

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:

AJW OFFSHORE, LTD., *et al.*,

Debtors in Foreign Proceedings.

Chapter 15

Case No. 13-70078-ast

13-70082-ast

13-70085-ast

13-70087-ast

(Jointly Administered)

**ORDER GRANTING FOREIGN REPRESENTATIVES' MOTION PURSUANT TO
BANKRUPTCY RULE 2004 (I) DIRECTING THE PRODUCTION OF DOCUMENTS
AND WITNESSES AND
(II) AUTHORIZING THE ISSUANCE OF SUBPOENAS**

Petitioners Ian Stokoe and David Walker, both of PwC Corporate Finance & Recovery (Cayman) Limited (the "**Foreign Representatives**"), in their capacity as duly appointed foreign representatives, as defined in section 101(24) of title 11 of the United States Code (the "**Bankruptcy Code**"), of AJW Offshore, Ltd., AJW Master Fund, Ltd., AJW Offshore II, Ltd., and AJW Master Fund II, Ltd. (collectively the "**Offshore Funds**"), filed a Motion for an Order Pursuant to Bankruptcy Rule 2004 (I) Directing the Production of Documents and Witnesses and (II) Authorizing the Issuance of Subpoenas [Docket No. 54] (the "**Motion**") concerning Corey Ribotsky, the NIR Group LLC and First Street Manager LLC (collectively the "**Ribotsky Discovery Parties**"). The Court has jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334, and the Standing Orders of Reference in effect in the Eastern District of New York. Due and proper notice of the Motion has been provided. An Objection to the Motion was filed by the Ribotsky Discovery Parties [Docket No. 68], and the Foreign Representatives' filed a Reply to the Objection [Docket No. 74]. The Court conducted a hearing on the Motion on May 29, 2013, at which the Court found and determined that good cause exists to allow the Foreign Representatives' to obtain Rule 2004 discovery from the Ribotsky Discovery Parties, and directed the parties to meet and confer about the scope and

use of the requested discovery, including the prospect of a joint protocol for discovery within these bankruptcy cases and a pending lawsuit recently filed by the Foreign Representatives in New York Supreme Court, New York County, Index No. 651036/2013 (the “**State Court Action**”). An adjourned hearing on the Motion was held on July 19, 2013, at which the parties advised the Court that, although they had met and conferred over the course of several weeks, they were unable to reach an agreement either on the scope or the use of the Rule 2004 discovery.

This Court, having found and determined that authorizing Rule 2004 discovery is in the best interests of the Offshore Funds, their estates, and their creditors and other parties in interest, and that 11 U.S.C. § 1521 authorizes such relief in order to effectuate the purposes of Chapter 15 and to protect the assets of the Offshore Funds and the interests of creditors, and that the protections set out herein are sufficient and appropriate in accordance with 11 U.S.C. § 1522, and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED as follows:

1. The Motion is GRANTED as set forth below.
2. The scope of the Rule 2004 production and examination shall be limited to the scope as defined by Rule 2004; i.e., the Foreign Representatives may inquire as to the acts, conduct, or property or to the liabilities and financial condition of the Offshore Funds, or to any matter which may affect the administration of these Chapter 15 cases. For purposes hereof, based upon: (1) the appearance of a substantial overlap between the discovery which may properly be sought through Rule 2004 and that which might become available in the State Court Action, but the Ribotsky Parties not having clearly delineated any significant scope of discovery which would only be available in the State Court Action but not under Rule 2004; (2) the right of

the Foreign representatives to proceed with the administration of these bankruptcy cases without the anticipated delay occasioned by awaiting discovery being authorized by the State Court; (3) the unwillingness of the Ribotsky Parties to enter into a joint protocol between these bankruptcy cases and the State Court Action; and (4) given the absence of any limitation contained within Rule 2004 created by the existence of pending litigation, the Court is not adopting the so called “pending proceeding” common law rule followed by some courts which may curtail or limit a party’s right to obtain Rule 2004 discovery where a lawsuit has been filed against one or more party(s) from whom Rule 2004 discovery is sought. Thus, the proper scope of discovery authorized under Rule 2004 is determined by this Court, and the proper scope of discovery that may be sought from the Ribotsky Discovery Parties in the State Court Action shall be determined by the State Court; further, the use during the State Court Action of any Rule 2004 discovery obtained from the Ribotsky Parties shall be determined by the State Court.

