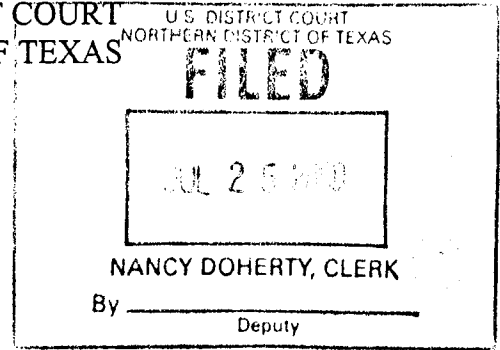


COPY

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



JOHN PAPAGNI, PAMELA L. ALBION, §  
BYRON W. BACCHI IRREVOCABLE §  
TRUST, by Eddie M. Bacchi, Trustee, §  
EDDIE M. BACCHI & VIRGINIA M. §  
BACCHI 1991 LIVING TRUST, by Eddie §  
Bacchi, Trustee, and WILLIAM L. BACCHI §  
& TERRIE L. BACCHI REVOCABLE §  
TRUST, by William L. Bacchi, Trustee. §

Plaintiffs. §

V. §

HAMMERSMITH TRUST, L.L.C. and §  
DAVID GILLILAND, §

Defendants. §

CIVIL ACTION NO:  
3:00-CV-1065-M

**JOINT STATUS REPORT AND  
PROPOSED DISCOVERY PLAN**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, the Plaintiffs and Defendant Hammersmith Trust, L.L.C., through Michael J. Quilling, the Receiver appointed in the above-entitled cause for said Defendant, and file this Joint Status Report and Proposed Discovery Plan pursuant to the Court's Order of June 27, 2000. Defendant David Gilliland did not participate in the preparation of this status report and proposed plan. Prior to submitting this status report and proposed discovery plan, Plaintiffs' counsel contacted Donald L. Beckner and Robert K. Crowe, attorneys that previously appeared as counsel of record for Defendant Gilliland when the case was in the Northern District of California. Both attorneys stated that they would not be appearing for Defendant Gilliland in this Texas case, and that Mr. Gilliland was representing himself pro se. Upon information and belief, Mr. Gilliland was indicted on June 21, 2000 in the Northern District of Florida, Cause No.

3:2000cr00048, on federal fraud charges pertaining in part to the factual basis for the Plaintiffs' claims. Mr. Gilliland is currently detained in the Escambia County Jail, Pensacola, Florida where he awaits federal criminal trial. According to Escambia County Jail officials, correspondence with Mr. Gilliland should be addressed as follows:

Benjamin David Gilliland  
Federal Detainee, G2B4  
Escambia County Jail  
P.O. Box 17789  
Pensacola, FL 32522

**A. JOINT STATUS REPORT:**

**1. Statement and Contention of the Parties:**

**a. Plaintiffs' Contentions**

On December 24, 1997, Plaintiffs filed the Complaint in this action in the United States District Court for the Northern District of California. Each of the claims asserted by Plaintiffs in the Complaint arises out of Defendants' illegal Ponzi scheme. In particular, Plaintiffs entered into investment contracts with Defendants David Gilliland ("Gilliland") and Hammersmith Trust, L.L.C. ("Hammersmith") based upon the written and oral fraudulent representations of Defendants, including (but not limited to) guaranteed profit payments and return of principal. Defendants paid only a few of the required profit payments to Plaintiffs John Papagni and Pamela Albion. Defendants paid no profit payment to the other Plaintiffs.

Plaintiffs diligently prosecuted their lawsuit against Defendants. In this regard, Plaintiffs (1) served written discovery on Defendants, (2) noticed Defendants' depositions and (3) moved to compel Defendants' compliance with Plaintiffs' properly served discovery. As a result of Plaintiffs' motions to compel, the United States Magistrate Judge ordered Defendants to respond to certain interrogatories, produce certain documents and appear for deposition in California (the "Discovery Orders"). To date, Defendants have failed to comply with those Orders.

On November 1, 1999, Plaintiffs filed motions for Rule 37 issue establishment and evidence preclusion sanctions against Defendant Gilliland and Defendant Hammersmith based upon their failure to comply with the Court's Orders. On December 23, 1999, the United States Magistrate Judge recommended that if Defendants did not comply with their outstanding discovery obligations on or before January 7, 2000, Plaintiffs' Motions for Sanctions Under Rule 37 be granted precluding Defendant Gilliland and Defendant Hammersmith from introducing evidence to defend against Plaintiffs' claims or to support their affirmative defenses as provided by Rule 37(b)(2)(B) of the Federal Rules of Civil Procedure (the "Recommendation").

