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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

Hon. Robert B. Kugler
Hon. Anne Marie Donio

vs.

Civil Action No. 04-1512

EQUITY FINANCIAL GROUP LLC, TECH
TRADERS, INC., TECH TRADER, LTD.,
MAGNUM CAPITAL INVESTMENTS, LTD.,
VINCENT J. FIRTH, ROBERT W. SHIMER,
COYT E. MURRAY, & J. VERNON ABERNETHY
Defendants.

Defendant Robert W. Shimer's
Opposition to Temporary Equity
Receiver's Motion To Compel

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**BRIEF IN SUPPORT OF DEFENDANT'S OPPOSITION TO THE TEMPORARY
EQUITY RECEIVER'S MOTION TO COMPEL ROBERT SHIMER TO PRODUCE
TAX RETURNS**

Introductory Statement

In the first paragraph of his Brief filed on December 22, 2005 the Temporary Equity Receiver ("Receiver") through his attorneys makes the following inflammatory and deliberately deceptive statement in support of his Motion to Compel production of Defendant Robert Shimer's tax returns for the years 1999 through 2003:

"Mr. Shimer... who has derived over a million dollars of income from investor funds over the past 5 years, refuses to produce those returns."

The above quoted statement by the Receiver's attorneys has no basis in fact. It is categorically untrue and the Receiver should be ashamed of himself for ever allowing his attorneys to make that sort of biased and factually inaccurate statement. Defendant Shimer categorically denies that he ever personally received a million dollars of "income from investor funds over the past 5 years". The statement is patently ridiculous.

The last time Defendant Shimer read a fabrication in a Brief before this Court that equaled the lack of personal and professional integrity typified by the above cited statement of the Receiver's attorneys was when the Plaintiff Commodity Future Trading Commission ("CFTC") attempted to "imply" in paragraphs 28 and 29 on page 10 of its Original Complaint for Injunctive and Other Equitable Relief that there was an apparent "shortfall" or "discrepancy" of \$5.3 million dollars between the amounts received into Defendant Shimer's attorney escrow account for the benefit of Shasta's members and the amounts actually transferred out of that account to Defendant Tech Traders, Inc.

Plaintiff CFTC recently refused to provide any documents to substantiate how that previous alleged "discrepancy" (clearly inserted into its Original complaint to justify its request for a statutory restraining order) was ever computed. Instead, Plaintiff claimed in its Response to both Requests 11 & 12 of Defendant Shimer's recent Request to Produce Documents that both of those Requests "have been rendered moot" by a later filing (Plaintiff's First Amended Complaint) which never again referred to that alleged "discrepancy"! ¹ A Motion to Compel Plaintiff to produce that information properly requested by Defendant Shimer's timely pre-trial discovery has been concurrently filed with the Court today.

The "game plan" apparently followed by Plaintiff in obtaining its initial restraining order and now taken up by the Equity Receiver is to engage in a campaign to inflame the Court against the defendant by making totally ridiculous and outrageous claims and allegations prior to any application of the rules of evidence in the hope that the restraining order (or now, in the context of a motion to compel the requested tax returns) will be granted. ²

¹ That alleged "discrepancy" never appeared in any later filing with this Court for a very good reason—it simply was not true because there was never a shred of evidence to support that allegation.

² That the Equity Receiver is apparently now "taking a page from Plaintiff's previous play book" is apparent from the fact that Exhibit B attached to the Equity Receiver's Brief in support of its current ridiculous assertion against Defendant Shimer was prepared by the same "investigator" for the Plaintiff CFTC who was probably responsible for the previous \$5.3 million "discrepancy" that never existed!