3. The Ribotsky Discovery Parties shall respond to the Document Requests and produce responsive, non-privileged documents requested in the Document Requests, based on the schedule set forth below, at Reid Collins & Tsai LLP, One Penn Plaza, 49th Floor, New York, New York 10119 (Attention: Jeffrey Gross):

- a. Within **twenty-one (21) days** of entry of this Order, the Ribotsky Discovery Parties shall produce the following categories of documents: (i) all engagement letters between the AJW Funds or any of the Ribotsky Discovery Parties and PriceWaterhouse Coopers or FTI; (iii) any Marcum invoices other than invoices dated September 30, 2006 and October 31, 2007; (iv) any employment agreements for any of the Selected Custodians (as that term is defined in Exhibit A hereto), Lloyd Groveman, or Paul Schwartz.

- b. Within **twenty-one (21) days** of entry of this Order, the Ribotsky Discovery Parties shall produce emails responsive to the Requests for Production by applying the Additional Search Terms to the Archived Emails for the Selected Custodians and producing all documents, including attachments, which contain any search terms. Notwithstanding the prior sentence, the Ribotsky Discovery Parties may withhold in the first instance and log any communications in which any of the AJW Law Firms sent or received the email. Counsel for the Ribotsky Discovery Parties shall provide the log at the same as the email production, and the parties shall meet and confer about the production of additional production of any logged communications.
- c. Within **forty (40) days** of entry of this Order, the Ribotsky Discovery Parties shall produce non-emails contained on the NIR Hard Drive as follows by producing: (i) all documents in the Deal Files Database for the Selected Issuers, and if the Ribotsky Discovery Parties cannot isolate the files for the Selected Issuers, then they shall produce the entire Deal Files Database; (ii) all documents in the Audits folder; (iii) all documents in the Fund Restructuring folder; all (iii) all tax returns, statements, and sub-folders that relate to the Offshore Funds. For the sake of clarity, this production shall be made without application of the Additional Search Terms, but rather by producing the contents of the appropriate folders or sub-folders.
- d. The terms “Additional Search Terms,” “Archived Emails,” “Selected Custodians,” “NIR Hard Drive,” and “Deal Files Database” shall have the definitions set forth in Exhibit A hereto.

- e. As to any documents withheld from production by the Ribotsky Discovery on a claim of privilege that are otherwise responsive to the Documents Requests, the Ribotsky Discovery Parties will provide a privilege log with respect to any documents and communications claimed as privileged within **twenty-one (21) days** after the production based upon the category above to which the privilege claim relates.

- f. With respect to any information the Ribotsky Parties wish to claim as confidential, within **twenty-one (21) days** of entry of this Order, the parties shall enter a confidentiality agreement substantially similar to the Stipulated Agreement And Protective Order Governing the Production and Use of Confidential Information and the Foreign Representatives entered by this Court as between Bingham McCutchen and the Foreign Representatives [dkt item 83]; the Ribotsky Parties shall deliver a first draft thereof within **ten (10) days** of entry of this Order, and the Foreign Representatives shall provide comments thereon within **five (5) days** thereafter. In the event the parties are unable to agree to a form of confidentiality order, the parties shall submit competing forms of Orders within **twenty-one (21) days** of entry of this Order.

4. Pursuant to Rule 502(d) of the Federal Rules of Evidence, the production of any documents herein by the Ribotsky Discovery Parties shall not constitute a waiver in any other Federal or State proceeding.