On January 7, 2000, the United States District Court heard Plaintiffs' request for entry of default judgment against Defendant Gilliland, as well as an order to show cause why default

should not be entered against Defendant Hammersmith. Defendant Gilliland appeared pro se. No counsel for Hammersmith appeared. After hearing argument from both parties, the Court entered default as to Hammersmith and Gilliland (the "Default Order").

On April 14, 2000, Plaintiffs applied for default judgment against both Defendants in the Northern District of California (the "Application"). On May 9, 2000, the Court ordered this action transferred to the United States District Court for the Northern District of Texas, Dallas Division and denied the Application without prejudice to re-file in this Court. Importantly, the Court's transfer order did not vacate its previous orders, including, but not limited to, the Discovery Orders, the Recommendation, and the Default Order.

**b. Defendant Hammersmith/Receiver's Contentions**

The Receiver contends that liability has been found, through a default judgment that was taken prior to the appointment of Michael J. Quilling as the court-appointed Receiver. Based on the fact that liability has already been found, through a default judgment, the Receiver contends that the following individuals/entities are entitled to judgments in the following amounts:

1. John Papagni/Pam Albion in the amount of \$580.
2. William and Terri Bacchi Irrevocable Trust in the amount of \$50,000.
3. Eddie Bacchi & Virginia Bacchi Living Trust in the amount of \$50,000.
4. Byron Bacchi Irrevocable Trust in the amount of \$100,000.

The Receiver is sending proposed agreed judgments to the counsel for the plaintiffs.

**c. Defendant Gilliland's Contentions**

Defendant Gilliland's contentions are not currently available.

2. **Any challenge to jurisdiction or venue.**

No Parties challenge jurisdiction or venue.

3. **Any pending or contemplated motions and proposed time limits for filing motions.**

There are no pending motions. Plaintiffs presently intend to file an application for default judgment against Defendant David Gilliland. Plaintiffs and the Receiver presently intend to file separate stipulated requests for judgment on behalf of each of the Plaintiffs against Defendant Hammersmith Trust, L.L.C. Plaintiffs also intend to file a motion to enforce the Discovery Orders. The Defendants contemplate that they will file a Motion for Summary Judgment after discovery has been taken. The Parties would suggest a time limit for filing any dispositive motions 60 days before any pre-trial conference date set by this Court.

4. **Any matters which require a conference with the Court.**

No Parties require a conference with the Court.

**5. Likelihood that other parties will be joined.**

No Parties believe any other parties will be joined at this time.

**6. (a) Estimated time needed for discovery, with reasons.**

Because of the complexity of this case, the Parties have suggested a discovery plan, pursuant to the Court's Order of June 27, 2000.

**(b) Contemplated discovery.**

Plaintiffs intend to make a motion to enforce the Discovery Orders. (*See* Section A.1.a., above.) All parties believe that additional Interrogatories, Requests for Production and Requests for Admissions will be sent. In addition, depositions will be taken of the most relevant individuals (i.e., individuals who were involved in the alleged Ponzi scheme).

**7. Consent to U.S. Magistrate Judge.**

The unanimous consent of all parties to a trial by a U.S. Magistrate Judge is not available at this time.

**8. Prospects for Settlement.**

Plaintiffs and the Receiver (on behalf of Hammersmith only) currently are conducting settlement negotiations. (*See* Section A.1.b., above.) Plaintiffs' past settlement negotiations with Defendant Gilliland have been futile.

**9. Mediation Prospects.**

Plaintiffs and the Receiver agree to participate in a mediation of this case after discovery has been completed if they are not able to settle before that time.

**10. Any other relevant matters.**

Plaintiffs and Hammersmith believe there are no other matters relevant to the status and disposition of this case.

**B. JOINT PROPOSED DISCOVERY PLAN:**

Pursuant to the Court's Order of June 27, 2000, all Parties submit the following to the Court:

1. Pursuant to the Court's Order of June 27, 2000, a meeting was held on July 12, 2000 at 2001 Bryan Street, Suite 1800, Dallas, Texas 75201. The following attorneys attended in person:

Michael J. Quilling  
State Bar No. 16432300  
Andrew M. Trusevich  
State Bar No. 00785119  
Quilling Selander Cummiskey & Lownds  
2001 Bryan Street, Suite 1800  
Dallas, Texas 75201  
(214) 871-2100  
(214) 871-2111 (fax)  
Counsel for Defendant Hammersmith/Receiver Quilling

James F. Adams  
State Bar No. 00863450  
Passman & Jones  
1201 Elm Street, #2500  
Dallas, TX 75270  
(214) 742-2121  
(214) 748-7949 (fax)  
Counsel for Plaintiffs

Mike Schwartz, additional counsel for the Plaintiffs, also attended by telephone.