Background Chronology

The Receiver was appointed by the Court on April 1, 2004 to assert receivership responsibilities and duties with respect to alleged violations by Defendant Shimer of the Commodity Exchange Act from June, 2001 through March 2004. As reflected on page 5 of the First Amended Complaint Plaintiff alleges that "(f)rom June 2001 through March 2004 Defendants Equity Firth and Shimer solicited approximately \$15 million...for trading by Tech Traders in commodity futures contracts".³

To date Defendant Shimer through his previous attorneys Menaker & Hermann cooperated completely with the Receiver by providing all bank and accounting and tax records in Defendant Shimer's possession of the entities Edgar Holding Group, Inc. ("Edgar") and Kaivalya Holding Group, Inc. ("Kaivalya"). All documents in his possession with respect to Mr. Shimer's legal client Shasta Capital Associates, L.L.C. ("Shasta") were also provided willingly to the Receiver. The records of the entity Edgar Holding Group, Inc were relevant to the execution of the Receiver's responsibilities because that entity had placed funds with Defendant Coyt E. Murray for the purpose of trading commodity futures by one or more companies controlled by Defendant Murray. The records of the entity Kaivalya were relevant to the execution of the Receiver's responsibilities because that corporate entity actually received payments from the entity Tech Traders, Inc. (Tech") controlled by Defendant Murray beginning in June of 2002.

By letter dated September 8, 2005 Bina Sanghavi, legal counsel for the Receiver requested that Mr. Shimer provide a current statement of his assets and liabilities as well as a statement of his current monthly expenses. She also requested a copy of Mr. Shimer's joint tax return filed with his wife Alison for the tax year 2004. While reluctant to provide the sort of extremely private personal financial information reflected on a tax return, the apparent reason for Ms Sanghavi's request appeared to be a legitimate request to discern Defendant Shimer's current financial condition. That request appeared to be reasonable and was consistent with the Receiver's Court ordered responsibilities. Mr. Shimer reluctantly provided Ms Sanghavi with a copy of his joint tax return filed with his wife for tax year 2004 with both social security numbers redacted.

To date, as the result of all the documentation previously provided willingly by Defendant Shimer, the Equity Receiver has been able to meticulously trace *every single dollar*

³ See page 5, paragraph 4 of First Amended Complaint filed by Plaintiff on June 24, 2004.

that was ever paid from Defendant Tech to *any entity in any way associated with Defendant Shimer*. Mr. Shimer cooperated fully with that endeavor on the part of the Receiver because all payments from Defendant Tech and received by any entity associated with Mr. Shimer were received in good faith with *no knowledge* (either actual or constructive) that the trading performance numbers being consistently verified locally month after month by CPA Vernon Abernethy and provided each month to the CPA of Shimer's client Shasta were flawed or incorrect in any way. The conclusion that any and all payments from Tech to any entity associated with Defendant Shimer were received in good faith and with no knowledge of the fact that Tech was suffering losses instead of profits is reasonable and is supported by a preponderance of the evidence found in the pre-trial discovery record.

Regarding the Receiver's Request for Defendant Shimer's 2003, 2002 and 2001 tax returns

Why are these additional tax returns "critical" now for the execution of the Equity Receiver's duties when they were not considered to be critical in September of 2005? After more than a year of access to all of the necessary accounting and bank records necessary to account for every single dollar ever withdrawn from Defendant Tech Traders, Inc.'s accounts for the benefit of any entity associated in any way with Defendant Shimer Ms Sanghavi, on behalf of the Receiver, asked only for Mr. Shimer's tax return for 2004 in her letter to Mr. Shimer dated September 8, 2005. One would think that if Mr. Shimer's tax returns for the tax years 2003, 2002, 2001 *were even peripherally critical to the execution of the Receiver's duties* that certainly the importance of receiving the information on those other tax returns would have been obvious on September 8, 2005 to the Receiver and his accountants and legal counsel. Apparently that was not the case. At the time Ms Sanghavi drafted and sent Mr. Shimer her letter dated September 8, 2005 asking for verification of his current assets and liabilities and his current monthly expenses and income only Mr. Shimer's 2004 tax return was required to support the other information requested to perform an analysis of Mr. Shimer's current financial situation and condition.

