOPOLDO FIORILLA, as trustee f/b/o JOHN LEOPOLDO FIORILLA TRUST U/A/D 06-25-2003, including his agents, attorneys, accountants, and anyone else acting or purporting on his behalf.
2. The term "Fiorilla" refers to John Leopoldo Fiorilla, including his agents, attorneys, accountants, and anyone else acting or purporting on his behalf.
3. The term "Annie" refers to Annie B. Fiorilla di Santa Croce, including her agents, attorneys, accountants, and anyone else acting or purporting on her behalf.

4. The terms “K&T” “You or “Your” refer to Defendant KLAYMAN & TOSKES, P.A., including its predecessors, successors, and subsidiaries; including present and former officers, directors, agents, or employees, all other persons acting or purporting to act on its behalf, and, unless privileged, its attorney.

5. The term “Klayman” refers to Defendant LAWRENCE L. KLAYMAN, including his agents, attorneys, accountants, and anyone else acting or purporting on his behalf.

6. The term “Toskes” refers to Defendant STEVEN D. TOSKES, including his agents, attorneys, accountants, and anyone else acting or purporting on his behalf.

7. The term “Manasseh” refers to Jahan Manasseh, including his agents, attorneys, accountants, and anyone else acting or purporting on his behalf.

8. The term “Defendants” refers to K&T, Klayman, and Toskes.

9. The term “Agreement” refers to the Contingency Fee Agreement entered into between Plaintiff and K&T on or about February 16, 2010.

10. The term “Conway” refers to the law firm of Conway & Conway, including its predecessors, successors, and subsidiaries; including present and former officers, directors, agents, or employees, all other persons acting or purporting to act on its behalf, and, unless privileged, its attorney.

11. The term “Bressler” refers to the law firm of Bressler, Amery & Ross, including its predecessors, successors, and subsidiaries; including present and former officers, directors, agents, or employees, all other persons acting or purporting to act on its behalf, and, unless privileged, its attorney.

12. The term “Citigroup” refers to CITIGROUP GLOBAL MARKETS, INC., including its predecessors, successors, and subsidiaries; including present and former officers,

directors, agents, or employees, all other persons acting or purporting to act on its behalf, and, unless privileged, its attorney.

13. The term “Paul Weiss” refers to PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP, including its predecessors, successors, and subsidiaries; including present and former officers, directors, agents, or employees, all other persons acting or purporting to act on its behalf, and, unless privileged, its attorney.

14. The term “FINRA” refers to the Financial Industry Regulatory Authority, including its predecessors, successors, and subsidiaries; including present and former officers, directors, agents, or employees, all other persons acting or purporting to act on its behalf, and, unless privileged, its attorney.

15. The term “FINRA Arbitration” refers to the arbitration filed by Plaintiff against Citigroup – FINRA Arbitration No. 10-03615.

16. The term “UBP Lawsuit” refers to the lawsuit in New York state court between Citibank, N.A., Fiorilla, Plaintiff, and Citigroup Financial Products, Inc. regarding a swap transaction relating to interests in UBP Selectinvest ARV LP – Index Nos. 651702/2010 and 591157/2010.

17. The term “Mazer” refers to Jonathan Mazer, including his agents, attorneys, accountants, and anyone else acting or purporting on his behalf, including all other employees of Schlam Stone & Dolan LLP.

18. The term “Petition to Vacate” refers to the legal action filed in the Supreme Court of the State of New York, County of New York regarding Plaintiff, including all appeals – Index No. 653017/2013.

19. The term “Bar Complaints” refers to the complaints filed by Fiorilla with the Florida Bar against Klayman and Toskes. File Nos. 2013-50,219(15E) & 2013-50,218(15G).

