FYI

DOCKET NO. HHD-CV-07-4034033 SUPERIOR COURT

SOUTHRIDGE CAPITAL MANAGEMENT, LLC JUDICIAL DISTRICT OF HARTFORD

V. AT HARTFORD

HOWARD F. PITKIN, COMMISSIONER OF BANKING August 18, 2008

MEMORANDUM OF DECISION
APPLICATION TO QUASH SUBPOENA

I

STATEMENT OF CASE

On November 15, 2007, the plaintiff, Southridge Capital Management, LLC (SCM), filed an application to quash a subpoena issued by the defendant Howard F. Pitkin, Commissioner of Banking (department or commissioner). The investigative subpoena was issued by the department on November 5, 2007, pursuant to General Statutes § 36b-26 (November 5 Subpoena). [1]

SCM contends that the November 5 Subpoena should be quashed because (1) the department is without jurisdiction over SCM; and (2) the voluminous records sought – essentially every paper and electronic document relating to SCM's business covering nearly a four-year period – are not relevant to anything that the department is investigating. (Pl. Appl. p. 1.) In its memorandum of law, SCM further argues that the subpoena should be quashed on the grounds that: (1) SCM is exempt from registering notwithstanding whether it has $25 million assets under management; (2) SCM has already produced audited financial statements showing that the company's assets under

cc: Day, Pitney LLP(P)
AAG William Prensky(D)
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management far exceed $25 million; (3) although SCM maintains that the amount of its assets under management is irrelevant to the registration issue, SCM has offered to provide additional evidence to further support the evidence of its assets under management already; and (4) the November 5 Subpoena is oppressive, unduly burdensome and tailored to harass and punish the plaintiff. Pl. Mem. at 3-4; 25.

On March 28, 2008, the department filed an objection to the application to quash subpoena. In the accompanying memorandum of law, the department argues that SCM's claims are without merit and the application should be denied on the grounds that: (1) the department's investigation is protected at the pre-complaint stage under its official information and investigatory privileges, and as such SCM plaintiff cannot in this proceeding discover what the department is investigating; (2) SCM bears the burden of proof on its application to quash; (3) the department has jurisdiction to determine whether SCM should be registered as an investment advisor and whether SCM has committed fraud in the offer or sale of securities; (4) the public interest in enforcing the department's investigative subpoena superseded any recognition this court might give to the Bahamian Secrecy Law; and (5) the subpoena is not oppressive, unduly burdensome or issued to harass or punish the plaintiff. Def. Mem. at 6-35.

II

FINDINGS OF FACT

The department is conducting an ongoing investigation pursuant to General Statutes § 36b-26 of the Connecticut Uniform Securities Act (CUSA).

The department has not issued charges or complaints alleging any violation of CUSA against SCM or any of the related parties.

SCM has been in business since 1996. Stephen Hicks (Hicks) is the founder and president of SCM, which is owned by Hicks' family limited partnership. SCM is a private investment firm that advises and manages investment funds and provides investment capital to growing businesses. SCM manages five hedge funds: Southridge Partners LP, Sovereign Partners LP, Dominion Capital Fund Limited, Southshore Capital Fund LTD, and Dominion Investment Fund LLC. SCM is not registered as an investment advisor with the department or with the SEC. Henry Sargent (Sargent) is employed as legal counsel to SCM as well as a portfolio manager.

Southridge Investment Group (SIG) is a broker-dealer registered with the department under CUSA. Michael Byl (Byl) is the president of SIG, which is also owned by Hicks' family limited partnership. Sargent also acts as legal counsel to SIG, but he is not an SIG employee. SCM and SIG share office space in Ridgefield with Markland Technologies, Inc. (MTI). (SCM, SIG, Hicks and Byl may be referred to as the "Southridge Parties".)

