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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91219616
Party	Plaintiff Prudential Insurance Company of America
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Date	02/19/2016
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In Re: Application Serial No. 86/184,144  
For the Mark: ROCK SOLID INVESTMENT  
Filed: February 4, 2014  
Published in the Official Gazette: August 5, 2014

The Prudential Insurance Company of America	)	
	)	
Opposer	)	
	)	Opp. No. 91-219,616
v.	)	
	)	
Daryl Bank	)	
	)	
Applicant	)	
	)	

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**PRUDENTIAL’S MOTION FOR ENTRY OF ITS MOTION TO ENFORCE  
SUBPOENAS AND FOR SANCTIONS BEFORE THE DISTRICT COURT**

Per the Board’s order of January 20, 2016 (“Order”), Opposer The Prudential Insurance Company of America (“Opposer”) hereby requests entry of its Motion to Enforce Subpoenas, for Sanctions Against Defendant Daryl Bank and Incorporated Memorandum of Law (“Motion”).

On December 22, 2015, the Board issued an order (“Prior Order”) regarding Opposer’s Motion for Sanctions, filed before the Board, finding, *inter alia*, that the U.S. District Court for the Southern District of Florida (“District Court”) is the more appropriate forum to address Applicant Daryl Bank’s (“Applicant”) assault on Opposer’s process server. The Board further recommended that the parties utilize Accelerated Case Resolution (“ACR”) and ordered the

parties to schedule an ACR conference with the assigned Interlocutory Attorney, Christen English.

On January 20, 2016, the parties and Ms. English participated in the ACR conference. Opposer's counsel indicated that while Opposer did not want to waive its right to ACR, it wished to pursue remedies with the District Court, which the Board determined was "the necessary and appropriate forum" to address Applicant's actions, before proceeding with ACR. Opposer fully appreciates and understands the value of ACR; however, Opposer believes that the issues presented by Applicant's actions that formed the basis for Opposer's Motion for Sanctions leave unresolved questions that should be addressed prior to Opposer pursuing a final resolution of this matter through ACR. After the ACR conference, the Board issued the Order, instructing Opposer to file with the Board within fifteen days of filing a copy of its motion for sanctions with the District Court.

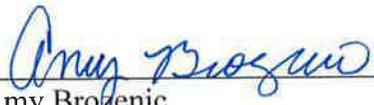
On February 4, 2016, Opposer filed with the District Court the Motion. *See* attached Exhibit A. As Opposer is filing a copy of the Motion with the Board within fifteen days of its filing with the District Court, the copy of the Motion is timely filed. Accordingly, Opposer requests entry of the Motion into the record.

Since the proceedings before the District Court may affect the Board proceedings, Opposer respectfully requests the Board suspend the Opposition pending the disposition of the District Court proceedings.

Date: February 19, 2016

Respectfully submitted,

LATHROP & GAGE LLP

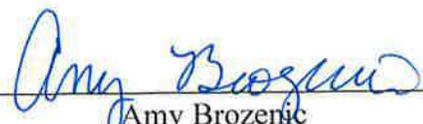
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ATTORNEYS FOR OPPOSER

**CERTIFICATE OF SERVICE AND ONLINE SUBMISSION**

I hereby certify that a true and correct copy of this Prudential's Motion for Entry of Its Motion to Enforce Subpoenas and For Sanctions Before the District Court was filed online with the Trademark Trial and Appeal Board using the ESTTA this 19th day of February, 2016. Further, I hereby certify that the above document was deposited in the U.S. Mail, with sufficient first class postage prepaid, on the 19th day of February, 2016, addressed to Opposer's attorney of record:

Mr. Mark Terry  
Office of Mark Terry, Esq.  
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Miami, FL 33131-2979

By:   
Amy Brozenic

# **EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 2:16-mc-14021-MARTINEZ/LYNCH

THE PRUDENTIAL INSURANCE COMPANY  
OF AMERICA,

Plaintiff,

v.

DARYL BANK,

Defendant.