As an apparent "after thought", during his visit to Chicago (where he voluntarily traveled apparently at his own expense since he has never received reimbursement from Plaintiff for his hotel expense and other expenses while there) Mr. Shimer willingly submitted to THREE DAYS OF DEPOSITIONS CONDUCTED BY PLAINTIFF. While Mr. Shimer was in Chicago, Ms

Sanghavi, *for the first time* in mid October, asked for tax returns for all of the other tax years that are now the subject of the Receiver's present Motion to Compel. Why, with all of the legal and accounting "talent" available to the Receiver was the "critical" nature of the information on Mr. Shimer's previous tax returns not obvious and evident to the Receiver and his legal minions long before mid October of 2005?

The transparent nature of this sudden "new" request is obvious from a review of the three "reasons" provided by the Receiver on pages 2 and 3 of his affidavit attached as Exhibit A to his Brief offered now to the Court in explanation for why he now feels that he "needs" to review the tax returns of Defendant Shimer for the tax year 2003, 2002 and 2001. These "reasons" do not make any sense. The Receiver's first stated "reason" found at the bottom of page 3 of that Affidavit is that he somehow needs these tax returns to gain a "full understanding of Mr. Shimer's assets and liabilities, including any tax liabilities". The tax return provided by Mr. Shimer for tax year 2004 along with his current asset and liability, income and expense information provided to Ms Sanghavi by Mr Shimer (see attachment 6 to Exhibit A of Receiver's Brief) provides the Receiver with a very full and clear picture of Mr. Shimer's current financial situation.

Mr Shimer clearly paid any and all tax liability that he had for tax year 2004 and to the extent that the Receiver is in any doubt about that, Mr. Shimer is happy to provide any additional documentation the Receiver may need to be assured that statement is true. The suggestion by the Receiver that he "somehow" harbors a doubt that Mr. Shimer paid all taxes due in tax years 2003, 2002 and 2001 has absolutely no basis in fact. It is pure speculation. Mr Shimer hereby states and is willing to provide the Receiver an affidavit under oath that Mr. Shimer has, indeed paid all taxes on income received during calendar year 2003. Mr. Shimer is also prepared to also provide the Receiver with a similar statement for tax years 2002 and 2001. These are all of the years that allege a violation of the Commodity Exchange Act by Defendant Shimer.

As noted in footnote 3 on page 4 of the Receiver's own Brief, the case law does not support the purely manufactured "concern" on the part of the Receiver that he may somehow become "liable" for Mr. Shimer's past taxes due for those tax years. As that footnote clearly points out, the custodian must know of the debt owed to the United States or have notice of facts that would lead a reasonably prudent person to inquire as to the existence of the debt owed.

The second "reason" given by the Receiver on page 3 of his affidavit is that he needs to gain "a full understanding of the flow of funds in and out of bank accounts maintained by Kaivalya, Edgar and Equity, all of which received Tech Trader funds and all of which received funds from and transferred to accounts maintained in Mr. Shimer's name". Anyone who has ever filed a tax return knows very well that the summary income and expense information provided on any of the federal income tax schedules is not going to provide anyone with any useful information even remotely helpful to understanding a transfer of funds from one bank account to another.

The third "reason" given by the Receiver at the top of page 4 of his affidavit is to gain a "full understanding of statements made in Mrs. Shimer's claim form and in other documents she and Mr. Shimer have submitted to the Court, the CFTC and to me." Mrs. Shimer's claim form submitted to the Equity Receiver simply makes a legitimate claim for the \$150,000.00 that was placed with Shasta Capital in her name on September 5, 2003. She made no withdrawals from that investment as stated on that claim form and the Receiver knows that statement to be true. There is absolutely nothing in the joint tax return statements for the years 2001, 2002 or 2003 that would give the Receiver any greater "understanding" of the clear, simple and straightforward statements made on Alison Shimer's claim form dated September 20, 2004. Any suggestion by the Receiver to the contrary is patently ridiculous.