The November 5 Subpoena, directed to SCM, requests information regarding the securities related activities of SCM. More specifically, the subpoena requests the following: records reflecting the identity of investors which received investment advice from SCM; documents disseminated to those investors; redemption requests made by those individuals; documents reflecting litigation/arbitration relating to those investors; bank records relating to those

investors; an itemized accounting of all fees paid to SCM for raising funds for MTI; documentation used in the valuation of assets under SCM's management; and records reflecting requests for payment for services rendered by SCM.

Before the November 5 Subpoena was issued, the department had made numerous requests for information to the Southridge Parties. In August, 2005, the department paid a routine audit visit to SIG and requested documents. The department sought a list of investors for the domestic funds. The list of investors was provided without any confidentiality issues being raised. Beginning in February, 2007, the department issued eight subpoenas to the Southridge Parties. SCM received three of the eight subpoenas issued by the department in 2007 (March 5, 2007; September 6, 2007; and November 5, 2007). The evidence demonstrated that the Southridge Parties made numerous complaints to the department regarding the issuance of the subpoenas and the conduct of the investigation.

On February 2, 2007, the department issued a subpoena to SIG for documents relating to MTI covering the period from January 2004 to the present. Pl. Ex. 1. Twelve document requests were made. On February 2, 2007, the department also issued a subpoena to Byl for documents relating to MTI covering the period from January 2004 to the present. Pl. Ex. 2. Nine document requests were made. SIG complained that the subpoenas basically asked for the same information. The firm responded to the subpoenas. Byl was later deposed by the department, and additional documents were requested.

SIG and Byl, as broker-dealers, were required to respond promptly to information requests from regulatory agencies, such as the department. The Securities and Exchange Commission (SEC) has certain document retention and production rules that apply to broker-dealers, which have been adopted by Connecticut. The rules require that the records be kept in a non-modifiable and searchable format. A brokerage firm is required to respond promptly to document requests made by a regulatory agency. In adopting the rules, the SEC determined that the cost of compliance was reasonable.

When the February, 2007 subpoenas were issued, SIG did not have a third-party vendor maintaining its records. SIG captured email internally. The data was not necessarily in a searchable format. SIG and SCM hired Smarsh Financial Technology Solutions (SMARSH) as a third-party document management vendor. A significant part of the costs incurred by SCM and the Southridge Parties in complying with the subpoenas included the expense of retaining third-party vendor document management services.

On March 5, 2007, the department issued the first subpoena to SCM for documents relating to MTI covering the period from January 2004 to the present. Pl. Ex. 3. Sixteen document requests were made. On March 5, 2007, the department also issued a subpoena to Hicks for documents relating to MTI covering the period from January 2004 to the present. Pl. Ex. 4. Nine document requests were made. Sargent complained that the requests were similar to those made to SCM.

On April 6, 2007, the attorney for the Southridge Parties sent a letter to the department regarding the February, 2007 and March, 2007 subpoenas. The letter expressed the Southridge Parties' view that the requests were unduly burdensome and overbroad. They indicated a willingness to negotiate the terms of compliance with the subpoenas. The department did not fully respond to the firm's letter. The Southridge Parties agreed to make production of the requested documents, including documents that they believed were already produced.

Several letters were sent to the department regarding production of documents pursuant to the subpoenas. Pl. Exs. 6, 7 and 8. The department agreed to a rolling production of documents. Over several weeks, thousands of documents and emails were provided to the department in response to the subpoenas. According to Sargent, production was completed as of May 2, 2007. SCM took the position that documents were subject to strict disclosure requirements. The third-party vendor(s) assisted with the production. After the May 2, 2007 letter, the department did not notify the Southridge Parties that the production was insufficient.

On May 22, 2007, the department issued a subpoena to SIG for documents relating to SIG covering the period from January 2004 to the present. Pl. Ex. 9. The subpoena was issued right before the Memorial Day holiday weekend. Five document requests were made including copies of all SIG emails. SIG thought that it had already complied with this specific email request in previous subpoenas. In a letter dated May 25, 2007, SIG complained to the department about the subpoena being burdensome and duplicative. Pl. Ex. 10.