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**PLAINTIFF PRUDENTIAL’S MOTION TO ENFORCE SUBPOENAS,  
FOR SANCTIONS AGAINST DEFENDANT DARYL BANK  
AND INCORPORATED MEMORANDUM OF LAW**

The Prudential Insurance Company of America (“Prudential”), pursuant to Fed. R. Civ. P. 45(g) and 81, 35 C.F.R. § 24, Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 404.03(a)(2), and the Court’s inherent authority, respectfully moves the Court to enforce the subpoenas dated July 14, 2015, and enter judgment against Defendant Daryl Bank (“Bank”) as a sanction for his conduct, enjoin him from proceeding further in the Opposition and direct the United States Trademark Trial and Appeal Board (the “Board”) to deem Mr. Bank’s application abandoned, and award of attorneys’ fees and costs related to his gun assault on Prudential’s process server, and as grounds states:

**I. Introduction**

This motion stems from Defendant Bank’s personal gun assault on Prudential’s 68 year old process server, Marcia Gillings:



Ms. Gillings was wearing her badge and the same sundress shown in this photo while she was serving the subpoena on Mr. Bank at his residence. In broad daylight, Mr. Bank pulled a gun on her and chased her from his front door to her car. Based on their investigation of the incident, the Port St. Lucie Police department issued an arrest warrant for Mr. Bank for three felonies: Aggravated Assault with a Deadly Weapon Without Intent to Kill, Assault on a Person 65 Years of Age or Older, and Resisting an Officer with Violence.

These facts are undisputed and were corroborated by Mr. Bank himself during his interview with the police. Mr. Bank's sole excuse for his behavior is his entirely non-credible statement that he did not know she was a process server and thought she was a burglar. The police reports also show Mr. Bank compounded his assault by fleeing the scene, failing to initially cooperate with law enforcement and destroying video evidence of his assault.

This was the latest and most heinous incident in Mr. Bank's efforts to obstruct discovery in the underlying trademark action. The Trademark Trial and Appeal Board specifically noted that Mr. Bank's behavior during his deposition prior to the gun incident was "wildly

inappropriate at best” and “troubling.” *See* Ex. 1, Board Order, issued on December 22, 2015 (“Order”).

Because Mr. Bank’s bad conduct is extreme, calculated and not his first abuse in discovery in the underlying action, Prudential seeks the strongest sanctions available from the Court. As is explained herein in detail, the case comes to the Court in an unusual procedural posture. These types of discovery abuses are thankfully rare in trademark oppositions. The Board has indicated that this Court, having issued the relevant subpoena, is the correct forum to consider Mr. Bank’s behavior and determine the correct remedy. Prudential respectfully implores this Court to either find judgment against Mr. Bank or enjoin him from proceeding further on his pending trademark application at issue, and award Prudential its reasonable attorneys’ fees and costs directly related to the enforcement of the subject subpoenas.

## **II. Background**

On February 4, 2014, Mr. Bank filed a trademark application for ROCK SOLID INVESTMENT for use with a variety of financial services. Prudential filed its Notice of Opposition with the Board on the basis that Mr. Bank’s application overlapped Prudential’s previously-registered and long standing ROCK SOLID family of trademarks and created a likelihood of consumer confusion under Trademark Act Section 2(d), 15 U.S.C. § 1502(d), and dilution under Trademark Act Section 43(c), 15 U.S.C. § 1125(c).

In trademark opposition proceedings, discovery proceeds much like in federal civil litigation and includes interrogatories, document requests, and depositions. During discovery, even before the assault, Mr. Bank made a show of demonstrating hostility and blatant disrespect. For example, during his deposition, he *began reading a newspaper*, and when asked about this, he replied, “Yes, I can multi task but you go right ahead.” Ex. 2, Depo. Daryl Bank 96:20-25

(June 8, 2015). Mr. Bank also chose to make his own objections to questions. *See, e.g., id.* at , 5:16-22 (Mr. Bank stating, “Asked and answered...I just didn’t want to hear the same questions again. It will make it go a lot faster if you didn’t ask the same question.”); *see also id.* at , 11:21-25; 49:23-25; 73:15-18; 78:19-79:2; 80:23-81:1. He also professed ignorance to simple questions including his college major, college degree, and any recollection of an earlier lawsuit where he was deposed. *See id.* at 8:8-11, 3:9-5:22.