The only other document submitted by Alison Shimer to the Receiver is her Challenge to the Receiver's objection to her legitimate claim as an investor in the entity Shasta. In that document Alison Shimer correctly pointed out to the Receiver and to the Court that Defendant Shimer received a total of exactly \$41,350.00 and an additional \$110,400.00 from the entity Edgar in repayment of his previous loan to that entity. Why that statement requires the examination of a tax return for any year at all is a total mystery. A repayment of the amount of a loan is not considered Income and is not reported on a federal tax return. That these amounts were in fact loaned to the entity Edgar by Defendant Shimer is obvious from the banking and accounting documentation previously provided to the Receiver. The truth of that statement is evident and obvious from the accounting records of Edgar provided by Mr Shimer to the Receiver.

The other references made by Alison Shimer to the amount of \$24,375.00 in legal fees paid to Robert Shimer by the entity Edgar in calendar year 2002 and 2003 can be verified

directly from the accounting and bank records of Edgar. Again how examination of a tax return for any tax year for either 2002 or 2003 (or for any year before or after those years) is going to "illuminate" the Receiver about these very modest payments made to Defendant Shimer is a mystery.

Finally Alison Shimer's references in her Challenge to the amount of \$212,945.00 paid in total to defendant Shimer by the entity Equity and the additional sum of \$24,150.00 paid as well as legal fees for three years of continuous legal work have all been verified as to amount by the Receiver by an examination of Equity's bank records. There is absolutely no evidence at all that Defendant Shimer did not report as income any payments received by him as stated by Alison Shimer in her Challenge. The extent of the actual legal work provided by Defendant Shimer to the entity Equity is obvious from all of the documents generated by Defendant Shimer in his capacity as an attorney now found in the files of both the Receiver and the Plaintiff.

With respect to the tax year of 2001 the bank and accounting records provided over a year ago to the Receiver substantiate the fact that Defendant Shimer loaned the entity Kaivalya \$157,984.00 from an inheritance that he received from his Aunt. NO ONE takes that kind of responsibility in an attempt to correct what turned out, in retrospect, to be a series of bad investments by Kaivalya. Mr Shimer tried to address and solve the past problems instead of simply walking away. The banking and accounting records also show that any payment that was received by Mr. Shimer from Kaivalya during 2001 was a repayment of that short term loan. None of the funds used to repay Mr. Shimer during 2001 came from defendant Tech Traders, Inc or any other entity owned or controlled by Defendant Coyt E. Murray. The Receiver knows or should know that statement is true because the bank and accounting records of Kaivalya previously provided to the Receiver support and confirm that fact.

The bank and accounting records provided to the Receiver also confirm that during 2002 Defendant Shimer received \$65,000.00 in legal fees for the legal work that he performed for defendant Equity Financial Group, LLC. These payments were eminently reasonable in light of the time and work conducted by Mr. Shimer on behalf of that client. That amount was reported as income by Mr. Shimer on his 2002 tax return and all taxes were paid as required.

In 2002 Defendant Shimer continued to receive repayment of the \$157,984.00 loan he had made to Kaivalya in 2001. All loan re-payments received by Mr. Shimer from Kaivalya prior to June of 2002 were made by Kaivalya to Mr. Shimer from funds that Kaivalya received from

sources other than trading conducted by Defendant Coyt Murray or any of his companies. Kaivalya's records show that Kaivalya began to receive payments from Tech Trader source funds in July of 2002. Kaivalya's banking and accounting records show that a small partial repayment of Mr. Shimer's previous loan to Kaivalya was made in October of 2002 by Kaivalya. The amount of that repayment was the modest sum of \$3,000.00.

In December of 2002 Mr. Shimer also received an additional repayment of his loan to Kaivalya in the amount of \$5,000.00. The banking and accounting records for that repayment show that only \$2,020.00 of that repayment was made from funds received by Kaivalya from Defendant Tech Traders.

In 2003 the records of Defendant Equity show that Mr. Shimer received legal fee payments from his client Equity of \$160,700.00. Mr. Shimer asked and Equity booked \$12,000.00 of those funds as a payment to his wife Alison for her work in assisting Mr. Shimer with his legal duties to Equity. These amounts were all properly reported on the Shimers' joint tax return for 2003 and appropriate taxes were paid in full.