5. Ribotsky, NIR and First Street (both by designating an individual or individuals with knowledge of the subject matters described in Exhibits B-2 and B-3 to the Motion) shall

appear to be examined under oath in accordance with Bankruptcy Rule 2004 on such dates and times as may be designated by the Foreign Representatives in writing on not less than twenty (20) days' notice to the party(s) to be examined; unless otherwise agreed, the examinations shall be conducted at the offices of counsel for the party to be examined. The Ribotsky Discovery Parties will be permitted to have their counsel attend the Rule 2004 examination of any Ribotsky Discovery Party and may assert any objection to the form or as to privilege under the rules governing Rule 2004 examinations. Any ruling on any disputed issue of the form of the question, the proper scope of the examination, or any assertion of privilege will be decided by this Court. Unless otherwise agreed in writing by the Ribotsky Discovery Parties, any subpoena to compel attendance at a Rule 2004 examination shall be personally served in accordance with Bankruptcy Rule 9016.


6. The Foreign Representatives may issue additional discovery requests and subpoenas as may be necessary to accomplish the discovery authorized by this Order.

7. A copy of this Order shall be served by electronic delivery or United States mail, first class postage prepaid, upon: (i) the Ribotsky Discovery Parties; (ii) the U.S. Securities and Exchange Commission; (iii) the Office of the U.S. Trustee; (iv) all parties who have appeared in these Chapter 15 Cases; and (v) any official liquidation committee or other committee appointed in the Cayman Islands Proceedings of the Offshore Funds.

8. This Court retains jurisdiction to resolve all matters arising under or related to this Order, including without limitation, any disputes regarding discovery, or any subpoena issued pursuant to this Order, which may arise between or among the parties, and to interpret, implement, and enforce the provision of this Order.

Dated: August 1, 2013
Central Islip, New York





Alan S. Trust
United States Bankruptcy Judge

Exhibit A

Definitions:

Archived Emails: The email storage files for former employees of the Ribotsky Discovery Parties.

Selected Custodians: Daryl Dworkin, Yoel Goldfeder, Kenneth Yellin, Jonathan Schechter, Lloyd Groveman, all for the time period of January 1, 2007 through December 31, 2010, and Corey Ribotsky and Joan Grant solely for the time period January 1, 2010 through December 31, 2010.

NIR Hard Drive: The Ribotsky Discovery Parties have represented that all of their electronic data, including emails and non-emails, are presently stored on a hard drive in the custody and control of NIR.

Deal File Database: The NIR Discovery Parties have represented that one or more folders or sub-folders on the NIR Hard Drive comprise the "Deal File Database" and that it relates to transactions with various issuers.

Selected Issuers: Any company in whom AJW invested and whose name or stock ticker is listed among the Additional Search Terms.

Additional Search Terms: The following terms, groups of terms, or Boolean operators:

Admiral
Aging analysis
"blockage discount"
Due diligence

“FAS 157”

FTI

GunnAllen

Liquid!

“marketability discount”

Master Fund (**only in Ribotsky’s emails**)

“master feeder”

“master-feeder”

Mizel

(onshore or qualified or qp) w/s (redeem! or redemption)

(offshore or master) w/s (redeem! or redemption)

Offshore (**only in Ribotsky’s emails**)

Restructur!

Re-balanc!

Rebalanc!

Price Waterhouse

Pwc

Tucci

Turnover

ADMH

Admiralty

AmeriResource

ARIO

AVVAA

AVVH

BCDH

Biz Auctions

Black Castle

Bounce

BNCM

BZCN

Camelot

Cape Systems

CMGR

CONC

Connectysis

Cross Atlantic

CXAC

Cyberlux

CYBL

CYSG

Delmar

DIBZ

Eagle Ridge

EDWY
Edoorways
Eurotech
EUOT
Golden Patriot
GPTC
Gregoryevans@ligatt.com
Haverstock
Herb!
Hi Tech
IGNT
IGIA
IMEN
Ingen
Innofone
Janovec
Juniper
JUNP
Leeming
Lightman
Michelex
MLXO
Monarch
MSTF
Muzii
Northstar
MDIN
Monarch
MSTF
Netco
NCVT
"Paul Taylor"
Paperfree
Paradigm
Protocall
PCLR
PFMS
PFMS
PDMI
PPJ
PPJE
Quest
QUOIL
RBYS
Riverhouse
Roboserver

Sivan
Safetek
SFIN
Spoofem!
SportsQuest
SPQS
STUO
Tudeme
UNVC
"William Robinson"