During the deposition, Mr. Bank testified that his company, Dominion Diamonds LLC (“Dominion”), was already using the trademark ROCK SOLID INVESTMENT in its marketing. Prudential also learned that Catrina Davis is one of Dominion’s officers. He indicated she has knowledge of Dominion’s marketing and scope of use and future use of the opposed mark.

**A. Mr. Bank had notice of Prudential’s desire to serve subpoenas, refused to voluntarily accept service and then assaulted the process server with a handgun.**

Prudential’s counsel, David Barnard, notified Mr. Bank’s counsel, Mark Terry, on July 7, 2015, that Prudential planned to take a 30(b)(6) deposition of Dominion and Mrs. Davis, and asked whether Mr. Terry would accept service of the subpoenas. *See Ex. 3, 7-7-15 Emails* between D. Barnard and M. Terry. Mr. Terry never responded.

Prudential then applied for subpoenas, which this Court issued on July 14, 2015. *See Ex. 4, Subpoenas.* They were addressed to Mrs. Davis as a non-party fact witness and to Mr. Bank as registered agent for Dominion. On July 16, 2015, having received no response from Mr. Bank’s counsel, Prudential sent courtesy copies of the issued subpoenas to Mr. Terry. Mr. Barnard asked whether Mr. Terry would be representing the parties named in the subpoenas and whether he would accept service. *See Ex. 5, 7-16-15 Email from D. Barnard to M. Terry.* As before, Mr. Terry never responded.

On July 17, 2015 and July 20, 2015, Elizabeth McIntyre, a process server at Baker Street Investigations (“BSI”) working in conjunction with HPS Process Service & Investigations, Inc., attempted service at the Dominion offices. *See* Ex. 6, McIntyre Decl., ¶¶ 2-4. Dominion employees informed Ms. McIntyre on both occasions that Mr. Bank and Mrs. Davis were not in the office and could not provide any information as to when either of them will again be in the office. *See id.*, ¶¶ 4-5.

Mrs. Davis and Mr. Bank are married and share the same home address. Believing that continued attempts at service at the Dominion offices would be futile, Ms. Gillings attempted service on July 21, 2015 at Mr. Bank’s and Mrs. Davis’s home address. *See* Ex. 7, Gillings Decl., ¶¶ 5-6. Ms. Gillings at the time was 68 years old and had owned and operated BSI since 1986. *See id.*, ¶¶ 1, 3. She is originally from England, where she attended university and served as a police sergeant in Her Majesty’s Detective Service. *See id.*, ¶ 4.

On the date of the incident, Ms. Gillings arrived at Mr. Bank’s house and knocked on the door, but no one answered. *See id.*, ¶¶ 6-7. She waited in her car, which was parked on the road. *See id.*, ¶ 7. A young boy came out of the house walking a dog. *See id.*, ¶ 8. The boy was outside by himself, so Ms. Gillings asked if his parents were home. *See id.*, ¶ 8. He said his mother was inside and confirmed she is named “Catrina” [Davis]. *See id.* The boy went inside, came out, and said his mother was in the shower. Ms. Gillings requested that the boy go back and ask his mother to come outside. *See id.* The boy went inside and, after some time, came out again. *See id.*, ¶ 9. This time he told Ms. Gillings his mother was not in the house at all. *See id.* Ms. Gillings reminded the boy that he had already told her that his mother was inside and that it was very important for Ms. Gillings to speak with her. *See id.* Ms. Gillings also told him that

she was from the court and had documents to give to his mother. *See id.* The boy went back inside the house, left the front door standing open, and did not come back out. *See id.*, ¶ 10.

After waiting a while at the door, Ms. Gillings went back to her car and continued to wait with the passenger window down. *See id.*, ¶ 11. After a few minutes, a white sedan pulled into the driveway and then into the garage. *See id.*, ¶ 12. Ms. Gillings identified the driver as Mr. Bank based on a picture on his website, and because she had served papers on him regarding a different legal matter once before. *See id.*

When Mr. Bank exited his vehicle, Ms. Gillings came out of her car and clearly identified herself in a loud voice as a process server. As previously noted, she was wearing her badge. Exhibit 7.1 is a picture of her wearing the same outfit and badge that she did on the day she served Mr. Bank. She told Mr. Bank in a loud voice as he exited the car that she was there to serve him legal papers. *See id.*, ¶ 13. Mr. Bank refused to acknowledge her and closed the garage door while she stood outside. *See id.* It was approximately 5:00 pm.