In 2003 Defendant Shimer also received total payments from Kaivalya of \$55,250.00. All of these funds were received by Kaivalya from Defendant Tech Traders, Inc. \$16,425.00 of that amount was paid to Mr. Shimer for work performed for Kaivalya during the year as Kaivalya's attorney. The remaining amount was a repayment of previous loans made to Kaivalya.

In 2003 Mr. Shimer also received \$24,250.00 in legal fees paid to him by the entity Edgar and he also received legal fees in the amount of \$13,500.00 from the entity Allied International Management that acted as the manager of New Century Trading. All of these legal fees were reported as income and proper taxes were paid.

If the Court so requests, Defendant Shimer is more than happy to provide *to the Court* a copy of his 2003, 2002 and 2001 tax return to verify that the amounts stated above were indeed reported as income and that all taxes were paid on these various sources of income. The Receiver's stated "suspicion" in his Brief that Mr. Shimer may not have paid all taxes due on income that he received during any of the tax years 2001, 2002 or 2003 has no basis in reality and is a product of someone's overactive imagination.

Regarding the Receiver's Request for Defendant Shimer's 2000 and 1999 tax returns

All of the stated "reasons" offered by the Receiver in his Affidavit attached as Exhibit A to his Brief for why he needs to review the tax returns of Defendant Shimer for tax years 2003, 2002 and 2001 make even less sense when one tries to "mesh" these reasons to his request for Defendant Shimer's tax returns for calendar years 2000 and 1999. First of all, the Complaint filed by Plaintiff does not allege any violation of the Commodity Exchange Act in either 2000 or 1999 by Defendant Shimer. Indeed, Plaintiff has never alleged that Defendant committed any violation of the Commodity Exchange Act in either of those past years.

The jurisdiction of this Court with respect to this matter is derived from Plaintiff's contention that Defendant allegedly violated the Commodity Exchange Act between from 2001 until 2004 as specifically recited in Counts I through V of the Complaint filed on April 1, 2004 as amended on June 24, 2004. Plaintiff has never alleged that Mr. Shimer ever violated the Commodity Exchange Act as a result of his association with the entity Kaivalya. Even more specifically Plaintiff has never alleged that Defendant Shimer ever violated the Commodity Exchange Act during either calendar year 2000 or during 1999. Nor has Plaintiff ever alleged that the entity Kaivalya has ever violated the Commodity Exchange Act during any period of time let alone during calendar year 2000 or 1999.

While it is true that the Receiver has the responsibility to trace and account for every dollar paid to anyone by Defendant Tech Traders, Inc. or by any other entity owned or controlled by Defendant Coyt E. Murray, in recognition of that responsibility, all banking records and all accounting records in the possession of Defendant Shimer were made available to the Receiver.

That Kaivalya received funds from Tech Traders, Inc is not disputed. And the Receiver has been voluntarily provided with sufficient information to know and trace exactly *where every single dollar went that was ever paid to Kaivalya by Tech Traders*. This is an important function in order for the Equity Receiver to evaluate every claim that is submitted to the Receivership estate to determine if any claim should be partially or fully offset by payments previously made to that specific claimant.

The Receiver's present Motion to Compel proposes to take the Receiver far beyond any responsibility to account for funds previously paid out by Tech Traders to Kaivalya or Mr. Shimer. The expenditure of Receivership funds that should be finally returned to Shasta's

investors and other investors that placed funds with the Defendant Tech Traders should not be spent by the Receiver or his accountants attempting to "prove" that somehow, in some way, Mr. Shimer did anything inappropriate in either calendar year 2000 or 1999. Those years are clearly beyond the scope of the Plaintiff's current Complaint as amended.