The letter expressed dismay about the large number of documents and emails already produced and the costs associated with the production including the need to redact privileged information. The document production requests involved nearly 95,000 emails and close to 400,000 pages worth of information. SIG believed that the identity of investors in MTI were subject to strict disclosure requirements.

On May 31, 2007, SIG notified the department in writing of its efforts to produce the documents requested. Pl. Ex. 11. Over the next few months, the department was apprised in writing or by email of the production efforts. Pl. Exs. 12, 13. As part of the production, the firm provided audited financial statements. As of June 11, 2007, the firm had completed its production of email requested in the May 22, 2007 subpoena. Sargent testified that the production included roughly 200,000 email documents. He testified that the Southridge Parties incurred $200,000 in legal and production fees through June, 2007.

The next correspondence from the department was an August 27, 2007 email requesting from SIG emails from January 1, 2004 to June 31, 2007. Pl. Ex. 14. The request was limited to several search terms. The request was made a few days before Labor Day holiday weekend. SIG had previously offered to do a targeted search of emails which was not accepted by the department. On August 30, 2007, SIG responded to the August 27, 2007 email and expressed dismay with the request for targeted emails. Pl. Ex. 15. The letter recounted the history of production to date and expressed concerns regarding the burdensome and duplicative nature of the request and the department's failure to accept

earlier offers of compromise. On September 14, 2007, SIG notified the department in writing of its compliance with the August 27, 2007 email. Pl. Ex. 16.

On September 6, 2007, the department issued a second subpoena to SCM for documents relating to MTI covering the period from January 2004 to present. Pl. Ex. 17. Six document requests were made. On September 6, 2007, the department also issued a subpoena to Hicks for documents relating to MTI covering the period from January 2004 to the present. Pl. Ex. 18. SCM complained that several months earlier, the identical document requests had been made by the department to Hicks pursuant to nos. 1, 4 and 5 of the March 5, 2007 subpoena. See Pl. Ex. 4. On September 6, 2007, the department paid a visit to SIG and Byl and requested further documents.

On September 12, 2007, the plaintiff sent an email to the department indicating that almost all of the requested documents had already been produced pursuant to the prior subpoenas. The plaintiff indicated a willingness to resolve any problems.

On September 25, 2007, the plaintiff's attorney wrote to the department expressing concerns with the September 17, 2007 conference call. PL. Ex. 20. SCM believed that the department indicated during the conference call that it wanted SCM to produce all the books and records of SCM. In order to comply with the request, SCM believed that it would have to shut down the firm for an extended period of time given the extensive scope of the request and SCM's limited staff. In addition, SCM had already produced many of the documents

being requested, including financial statements. SCM indicated a willingness to negotiate compliance with the request.

Another conference call was held during which the department raised the issue of whether SCM was required to register under CUSA. SCM believed it was exempt from registration under CUSA if it had more than $25 million in assets. The department had never previously examined SCM as a potential registrant. The department indicated it was looking for the work papers for the financials and the identity of investors in the funds. SCM had its outside counsel contact the department to discuss the requests but the discussions were unsuccessful. Pl. Ex. 22. By October 2007, the issue of SCM's assets under management as it related to registration as an investment advisor was clearly being pursued by the department.

The department's principal examiner in this case was Salvatore Cannata (Cannata.) He drafted all the subpoenas issued to the Southridge Parties. During his testimony, he explained the department's process for issuing a subpoena. After the subpoena is drafted by an examiner, it goes to the assistant director for his or her review. The subpoena is then reviewed by the legal department. The division director then reviews the subpoena for final approval. The department issues subpoenas that are broad in scope partly because of problems with parties narrowly defining the document requests. The department needs to broadly define the terms to capture all of the necessary documents. If a subpoena is not complied with , the department's practice is to issue a new

subpoena after sixty (60) days due to enforceability problems. The department may also request enforcement through the Attorney General's Office.

The department is not required to serve a subpoena on a registrant like SIG or Byl. The department has the authority to make a written or oral request for the broker-dealer's records. If a registrant fails to comply with such a request, the department has the authority to issue a summary suspension. Under the SEC requirements, a broker-dealer is required to maintain electronic documents in an unalterable and searchable format and to promptly produce records upon request. If the records are maintained as required, there should not be significant extra cost to comply.