Ms. Gillings went to the front door, which was still open, and put both subpoenas just inside the front door and informed Mr. Bank again in a loud voice that he had been served. *See id.*, ¶ 14. The papers landed approximately eight to ten inches inside the house. *See id.* As Ms. Gillings was about to leave, she saw Mr. Bank coming toward the door. *See id.*, ¶ 15. She then picked up the papers and was about to hand them to Mr. Bank when she saw he had a handgun. *See id.* Mr. Bank's arm was completely outstretched, and he was pointing the pistol directly at her. *See id.* While continuing to point the gun at Ms. Gillings, Mr. Bank yelled for her to get off of his property and called her a "whore." *See id.*

Mr. Bank moved toward Ms. Gillings, so she immediately turned, dropped the papers and headed back toward her car. *See id.*, ¶ 16. As she started her vehicle, she saw Mr. Bank running

toward her vehicle in a “menacing” manner carrying the papers she had dropped. *See id.* Mr. Bank ran to the passenger side of the car as Ms. Gillings was starting the car and threw some of the papers into her car. *See id.* She threw them back out of the window and drove away. *See id.* At all times during the incident, Mr. Bank appeared to be enraged and out of control. *See id.*

Ms. Gillings immediately called 911 to report the incident and was advised to go to the Port St. Lucie police station to make a full report, which she did. *See id.*, ¶ 17. Mr. Bank did not call the police and left his house shortly after the incident.

**B. Port St. Lucie Police Investigation and Mr. Bank’s Subsequent Arrest.**

After Ms. Gillings filed the police report, Officer Alan Ludmerer of the Port St. Lucie Police Department, went to Mr. Bank’s home the evening of the incident, but was unable to meet with Mr. Bank. *See Ex. 8, Warrant Affidavit and Arrest Warrant.*

On July 22, 2015, Officer Ludmerer and his colleague met with Mr. Bank at his residence. *See id.* Mr. Bank claimed that he was in fear for his life and accused Ms. Gillings of trespassing and burglary. *See id.* Having said this, however, Mr. Bank corroborated Ms. Gillings’s account of her being at the house, him pulling a gun on her and chasing her to her car. *See id.* Mr. Bank also provided the police with several photographs taken by a hidden camera inside his doorbell, including: (1) Ms. Gillings standing in the door frame with half of her foot inside the door; (2) Ms. Gillings bending down to retrieve the subpoenas; (3) Ms. Gillings turning and leaving the premises; and (4) Mr. Bank exiting the front door with a handgun. *See id.*, pp. 2-3. Mr. Bank also indicated that there had been video, but it had been erased before the meeting. *Id.*

Based on the investigation, Officer Ludmerer determined: (1) that Ms. Gillings did not commit burglary or trespass; (2) Mr. Bank resisted an officer with violence, given that Ms.

Gillings is employed by the 19<sup>th</sup> Judicial Circuit and was acting within her jurisdiction to execute her legal duties as ordered by the Court; (3) there was probable cause for aggravated assault and aggravated assault on an elderly. *See id.*, 3. Mr. Bank was then arrested on July 27, 2015.

**C. The Board’s Decision on Prudential’s Motion for Sanctions.**

Based on Mr. Bank’s assault and other misconduct, Prudential filed a motion requesting the Board to order judgment against Mr. Bank for his egregious behavior.<sup>1</sup> *See* Ex. 9, Motion for Sanctions or, in the Alternative, Motion to Extend Time. In the alternative, Prudential requested protective measures be placed for the safety of all individuals involved in further discovery efforts. *Id.*

On December 22, 2015, the Board issued the Order denying without prejudice Prudential’s Motion for Sanctions. The Board stated that Prudential’s “grievance is more properly before the District Court that issued the subpoena because [Mr. Bank’s] alleged conduct is an affront to the District Court’s authority.” *See* Ex. 1 at 5. The Board also noted its limited powers to address the incident, stating that “short of judgment, the range of sanctions that we may impose is limited. For example, we cannot compel a third party witness to appear for deposition or issue a restraining order, as [Prudential] requests. The District Court may impose such remedies, *and more if it deems them justified...*” *Id.* (emphasis added).