The Receiver has expressed a concern that "maybe" Mr. Shimer has not properly reported income for years prior to tax year 2004. But Mr. Shimer is willing to dispel that unfounded concern by making his tax returns for the years 2003, 2002 and 2001 available to the Court. If there has been no "underreporting" of income for any of the years actually relevant to the Complaint as filed, what basis is there to entertain any presumption that Defendant Shimer was not as careful with respect to the filing of tax returns for all previous tax years including 2000 and 1999?

The Receiver's stated "concern" about some imagined personal liability under the federal priority statute seems misplaced. It should be more important for him to be concerned about the attitude of Shasta's investors as well as other investor that placed funds directly with Tech if they were to learn that Receivership assets are being expended to determine if taxes were paid on amounts paid to Mr. Shimer or anyone else by an entity such as Kaivalya that has never been charged with the violation of any federal statute.

The merits of Kaivalya's investments are clearly beyond the scope of the present civil action. The Plaintiff clearly has no jurisdiction over Kaivalya because Kaivalya never bought or sold commodity futures contracts nor did it ever represent to anyone that it intended to do so. Nor did Kaivalya ever place funds with anyone who actually bought or sold commodity futures contracts. That Kaivalya made several bad investments is true. But it is also true that on its first investment Kaivalya was regularly and consistently paid for over a year and the records of Kaivalya show that every lender of Kaivalya received every payment that Kaivalya agreed to make to that lender whenever Kaivalya was paid.

Defendant Shimer does not recall ever receiving payments even *approaching* the amounts that are alleged to have been made to him by Kaivalya in either 1999 or 2000. Every dollar forwarded by any of his friends to Mr. Shimer for placement with Kaivalya was in fact forwarded to Kaivalya and any suggestion by the Receiver that Mr. Shimer did not always do exactly what he said he would do is completely unfounded. If funds were returned to him for forwarding to some other person, that would have been done.

As stated above, Mr. Shimer is more than willing to provide the Court with copies of his 2003, 2002 and 2001 tax returns if the Court finds it absolutely necessary to dispel the Receiver's unfounded and unjustified fear that Mr. Shimer has, somehow, not paid all taxes due for income received during those years specifically referred to in Plaintiff's Complaint.

Defendant Shimer trusts the Court to keep his private tax returns for these years appropriately confidential. Such a procedure would assure that these returns are used only for the purpose intended—to verify that all income was properly reported and that all taxes were indeed paid. While both Mr. Shimer and his wife consider even handing over the returns to the Court to be an unnecessary invasion of their financial privacy. That is especially true with respect to the financial privacy of Alison Shimer who has never been named as a defendant in this matter. Defendant Shimer is, however, willing to do that to satisfy both the Receiver and the Court that all required income taxes have, indeed, been paid. One only has to review all of the extremely private financial information about Mr. Shimer's current financial situation found as attachment 6 to Exhibit A of the Receiver's Brief to see that the Receiver has absolutely no regard at all for Mr. Shimer's financial privacy.

The Receiver also argues for his Motion to Compel that

“If Mr. Shimer is found culpable for the conduct the CFTC alleges and obtains a significant monetary judgment against him, he may also be required to make restitution to defrauded investors or pay a share of receivership administration fees and expenses”

This is pure speculation about the final outcome of this matter when all of the evidence is presented at trial. The Receiver's attorneys are clearly getting way ahead of themselves. The Receiver's attorneys are confusing the allegation of fraud (easy to make) with actual proof of fraud—which requires a preponderance of actual evidence on the merits. The record does not support a finding that Mr. Shimer violated the anti-fraud provisions of the Commodity Exchange Act. That is not an issue to be argued here but more appropriately at trial.

The present apparent insolvency of Mr. Shimer is a fact created solely by the present litigation and is hardly a legitimate reason to seize the last 6 years of Mr. Shimer's personal tax returns.