Cannata testified that the department did not issue the November 5 Subpoena to harass SCM, rather the department was investigating the activities of the Southridge Parties. Several investors complained that they were unable to liquidate their positions in the funds. The investigation evolved over time. By November, 2007, the areas under investigation included: (1) trading in MTI Securities; (2) the valuation of assets under management; (3) the broker-dealer registration requirements; (4) the assessment of management fees; and (5) potential securities fraud violations. These areas of inquiry were interrelated to a large degree.

The department first tried to determine which of the funds had positions in MTI. In February, 2007, the department issued several subpoenas to the Southridge Parties for information relating to MTI. The subpoenaed parties were given time to produce the documents. In response to the February, 2007

subpoena, the plaintiff proposed a rolling production. The department agreed to rolling production of documents. During April, 2007 and May, 2007, there was a rolling production of the SIG emails.

SIG and Byl produced documents in response to the February, 2007 subpoenas, but the department did not believe all the relevant documents were produced. The department had obtained records from other sources that were not part of the production. Specifically, the department had in its possession emails from individuals affiliated with trading in MTI which indicated that emails were sent to employees of SIG as well as SIG.

In May, 2007, the department issued additional subpoenas to the Southridge Parties. Some of these subpoenas were broader in scope. The department agreed to an extension on the subpoenas issued before the Memorial Day holiday weekend.

During the investigation, the department experienced technical and staffing difficulties relating to the document production. The Southridge Parties provided thousands of emails in a format that the department did not have the technical capability to search. The department also had limited staff to review the thousands of documents produced. In August 2007, as a result of changes within the department, Eric Wilder, Assistant Director of the Securities and Business Investment Division, assumed direct oversight of this matter. Wilder sent the August 27, 2007 email to Byl asking for emails for certain search terms in a format searchable by the department.

In the subpoenas issued to SCM, the department requested a list of the names and addresses of the investors in the funds. Pl. Exs. 3, 17, 23. SCM raised confidentiality concerns and refused to provide the department with an unredacted list of investors.

In or about September, 2007, the department received a complaint from one of the investors in the funds regarding excessive management fees. Management fees were calculated as a percentage of the assets under management. If assets under management were overvalued, then management fees were potentially excessive. Some of the Southridge funds had positions in restricted securities of entities in which Hicks had ownership interest. Hicks was also involved in valuating these assets for the funds. The department was investigating whether some of the restricted securities were not valued properly in conformance with the subscription agreement resulting in excessive management fees.

In September, 2007, the department issued additional subpoenas to SCM and Hicks because the department believed certain documents had not been produced and the 60-day window had passed.

As a result of discussions between the parties after the September 6, 2007 subpoenas were issued, the department recognized that the plaintiff had some valid points regarding compliance and the wording of some of the requests. The department wanted an opportunity to review all the bank and brokerage statements and the audit reports to determine if the numbers reconciled. The department was focused on getting documents relating to the identity of investors

and the backup for the valuation of assets under management. The parties engaged in discussions but were unable to resolve their differences.

On October 30, 2007, the department set a November 2, 2007 deadline for compliance. When the documents were not produced by that date, the November 5 Subpoena was issued.

SCM considered the November 5 Subpoena unreasonable in its totality. SCM asked the department to narrow the scope of the November 5 subpoena. The list of investors continued to be a major point of contention. SCM refused to produce an unredacted list of investors.

The department did not question whether the firm's auditor(s) had complied with generally accepted accounting standards and practices in preparing the audit reports. The department believed it did not have sufficient reliable information to make a decision regarding registration/exemption. The department was unable to determine from the auditors' reports what securities were valued by Hicks.