**III. Legal Background**

The Court may impose sanctions under its inherent power. *Chambers v. NASCO, Inc.*, 501 U.S., 32, 43 (1991). “Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates.” *Id.* “These powers are governed not by rule or statute but

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<sup>1</sup> Although Prudential considered requesting attorneys’ fees and costs directly related to the enforcement of the subject subpoenas, it did not request this relief, since the Board does not award such fees and costs. *See* TBMP § 502.05.

by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Id.*

“It is firmly established that the power to punish for contempts is inherent in all courts.” *Id.* at 44. “This power reaches both conduct before the court and that beyond the court’s confines, for the underlying concern that gave rise to the contempt power was not merely the disruption of court proceedings. Rather, it was disobedience to the orders of the Judiciary, regardless of whether such disobedience interfered with the conduct of trial.” *Id.* Failure to obey a subpoena is contempt of the court wherein compliance is required. *See* Fed. R. Civ. P. 45(g).

The key to unlocking a court’s inherent power is a finding of bad faith. *Barnes v. Dalton*, 158 F.3d 1212, 382 (11th Cir. 1998). A party has acted in bad faith when a party delays or disrupts the litigation or hampers enforcement of a court order. *Id.* “[W]hen there is bad-faith conduct in the course of litigation that could be adequately sanctioned under the [Federal Rules of Civil Procedure (“Rules”)], the court ordinarily should rely on the Rules rather than the inherent power. But if in the informed discretion of the court, neither the statute nor the Rules are up to the task, the court may safely rely on its inherent power.” *Chambers*, 501 U.S. at 50.

“The dismissal of a party’s complaint or answer, or striking its defenses, as a sanction is a heavy punishment appropriate only as a last resort, when less drastic sanctions would not ensure compliance with the court’s orders.” *Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F.3d 1298, 1306 (11th Cir. 2009). The Eleventh Circuit has determined that such severe punishment may be appropriate to deter other litigants from similar improper and egregious behavior. *See id.* (affirming District Court’s sanction to order default judgment against a litigant, who improperly intercepted attorney-client privileged information and invoked his Fifth Amendment rights in refusing to answer how he came upon such communications). The

Eleventh Circuit has also found such sanctions proper where a litigant committed discovery abuses or had a pattern of bad faith stonewalling. *See Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987) (affirming District Court's order to strike misbehaving party's answer and entering default against him for party's failure to appear for deposition and failure to respond to discovery requests in violation of court order); *In re Sunshine Jr. Stores*, 456 F. 3d 1291, 1306 (11th Cir. 2006) (determining that a clear history of bad faith stonewalling in the litigation justified the District Court's decision to enter judgment against misbehaving party).

A court under its inherent powers may also assess attorneys' fees and costs as a sanction against a party for bad faith, vexatious, or wanton conduct. *Chambers*, 501 U.S. at 45; *see also Byrne v. Nezhat*, 261 F.3d 1075, 1106 (11th Cir. 2001).

#### **IV. Argument**

The Court has inherent authority to govern over this discovery dispute in these proceedings and order sanctions in the form of judgment and award attorneys' fees and costs. As the U.S. Supreme Court has stated, "[W]hen there is bad-faith conduct in the course of litigation that could be adequately sanctioned under the [Federal Rules of Civil Procedure ("Rules")], the court ordinarily should rely on the Rules rather than the inherent power. But if in the informed discretion of the court, neither the statute nor the Rules are up to the task, the court may safely rely on its inherent power." *Chambers*, 501 U.S. at 50.