20. The term “Settlement” refers to the alleged settlement of the FINRA Arbitration on or about April 29, 2012.

21. The terms “document” or “documents” mean the original and all drafts or copies thereof which are different in any way from the original (whether by interlineation, receipt stamps notation, indication of copies sent or received, or otherwise) and all attached or annexed materials to any written, typewritten, handwritten, printed, graphic, photographic or recorded material, correspondence, telegrams, facsimiles, telexes, emails, memoranda, records of meetings, conferences, telephone or other communications, pamphlets, books, notes, reports, studies, transcripts, indexes, records, charts, tabulations, lists, analyses, graphs, diagrams, estimates, minutes, tapes, photographs and photographic films, sound recordings, phonograph records, video tapes, data compilations from which information can be obtained or can be translated into a form reasonably usable, computer data files, tapes, electronic media, inputs or outputs, and other computer-readable records or programs, all electronically stored or created data, whether written, typed, printed, punched, filmed, marked in any way, data or information stored in any form readable or accessible by computer including, but not limited to, magnetic tape storage media, hard disks, hard drives, floppy disks, compact disks, computer tapes, memory and magnetic tapes of any kind, backup copies and “deleted” files on any computer storage device or media, including the printed output of any such electronic data/communications processing equipment or magnetically stored information, computer memory, optical media, magneto media, and other physical media on which notations or markings of any kind can be affixed whether located on-site or off-site. All drafts, copies or preliminary

materials which are different in any way from the executed or final documents shall be considered to be additional documents as the terms are used herein.

22. The term “communication(s)” shall mean every manner or means of disclosure, transfer, or exchange, and every disclosure, transfer or exchange of information whether orally or face-to-face, or by telephone, mail, e-mail, computer disk, text message, telecopy or facsimile, personal delivery, documents, or otherwise.

23. The term “person” means any natural person, any business entity (whether a corporation, partnership, or other business association), any government or political subdivision thereof, or governmental body, commission board, agency, bureau, or department.

24. The phrase “reflecting or relating to” or any variant thereof means constitutes, embodies, comprises, reflects, discusses, identifies, states, comments on, responds to, describes, analyzes, contains information concerning, or is any way related, connected, associated, or pertinent to the stated subject matter.

25. THIS DOCUMENT REQUEST ENCOMPASSES ALL COMPUTER RECORDS OR FILES ON ANY COMPUTERS, EQUIPMENT, MACHINERY, OR FILES IN YOUR ACTUAL OR CONSTRUCTIVE POSSESSION, CUSTODY, CARE, OR CONTROL (COLLECTIVELY “ELECTRONICALLY STORED INFORMATION” OR “ESI”). ACCORDINGLY, EVEN IF A PARTICULAR DOCUMENT WAS DELETED, PURGED, OR ARCHIVED, THIS DOCUMENT REQUEST REQUIRES A DILIGENT SEARCH OF ANY AND ALL COMPUTER RECORDS, HARD DRIVES, DISKS, DISKETTES, FLOPPY DISKS, OR OTHER STORAGE MEDIUM ON WHICH ANY DOCUMENT OR ANY INFORMATION REQUESTED HEREIN MIGHT RESIDE OR BE FOUND, SPECIFICALLY

INCLUDING ALL BACKUP FILES OR ANY DRIVE CONTAINING ANY BACKUP OR COPY OF ANY DOCUMENTS REQUESTED HEREIN.

26. The form of production of any ESI shall be in its native file format with metadata intact or in an equally useable format. If you intend to produce any ESI in a format other than native file format with metadata intact, please contact counsel for Plaintiff prior to production of the ESI to discuss an acceptable format for production.

27. To the extent that you consider any of the following requests objectionable, respond to so much of each, and each part thereof, which is not objectionable in your view, and separately state that part of each which is objectionable and the ground for each objection.

28. If any document is withheld under a claim of privilege or other protection, so as to aid the Court and the parties hereto to determine the validity of the claim of privilege or other protection, please provide the following information with respect to any such document:

- (i) The name and job title of the person(s) who prepared the document, who signed it, and over whose name it was sent or issued;
- (ii) The name and job title of any person(s) to whom the document was directed;
- (iii) The nature and substance of the document with sufficient particularity to enable the Court and the parties hereto to identify the document;
- (iv) The date of the document;
- (v) The identity of the person(s) having custody or control over the document and each copy thereof;
- (vi) The title of the document;
- (vii) The number of pages;
- (viii) The basis on which any privilege or other protection is claimed; and

(ix) Whether any non-privileged or non-protected matter is included in the document.

29. Consistent with Florida Rule of Civil Procedure 1.350(b), please produce documents in a manner that will facilitate their identification with the particular Request to which they are responsive. If any document is responsive to more than one Request, please so indicate to the extent it is reasonably practicable to do so.

30. Unless otherwise specified herein, the relevant time period for the creation and/or transmission of any Documents is January 1, 2010 through the present.