III

DISCUSSION

The department has broad investigative powers pursuant to General Statutes § 36b-26. "The commissioner may . . . (1) Make such public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated, is violating or is about to violate any provision of sections 36b-2 to 36b-33, inclusive, or any regulation or order thereunder, or to aid in the enforcement of said sections or in the

prescribing of rules and forms thereunder, or to aid in the enforcement of said sections or in the prescribing of rules and forms thereunder. . ." General Statutes § 36b-26 (a).

This broad authority includes the power to issue investigative subpoenas. "For the purpose of any investigation or proceeding under sections 36b-2 to 36b-33, inclusive, the commissioner or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and *require the production* of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry." (Emphasis added.) General Statutes § 36b-26 (b).

If documents are not produced in response to a subpoena, the department may apply for an enforcement order. "In case of contumacy by, or refusal to obey a subpoena issued to, any person, the superior court for the judicial district of Hartford, upon application by the commissioner, may issue to the person an order requiring him to appear before the commissioner, or the officer designated by him there to produce documentary evidence if so ordered or to give evidence concerning the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court." General Statutes § 36b-26 (c).

In seeking enforcement, the department must demonstrate the applicable factors. "To prevail on any application for an order requiring compliance with an investigative subpoena issued under the authority of § [36b-26], the

commissioner must prove that the subpoena satisfies the following three-part test: first, that it was issued in the course of an investigation that he is legally authorized to conduct; second, that it seeks the production of documents, records and/or materials that are relevant to that investigation; and third, that it is specific and otherwise not unduly burdensome . . . . If the commissioner can make this showing, then the subpoenaed party must comply unless that party can prove, by independent evidence that the purpose behind the issuance of the [subpoena] was improper, i.e., that the [subpoena was] issued in order to harass or punish, rather than to gain information relevant to the investigation." (Citation omitted; internal quotation marks omitted.) *Shulansky v. Rodriguez*, 44 Conn. Sup. 72, 77, 669 A.2d 638 (1994), affirmed 235 Conn. 465, 669 A.2d 560 (1995).

A party subject to a subpoena may apply to quash a subpoena. The party seeking to quash a subpoena bears the burden of proof. See *Hartford County Sheriffs v. Blumenthal*, 47 Conn. Sup. 447, 806 A.2d 1158 (2001); *Mulero v. State Department of Education*, Superior Court, judicial district of New Britain at New Britain, Docket No. CV-04-0527004 (July 14, 2004, Robinson, J.)(2004 Ct. Sup. 10768). In *Mulero*, the court denied a motion to quash a subpoena issued by an administrative agency. *Mulero v. State Department of Education*, supra, 2004 Ct. Sup. 10769. The court concluded "that the applicant has failed to meet his burden of proof as to any of the three reasons cited in support of the motion to quash the subpoena. Furthermore the movant has failed to show that the subpoena was unreasonable or oppressive." Id. SCM has the burden of proof in seeking to quash the November 5 Subpoena. Accordingly, SCM must prove the

absence of the applicable factors. See *Shulansky v. Rodriguez*, supra, 44 Conn. Sup. 77; *Shulansky v. Cambridge-Newport Financial Services Corporation*, 42 Conn. Sup. 439, 444-45, 623 A.2d 1078 (1992)("The commissioner's subpoena of the defendant's records carries with it a presumption that it was issued legally, in good faith, and under proper authority for a proper purpose. In light of the presumption that the administrative subpoenas were issued for a proper purpose, the burden is shifted to the defendant to prove affirmatively that there was an improper purpose in issuing them. . . . The defendant must make a prima facie case through a showing of independent evidence that the purpose behind the issuance of the subpoenas was improper, i.e., that the subpoenas were issued in order to harass or punish, rather than to gain information relevant to the investigation.")

"The determination of breadth of scope of an investigatory subpoena is to be determined in the first instance by the agency serving the subpoena. . . . The scope of an investigatory subpoena will survive judicial review as long as the agency seeking the information has the authority to request the documents, the demands are not too indefinite, the information is reasonably relevant and the information is being sought for a proper investigatory purpose." (Citation omitted.) *Hartford County Sheriffs v. Blumenthal*, supra, 47 Conn. Sup. 473-474.