Here, no statute or Rule is up to the task. The case comes to the Court clearly on the basis of a violation of the Court's subpoenas, but as part of a separate legal proceeding before the Board. In light of the Board's deferral to the Court, no other Judiciary is able to address Mr. Bank's bad-faith conduct. Thus, it is up to this Court to decide and award the only appropriate form of sanctions in view of the present facts. Because Mr. Bank's gun assault on an elderly

process server was both so extreme and was preceded by other contemptuous acts obstructing discovery, the most severe sanctions are warranted.

**A. Judgment should be entered against Mr. Bank, and he should be enjoined from proceeding further in the Opposition.**

The extreme bad faith conduct exhibited by Mr. Bank justifies the most severe sanction. Mr. Bank pointing a gun at Ms. Gillings—a clearly identified process server with a badge in broad daylight—while she sought to serve official papers on him is not just “bad faith conduct,” but is extreme bad faith conduct. That was the most heinous abuse following a history of misbehavior. Mr. Bank throughout these proceedings has been contemptuous, uncooperative and hostile, affirmatively delaying and hindering Prudential’s efforts in rightfully conducting its discovery. His crescendo of misconduct was threatening process server Ms. Gillings’s life.

Supreme Court and Eleventh Circuit precedent clearly authorize the harshest of sanctions based on the willfulness and gravity of Mr. Bank’s misconduct. Prudential respectfully submits that the Court should enter judgment against Mr. Bank, enjoin him from proceeding further in the Opposition, or enter other relief sufficient to stop him from further abusing the process and Prudential.

Any lesser form of sanctions would be futile and unfair to Prudential, its agents and representatives, and more importantly—the public. First, ordering sanctions that do not end these proceedings would require Prudential to potentially expose more people to *mortal danger*. That is extremely unfair for obvious reasons. Second, as demonstrated by Mr. Bank throughout these proceedings, he will be combative, uncooperative, and even resort to violence when compelled to perform his duties. Finally, ordering anything less would fail to deter others who may contemplate committing similar outrageous behavior in future proceedings. Allowing the

proceedings to continue—all the while exposing people to danger—will only provide Mr. Bank more opportunities to abuse the Board proceedings.

The burden this injunction will place on Mr. Bank is relatively small given his misconduct. He will forfeit his opportunity to attempt to own a federal trademark registration on ROCK SOLID INVESTMENT. Given that this is a federal property right that may only be obtained by proper use of a process Mr. Bank has wantonly and repeatedly abused, forfeiting the opportunity because of such extreme bad behavior does not offend notions of justice and fair play.

For the foregoing reasons, and for the sake of everyone involved in these proceedings, Prudential respectfully requests and strongly urges the Court to exercise its inherent authority and enter judgment against Mr. Bank, enjoin Mr. Bank from proceeding further in the Opposition and direct the Board that it may deem abandoned Mr. Bank's trademark application in line with same.

**B. The Court has inherent authority to Order Mr. Bank to pay attorneys' fees and costs stemming from his misconduct.**

Mr. Bank has not only caused emotional distress and delay during these proceedings, but unnecessary attorneys' fees and costs. Prudential has been forced to spend substantial time, effort, and money to address and seek a remedy for Mr. Bank's misconduct including his assault on Ms. Gillings. Prudential therefor seeks an award of its reasonable attorneys' fees and costs incurred in addressing Mr. Bank's misconduct.

**C. Protective Measures Are Warranted and Prudent.**

Should the Court deny the relief requested above and require Prudential to continue with the Opposition proceedings, Prudential respectfully requests the Court order protective measures to be in place prior to continuing these proceedings. Mr. Bank drew a gun on and chased an

elderly woman wearing a dress and a badge, whom he had advance notice would be attempting service on him and his wife. Capable of such outrageous acts, Mr. Bank poses a clear and imminent threat of doing as much and worse to other people involved in this case.

For these reasons, we urge the Court to order the following measures to minimize further threats of violence:

- 1) All previously noticed witnesses be deemed served and compelled to appear for depositions during an agreed upon date and time;
- 2) All depositions be conducted at Mr. Bank's expense at the Sheriff's Office or police department closest to the deponent's residence or place of employment;
- 3) Mr. Bank cannot be designated as 30(b)(6) witness for either Dominion or its related company, Dominion Investment Group LLC, or any affiliated companies; and
- 4) Mr. Bank not be allowed within 1,000 yards of any of Prudential's agents and representatives during the remainder of these proceedings.