The Equity Receiver also makes much of the fact that Defendant Shimer may now be insolvent because his monthly expenses exceed his income. But the act of placing Mr. Shimer in receivership well over a year ago as a part of the Plaintiff's allegations of fraud was and is the main cause of Mr. Shimer's current financial difficulties! How can an attorney possibly find work when he has been accused of fraud by a federal agency? Who is going to hire an attorney who will be 60 years old in March of 2006 with THAT sort of cloud hanging over his head? And let's not forget the amount of time that Mr. Shimer spent during the past year *simply conducting his own defense!*

Mr. Shimer is admittedly not a litigator. No one is paying *him* \$350 an hour for *every hour that he spends trying to defend himself*. Mr. Shimer is not familiar with the rules of evidence and the necessary formalities for filing motion after motion in the federal courts. He has spent countless hours on his own defense that could have and should have been devoted to a search for an alternative source of income. How is it possible for ANYONE to find work if he has to continually take off time—often days and days in succession to research and write motions and briefs in one's own defense?

The Equity Receiver's argument that Mr. Shimer's current financial difficulties now require greater receivership involvement in Mr. Shimer's affairs is the result of the most absurd circuitous logic imaginable. Mr. Shimer is accused of having engaged in fraudulent conduct. That accusation *alone* not only creates but immeasurably compounds Mr. Shimer's present financial difficulties, and has now resulted in a very difficult financial situation for Mr. Shimer. Now that Mr. Shimer's expenses exceed his income the Equity Receiver's proposes to exert even more "receivership authority" over Mr. Shimer to purportedly protect the federal government's position under the federal priority statute! If little income was earned during tax year 2005 because of the disruption the present matter has caused to Mr. Shimer's ability to earn a living where is the risk that federal income taxes will not be paid in future years? If there is little or no income earned little or no federal income taxes are due! One can just see the creative legal juices flowing at Pepper Hamilton and at Sachnoff & Weaver while consulting on a telephone conference call —"hey let's run the federal priority statute up the flag pole and see if the Court

salutes!!!! There is not a shred of evidence in the record that Mr. Shimer has not paid all federal income taxes due for prior years. But "hey let's see if we can get the Court to let us probe into Shimer's past financial tax records". Let's see what might "pop up"!

Mr. Shimer would welcome oral argument on the points discussed in both his Brief and the Equity Receiver's. The Equity Receiver's concerns about Mr. Shimer's past joint tax returns with his wife are unwarranted and have no basis in fact. If the Equity Receiver wishes to go fishing, a more appropriate place to do that is in the Florida Keys.

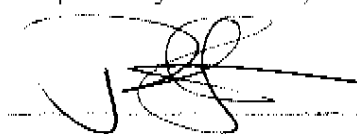
Defendant Shimer will not be available during the month of January

The Court had originally set a date of December 31st as the last day for pre-trial discovery. Relying upon that previously announced schedule, Defendant Shimer made flight arrangements in August or September, following the sudden and unexpected death of his only brother Stephen to take some time away with family beginning in early January. In November, during a regularly scheduled telephone conference call Mr. Shimer asked for clarification from the Honorable Ann Marie Donio if the Court would be flexible with respect to that previously established schedule for the completion of pre-trial discovery. Mr. Shimer was told that the Court did not anticipate granting any extensions for discovery into January. Taking the Court at its word, Mr. Shimer finalized his plans for that family trip and will be unavailable for most of the month of January. He expects to return on approximately January 31st.

Mr. Shimer respectfully requests that any hearing scheduled with respect to the Receiver's pending Motion to Compel await Mr. Shimer's return to allow Defendant Shimer sufficient time to prepare and participate in any oral argument the Court might wish to hear. The Court has granted Plaintiff's request to extend the time for discovery until the end of January. Postponing any deliberation with respect to the Receiver's present Motion to Compel until such time as Mr. Shimer returns certainly will not prejudice or delay the underlying case schedule.

Dated: December 30, 2005

Respectfully submitted,



Robert W. Shimer, Esq.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on December 30, 2005 he caused copies of his Opposition To the Temporary Equity Receiver's Motion To Compel Robert Shimer to Produce Tax Returns to be served upon the following parties at the address indicated below by First Class mail.

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