

Ex. 9

Ex I. to the Declaration of Eugene T. D'Ablemont (docket entry no. 43),
dated March 19, 2011

KELLEY DRYE & WARREN LLP
CONFIDENTIAL
MEMORANDUM

TO: John M. Callagy,
Merrill B. Stone

FROM: Eugene T. D'Ablemont

DATE: March 12, 2001

RE: Last Friday's Meeting

One more thing (in the interest of complete accuracy): in reviewing the exchange of memoranda between us in February 2000 - - mine of 2/9/00 and 2/14/00; yours of 2/22/00 - - I note that I did not "agree" to the Executive Committee's position; I simply did not contest it further following my receipt of your 2/22/00 memorandum. I am now asking the Executive Committee to reconsider its position.

In a nutshell, the Executive Committee determined that I could not retain "Ancillary Income" as a life partner and qualify for a bonus for my contributions to the Firm in 2000. It was one or the other, but not both. As stated in your 2/22/00 memorandum to me: "Our willingness to consider a bonus is conditioned on your not retaining Ancillary Income, whether from [redacted], other [redacted] affiliates or other sources. Alternatively, if you prefer to keep the retainer which [redacted] is willing to pay to you, we would not be in a position to consider making any additional payments to you."

Merrill stated it was not the money, but the principle that was at stake. I continue to question why, in the application of that principle, I am being treated differently from Mike Insel and Alan Epstein who get to keep both their Ancillary Income (from [redacted] and [redacted], respectively) and their compensation from the Firm for their contributions to the Firm in 2000.¹ In 2000, as you know, I brought in more collections (\$2.4 million) and worked more hours (1100) than Mike did and yet he gets to keep all his Ancillary Income from [redacted] plus receiving \$250,000 from the Firm for his contribution in 2000 and a higher share of the [redacted] monies than I received. It really is an *fortiori* situation. An active partner is supposed to devote all of his or her time and energies to the Firm. A life partner is no longer required to do so, so long as the life partner does not compete with the Firm.

Certainly a distinction in the application of whatever principle may be at stake here may not properly be made on the basis of age or whether the partner is an active partner or a life partner. Money is money and partners ought to be rewarded on the basis of their contribution to the Firm. This is consistent with the Executive Committee's minutes of December 16, 1999 to keep life partners "properly incented to continue to make significant

¹ My receipt from the Firm in 2000 of life partner payments is for 40 years of past service to the Firm. I could sit in Arizona or Hawaii, doing nothing for the Firm, and still get my life partner payments from the Firm. They are not compensation or a bonus or an honorarium for my contributions to the Firm in 2000.

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contributions to the Firm." This is particularly true in my case for 2000. As noted in my 12/14/00 memorandum:

"As with Alan's deal, my deal with the [redacted]-owned firms inured to the benefit of the Firm. It did not diminish one iota my contribution to the Firm's DNI this year or my continuing efforts to institutionalize and transition my clients or my continuing to remain a loyal and productive partner of the Firm. My contribution this year as a life partner was clearly not 'business as usual' for a typical life partner of the Firm. That contribution should be viewed and evaluated separately from my receipt of the [redacted] retainer."

Indeed, my receipt of the [redacted] retainer was directly related to Firm's holding onto \$620,000 in business from the [redacted]-owned firms which would have gone to another law firm had I not agreed to forego a South Carolina sojourn and to continue actively to work the [redacted] account.

As I stated at last Friday's meeting, I am not asking that I be evaluated and rewarded on some sort of points analysis basis or on the same basis as Mike Insel. I am asking that I be rewarded with a bonus ("honorarium" to use John's word) consistent with what the Firm has done in the past for productive life partners. Rewarding productive life partners with a bonus is not inconsistent with the concept of "transition". Life partners receive the same dollar amount in life partner payments from the Firm whether they have no business to transition, little business to transition, or slippage in their transitioned business. Those life partners who remain "active" and assist in maintaining and even growing their collections should be rewarded with a bonus - - a concept the Executive Committee has traditionally embraced.

Last year (for his contributions to the Firm in 1999), the Executive Committee awarded Bud a bonus of \$100,000. An Executive Committee member told me this was because Bud had over \$1 million in collections in 1999 and worked 1500 billable time. In prior years, the Firm awarded Bob Ehrenbard a bonus of \$70,000 on three separate occasions. My numbers in 2000 in collections and realization rate dwarf those of Bud and Bob. By any standard I would be entitled to a bonus for my contribution to the Firm in 2000. Why should I be disqualified simply because, like Mike and Alan, I received Ancillary Income in 2000. Under the partnership agreement, Ancillary Income has application to a partner or former partner while he or she was a partner. Other than trustee commissions, director fees, and the like, there is no prohibition against a life partner rendering legal services and receiving a retainer so long as the life partner is not competing with the Firm. The Executive Committee has already made that determination in the case of Brady [redacted] and Berson [redacted]. In my case, the retainer enabled the Firm to hold onto \$620,000 in [redacted] business which otherwise would have gone to [redacted] regular outside counsel, the [redacted] firm.

In short, I do not believe that under the partnership agreement my receipt of the retainer in 2000 is a proper disqualifying event to my receiving a bonus to which I otherwise would be entitled based on my contributions to the Firm in 2000.

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Viewed from a different perspective, it is just not right, and downright unfair, that for 2000 I receive from the Firm no more than Brady and Berson who got to keep (and get to keep) their life partner payments and their "Ancillary Income" and, unlike me, contributed not a nickel to the Firm's DNI in 2000 or otherwise to the normal business of the Firm.

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CALLING CALL TO SEE THE ABOUT
10:00 AM. HE SAID:

- (1) Merrill Lynch has not thought my request. They are not going to refund it by Life Expectancy Committee. ~~Will give me a bonus of \$75,000~~ Will look at it again next year. I said that you no longer work.
- (2) They might make different deals with other life policies. I said: fine
- (3) I wanted have my 100,000 dividend development account again this year.