WHEREFORE, for the foregoing reasons, Prudential respectfully requests the Court grant the instant Motion, according to the proposed Order, attached as Exhibit 10.

**CERTIFICATE OF CONFERENCE PURSUANT TO S.D. FLA. L.R. 7.1(a)(3)**

Pursuant to Local Rule 7.1(a)(3), counsel for Prudential hereby certifies that counsel has conferred with Mr. Bank's counsel on January 14, 2016 in good faith effort to resolve the issues in this motion and has been unable to do so.

Dated: February 4, 2016

Respectfully submitted,

By: /s Emilia A. Quesada

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*Counsel for Plaintiff Prudential*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by cm/ecf on February 4, 2016 on all counsel of record on the Service List below, and by regular U.S. Mail on Defendant Bank through his attorney of record who has agreed to accept service of all filings in this case:

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and

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# **EXHIBIT 1**

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CME

Mailed: December 22, 2015

Opposition No. 91219616

*Prudential Insurance Company of America*

*v.*

*Daryl Bank*

Before Mermelstein, Kuczma and Adlin,  
Administrative Trademark Judges.

By the Board:

This case now comes up on Opposer's motion for sanctions, filed August 4, 2015.

The motion is fully briefed.<sup>1</sup>

***Opposer's Motion***

Opposer seeks sanctions on the ground that Applicant brandished a gun against Opposer's process server, who was attempting to serve subpoenas in this proceeding, and that Applicant has been generally uncooperative during discovery, including during his discovery deposition. We have carefully considered all of the parties' arguments and presume the parties' familiarity with the factual bases for their filings, and do not recount the facts or arguments here, except as necessary to explain our decision.

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<sup>1</sup> We give no consideration to Applicant's surreply, filed October 5, 2015, because surreplies are prohibited. *See* Trademark Rule 2.127(a) and TBMP § 517 (2015).

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With respect to Applicant's conduct during his discovery deposition, Opposer attached to its motion portions of the transcript demonstrating that Applicant asserted his own purported objections, notwithstanding that he is represented by counsel, including during his deposition, and purported to "read" a newspaper upside down during his deposition, while advising Opposer's counsel that he could "multitask." Motion, Exhibit I, 5:16-23, 11:21-25, 49:23-25, and 96:20-25. This conduct is wildly inappropriate at best, and it is troubling that Applicant's counsel did not even attempt to rein in his client, much less succeed in doing so. But Opposer has not filed a motion to compel Applicant to answer any specific questions, and indeed has acknowledged that "[d]espite [Applicant's] lack of cooperation" it learned valuable information during the deposition. *Id.* at p. 6.

Opposer also asserts that Applicant served his initial disclosures 11 days late, produced only two documents in response to 37 document requests, failed to verify his interrogatory responses and did not provide a privilege log despite objecting to many of Opposer's requests for production on grounds of attorney client privilege and attorney work product.<sup>2</sup> *See id.* at pp. 4-5. Sanctions based on such deficiencies, however, are in the nature of discovery sanctions, and a party may not obtain discovery sanctions unless its adversary has violated "an order of the Trademark

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<sup>2</sup> Opposer also argues that Applicant's discovery responses were untimely. In support of this position, Opposer asserts that it served its first set of interrogatories and document requests via email on February 19, 2015, and that Applicant did not serve responses until March 24, 2015. Opposer's discovery requests, however, were procedurally improper because Opposer served them prior to serving its initial disclosures on March 13, 2015. *See* Motion, Exhibit C and Trademark Rule 2.120(a)(3) ("A party must make its initial disclosures prior to seeking discovery...."). We deem Opposer's discovery requests as having been served on March 13, 2015 – the day Opposer served its initial disclosures – and as such, Applicant's discovery responses, served March 24, 2015, are timely.

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Trial and Appeal Board relating to disclosure or discovery,” Trademark Rule 2.120(g)(1), or flatly refuses to participate in discovery, Trademark Rule 2.120(g)(2). Here, the Board has not issued any discovery order nor has Opposer requested such an order. Further, although Opposer complains of the adequacy of Applicant’s discovery responses, Applicant has not refused to provide any responses at all. Accordingly, Opposer’s motion is premature.