In *United States v. Morton Salt Co.*, 338 U.S. 632 (1950), the U.S. Supreme Court recognized that an administrative agency has broad authority to subpoena information when investigating potential violations of law that the agency is responsible for administering. "We must not disguise the fact that

sometimes, especially early in the history of the federal administrative tribunal, the courts were persuaded to engraft judicial limitations upon the administrative process. The courts could not go fishing, and so it followed neither could anyone else. Administrative investigations fell before the colorful and nostalgic slogan 'no fishing expeditions.' It must not be forgotten that the administrative process and its agencies are relative newcomers in the field of law and that it has taken and will continue to take experience and trial and error to fit this process into our system of judicature. More recent views have been more tolerant of it than those which underlay many older decisions. . . .

"The only power that is involved here is the power to get information from those who best can give it and who are most interested in not doing so. Because judicial power is reluctant if not unable to summon evidence until it is shown to be relevant to issues in litigation, it does not follow that an administrative agency charged with seeing that the laws are enforced may not have and exercise powers of original inquiry. It has a power of inquisition, if one chooses to call it that, which is not derived from the judicial function. It is more analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not. When investigative and accusatory duties are delegated by statute to an administrative body, it, too, may take steps to inform itself as to whether there is probable violation of the law." (Citations omitted.) *United States v. Morton Salt Co.*, supra, 338 U.S. 642-643; See *Shulansky v. Rodriguez*, 235 Conn. 465, 514-515, 669 A.2d 560 (1995)

("[T]hat the legislature, when it endows an administrative body with responsibility for a statute's enforcement, may authorize that body, rather than the trial court, to determine the question of coverage in the preliminary investigation of possibly existing violations. . . . An administrative body so empowered may, by virtue of such authority, develop, without interference or delay, a factual basis for the determination of whether particular activities come within its regulatory authority.")

In seeking to quash the November 5 Subpoena, SCM has raised issues relating to cost, scope, registration, confidentiality, and burdensomeness. The cost issue was difficult to assess. The Southridge Parties have claimed that they have spent over $200,000 complying with the subpoenas and document requests. They have estimated that it would cost at least another $500,000 to comply with the November 5 Subpoena. Sargent testified that 70% of the costs incurred in complying with the subpoena resulted from attorney's fees. All the documents had to be reviewed for privilege. The cost estimate included third-party document management vendor services for both SCM and the other Southridge Parties. A broker-dealer is required to maintain records in a readily accessible format. In terms of the volume of documents produced so far, the department estimated that approximately eighty percent (80%) of the documents were from SIG/Byl and the rest from SCM/Hicks. Furthermore, there was a lack of documentary evidence of the estimated production costs.

SCM has claimed that the November 5 Subpoena was also unreasonable because of its scope. Many of the records requested were

provided to the department pursuant to earlier subpoenas. Requests No. 1 and No. 2 would require the firm to produce all of its documents. SCM had already produced thousands of records pursuant to the prior subpoenas. However, SCM failed to comply fully with the prior subpoenas. SCM ignored some requests and failed to provide documents that the department had received from other sources. The department had valid concerns regarding SCM's production to date.

SCM has argued that its exemption/registration status was not challenged by the department until the Fall, 2007. SCM's position was that the audited financial statements and brokerage statements clearly show that the partnership capitol and net assets exceeded $25 million for the period from 2004 through 2007. The assets under management issue related to both the exemption and registration requirements and the management fees. The department still had significant questions regarding the valuation of assets. The assets of the funds included restricted securities that were not readily marketable. Hicks was involved in the valuation of these assets even though he also had some ownership or controlling interest in the assets. Partnership documents provide for how restricted securities should be valued. If assets were overvalued, management fees were potentially excessive.

The confidentiality concerns raised by SCM were not persuasive. SCM was concerned with the possibility of losing investors or capital if investors were contacted by the department pursuant to the investigation. SCM did not ask the investors to waive confidentiality. The Bahamian confidentiality issue raised by

SCM applied only to one of the funds, Dominion Capital Fund Limited. Bahamian law does not supersede CUSA. SCM also never sought a waiver or exemption from the Bahamian Government.