2. Initial disclosures pursuant to Fed. R. Civ. P. 26(a) were made in 1998. Pursuant to the Court's Order of June 26, 2000, no further initial disclosures will be made.
3. The Parties jointly proposed to the Court the following agreed discovery plan:
  - a. Discovery will be needed on the following subjects:
    1. The Plaintiffs' allegations against the Defendants.
    2. The Defendants' affirmative defenses.
    3. The Receiver's investigation of the financial records and status of each defendant and the tracing of investors' funds.
    4. Plaintiffs' previously served discovery (*See* sections A.1.a. and A.6.b., above.)
  - b. All discovery will be commenced in time to be completed by June 15<sup>th</sup>, 2001.
  - c. All Parties will limit interrogatories pursuant to Fed. R. Civ. P. 33.

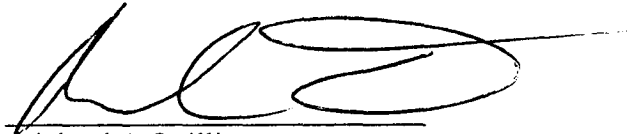
- d. All Parties will limit request for admissions to a maximum number of 30.
  - e. Depositions will not be limited at this time, but will be conducted pursuant to the Federal Rules of Procedure.
  - f. Deposition Time Limits:
    - 1. No deposition time limits are deemed necessary at this time.
  - g. Experts will be designated by, and reports from experts due:
    - 1. From Plaintiffs — March 5, 2001.  
Reports due by — March 15, 2001.
    - 2. From Defendants — April 5, 2001.  
Reports due by — April 15, 2001.
    - 3. Rebuttal experts and reports due — May 5, 2001.
  - h. Supplementation of all discovery will be made by June 15, 2001.
4. Other Items
- a. Parties do not request a conference with the Court before entry of the scheduling order.
  - b. Parties request a Pre-Trial Conference in August, 2001.
  - c. The Plaintiffs should be allowed until October 15, 2000 to join additional parties and until November 15, 2000 to amend the pleadings. The District Court for the Northern District of California previously granted the Plaintiffs leave to file a First Amended Complaint; however, Plaintiffs have not yet filed the First Amended Complaint. The First Amended Complaint, if filed, would, among other things, join additional parties. Presently, Plaintiffs do not intend to file the First Amended Complaint.
  - d. Defendants should be allowed until October 22, 2000 to join additional parties and until November 22, 2000 to amend pleadings.
  - e. All potentially dispositive motions should be filed by June 30, 2001.
  - f. Past settlement negotiations have not been fruitful. Plaintiffs and Hammersmith are in the process of negotiating a settlement, but Plaintiffs do not anticipate settling with Gilliland. Nonetheless, Plaintiffs will discuss settlement with Gilliland throughout the litigation process.

**Plaintiffs will discuss settlement with Gilliland throughout the litigation process.**

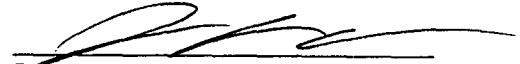
- g. Final lists of witnesses and exhibits under Rule 26(a)(3) should be due from:**
  - 1. Plaintiffs — June 30, 2001.**
  - 2. Defendants — July 15, 2001.**
- h. Parties should have until July 30, 2001 to list objections under Rule 26(a)(3) to the other parties' witness and exhibit lists, including Daubert challenges.**
- i. The case should be ready for trial in September, 2001 and is expected to last 3 weeks.**

DATE: July 25, 2000.

Respectfully submitted,



Michael J. Quilling  
State Bar No. 16432300  
Andrew M. Trusevich  
State Bar No. 00785119  
Quilling Selander Cummiskey & Lownds  
2001 Bryan Street, Suite 1800  
Dallas, Texas 75201  
(214) 871-2100  
(214) 871-2111 (fax)  
Counsel for Defendant Hammersmith through  
Receiver Michael J. Quilling

  
James F. Adams  
State Bar No. 00863450  
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1201 Elm Street, #2500  
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(214) 742-2121  
(214) 748-7949 (fax)  
Counsel for Plaintiffs

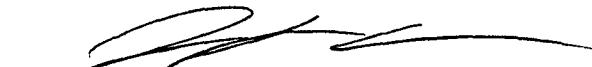
Certificate of Service

The undersigned counsel hereby certifies that on July 25, 2000, true and correct copies of the foregoing document were served pursuant to the Federal Rules of Civil Procedure on the following people:

Michael J. Quilling  
Andrew M. Trusevich  
Quilling Selander Cumiskey & Lownds  
2001 Bryan Street, Suite 1800  
Dallas, Texas 75201

Benjamin David Gilliland  
Federal Detainee, G2B4  
Escambia County Jail  
P.O. Box 17789  
Pensacola, FL 32522

Michael Schwartz  
Mark Fowler  
Pamela R. Davis  
Gray, Cary, Ware & Freidenrich  
3340 Hillview Ave.  
Palo Alto, CA 94304-1203

  
James F. Adams