## II. DOCUMENT REQUESTS

1. All agreements between any of the Defendants and Fiorilla.
2. All communications between any of the Defendants and Fiorilla.
3. All communications between any of the Defendants and Annie.
4. All communications between any of the Defendants and Conway.
5. All communications between any of the Defendants and Mazer.
6. All communications between any of the Defendants and Bressler reflecting or relating to Fiorilla, the FINRA Arbitration, the Settlement, the UBP Lawsuit, the Bar Complaints, or the Petition to Vacate.
7. All internal K&T communications (*i.e.*, not involving non-K&T attorneys or employees) reflecting or relating to Fiorilla, the FINRA Arbitration, the Settlement, the Bar Complaints, the UBP Lawsuit, or the Petition to Vacate.
8. All communications between any of the Defendants and Paul Weiss reflecting or relating to the Settlement, UBP Lawsuit, Bar Complaints, FINRA Arbitration, the Petition to Vacate, or Fiorilla.

9. All communications with Citigroup reflecting or relating to Fiorilla or the FINRA Arbitration before April 20, 2012.

10. All communications with Citigroup reflecting or relating to Fiorilla, the Settlement, UBP Lawsuit, Bar Complaints, FINRA Arbitration, or the Petition to Vacate from April 20, 2012 to present.

11. All communications with FIRNA reflecting or relating to the FINRA Arbitration.

12. All communications with the Florida Bar reflecting or relating to Fiorilla, the FINRA Arbitration, or the Bar Complaints.

13. All documents or communications reflecting or relating to any settlement demands made by Plaintiff regarding the FINRA Arbitration.

14. All documents or communications reflecting or relating to any settlement offers made by Citigroup regarding the FINRA Arbitration.

15. All documents or communications reflecting or relating to any analysis of the value or settlement value of Plaintiff's claims in the FINRA Arbitration.

16. All communications reflecting or relating to the Bar Complaints.

17. All documents and communications reflecting or relating to the Petition to Vacate.

18. All contracts or employment agreements between K&T and:

a. Klayman,

b. Toskes, or

c. Manasseh.

19. All bonus or compensation plans between K&T and:

a. Klayman,

- b. Toskes, or
  - c. Manasseh.
20. Manasseh's personnel file.
21. All resumes or curriculum vitae for:
  - a. Klayman,
  - b. Toskes, or
  - c. Manasseh.
22. All documents or communications reflecting or relating to any client complaints made against:
  - a. Klayman,
  - b. Toskes, or
  - c. Manasseh.
23. All marketing materials, including advertisements, for any of the Defendants from 2009 through 2012.
24. Your litigation file concerning the FINRA Arbitration, including all notes, research, filings, expert communications and reports, and other documents prepared or collected in relation to representing Plaintiff.
25. All insurance policies that may cover any of the Defendants for the actions alleged in the Complaint, including excess insurance or umbrella policies.
26. All reservation of rights letters or any other document that might limit the coverage of the insurance carriers to whom you have submitted Plaintiff's claim for coverage.
27. All documents or communications reflecting or relating to Fiorilla or the FINRA Arbitration that are not responsive to Request Nos. 1-26 above.

Dated: December 29, 2016

**BABBITT & JOHNSON, P.A.**

/s/ Theodore Babbitt

**Theodore Babbitt**

Florida Bar No. 091146

1641 Worthington Rd., Suite 100

West Palm Beach, Florida 33409

Telephone: (561) 684-2500

Facsimile: (561) 684-6308

TedBabbitt@Babbitt-Johnson.com

DCodding@Babbitt-Johnson.com

**MORGAN & MORGAN, P.A.**

**Business Trial Group**

/s/ William B. Lewis

**William B. Lewis**

Florida Bar No. 064936

**James Fakhoury**

Florida Bar No. 0118644

515 N. Flagler Dr., Suite 2125

West Palm Beach, Florida 33401

Telephone: (561) 227-5858

Facsimile: (561) 227-5859

WLewis@forthepeople.com

JFakhoury@forthepeople.com

*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on December 29, 2016, I electronically filed the foregoing with the Clerk of Court by using the Court's E-Portal system which will generate automatic electronic notifications to all counsel of record.

/s/William B. Lewis

William B. Lewis