The department was legally authorized to conduct an investigation pursuant to General Statutes § 36b-26 and issue investigatory subpoenas. The investigation had expanded in response to investor complaints made to the department. When the November 5 Subpoena was issued, the department was investigating: (1) trading in MTI; (2) the valuation of assets under management; (3) the broker-dealer registration requirements; (4) the assessment of management fees; and (5) potential securities fraud violations. The subpoena was issued in the course of an evolving investigation. The department sought the production of documents that were reasonably relevant to that investigation. The subpoena was issued after SCM failed to comply fully with the prior subpoenas. The department had valid concerns regarding whether all the relevant documents were produced. The department had received documents from other sources that were not produced by the Southridge Parties. The subpoena was necessarily broad to capture all of the relevant documents. The department was not required to rely on audit reports in determining compliance with state requirements. SCM is subject to a general fraud inquiry by the department. SCM must answer a department issued subpoena pursuant to a fraud investigation under CUSA. Under the circumstances, the November 5 Subpoena time frame was reasonable. The subpoena was not unduly burdensome. SCM must bear the production cost like any other cost of doing

business. The November 5 Subpoena was issued for a proper purpose and was not issued to harass or punish the plaintiff.

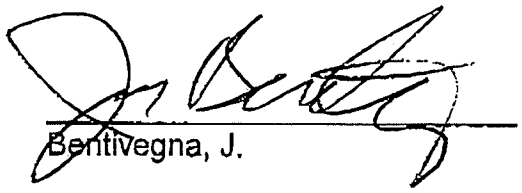
Based on the evidence presented, SCM has failed to meet its burden of proof to quash the November 5 Subpoena. SCM has failed to show that the November 5 Subpoena was unreasonable or oppressive.

IV

CONCLUSION

For the above-stated reasons, the court denies SCM's application to quash the November 5 Subpoena.

SO ORDERED,



Bentivegna, J.

[1] SCM - November 5, 2007 Subpoena:

EXHIBIT A

The following books, record, papers, documents and other writings, wherever maintained (collectively, "Documents") in the possession, custody or control of Southridge Capital Management LLC and/or its agents, employees and representatives and covering the period from January 2004 to the present, including, without limitation, office files, personal files, desk files, and documents maintained electronically, magnetically, optically, or in any other form:

1. A schedule or other record reflecting the identity of all individuals and/or entities who invested in all investment entities which received investment advice from Southridge Capital Management, LLC, including but not limited to Dominion Capital Fund Limited, Southshore Capital Fund LTD, Sovereign Partners L.P., and Southridge Partners, L.P.;

2. Copies of all correspondence, letters, prospectuses, disclosure documents, and offering memoranda disseminated to those individuals and/or entities referenced in Item number 1 above;

3. Copies of all redemption requests made by the individuals and/or entities referenced in Item number 1 above;

4. Copies of any and all documents reflecting litigation and/or arbitration proceedings between any individuals and/or entities referenced in item number 1 above;

5. Copies of any bank records including any checking, trust, escrow and savings account statements, wire transfers, cancelled checks (both sides), withdrawal notices and deposits made to checking, trust, escrow and savings accounts (both sides of deposited checks), showing the deposit of funds received from the activities referenced in Item number one above;

6. An itemized accounting of all fees paid to Southridge Capital Management LLC by any person, including but not limited to Markland Technologies, Inc., for raising funds through any means for Markland Technologies, Inc., including stock warrant purchase agreements, angel financings, convertible promissory notes, promissory notes, private equity agreements, or securities purchase agreements;

7. Copies of supporting documentation, including but not limited to work papers and financial statements, used in the valuation of those assets and liabilities listed on each financial statement as representing the total assets under management of Southridge Capital Management LLC; and

8. Copies of any and all invoices, bills, and/or correspondence sent to any client requesting payment for services rendered by Southridge Capital Management, LLC.