We now turn to the disheartening incident between Applicant and Opposer’s process server. On July 14, 2015, pursuant to Opposer’s request, the United States District Court for the Southern District of Florida (the “District Court”) issued subpoenas for: (1) Dominion Diamonds, LLC (“DDL”) – a third-party company that Applicant has identified as having an ownership interest in the involved mark – “c/o Daryl Bank,” Motion at Exhibit G, Applicant’s Responses to Interrogatories 1 and 2 and Exhibit L; and (2) Applicant’s wife, Catrina Davis, whom Applicant has identified as “the point person” for DDL’s marketing. *Id.* at Exhibit I, 63:25 - 64:17 and Exhibit L.

Process server Elizabeth McIntyre attempted to serve the subpoenas on DDL and Ms. Davis at DDL’s business address on Friday July 17, 2015 and again on Monday, July 20, 2015, but she was unsuccessful. *See id.* at Exhibit M, McIntyre Affidavit, ¶¶ 4-6. Accordingly, Ms. McIntyre’s colleague Marcia Gillings attempted to serve Ms. Davis and DDL at Applicant’s home in Florida. *See id.* at Exhibit N, Gillings Affidavit, ¶ 6.

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Ms. Gillings attests that: (1) she went to the front door of Applicant's home, which was open, and as she was attempting to serve the subpoenas, Applicant pointed a handgun at her, accused her of trespassing, and called her a "whore," *id.* at ¶¶ 14-15; (2) she "immediately turned, dropped the papers and walked back to [her] car," but Applicant started "running toward" her car "in a menacing manner carrying the papers," *id.* at ¶ 16; (3) Applicant "ran to the passenger side window" of her car and "threw some of the papers into [her] car" as she drove away, *id.*; and (4) she called 911 and reported the incident to police. *Id.* at ¶ 17 and Exhibit 2 thereto. After speaking with both Ms. Gillings and Applicant, the police concluded that Ms. Gillings did not commit burglary or trespass, and found probable cause to arrest Applicant for resisting an officer with violence to his or her person, aggravated assault, and assault or battery on a person 65 years old or older. *See id.* at Exhibit R, p. 3. Applicant was subsequently arrested and charged with aggravated assault with a deadly weapon and assault on a person 65 years old or older – both felonies – and the court issued a restraining order prohibiting Applicant from coming within close proximity of Ms. Gillings. *See id.* at pp. 5 and 7.

Opposer argues that this "outrageous act ... deserves the harshest sanction [of judgment against Applicant] to protect the sanctity of this process and the safety of its participants." *Id.* at p. 1. If the Board does not enter judgment against Applicant, Opposer requests that the Board:

- Deem all previously noticed witnesses as served and compel their appearance for deposition, *id.* at p. 14;

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- Order that “[a]ll depositions be conducted at Applicant’s expense at the Sheriff’s Office or police department closest to the deponent’s residence or place of employment,” *id.*;
- Prohibit Applicant from being designated as the 30(b)(6) witness for DDL or third-party company Dominion Investment, *id.*;
- Order that “Applicant not be allowed to be within 1,000 yards of any of Opposer’s agents and representatives during the remainder of these proceedings,” *id.* at p. 15; and
- Extend discovery by two months. *Id.* at pp. 2 and 17.

The Board finds Opposer’s allegations shocking, but we decline to make any factual determinations regarding exactly what happened at Applicant’s home in Florida. Opposer’s grievance is more properly before the District Court that issued the subpoena because Applicant’s alleged conduct is an affront to the District Court’s authority. *See PRD Elecs. Inc. v. Pac. Roller Die Co.*, 169 USPQ 318, 319 n.3 (TTAB 1971) (opposer’s allegation that applicant defied a subpoena to produce witnesses is a matter that opposer should have pursued before the court that issued the subpoena). *Cf. Ate My Heart v. GA GA Jeans*, 111 USPQ2d 1564, 1565 n.5 (TTAB 2014) (“The Board has no jurisdiction over depositions of non-parties by subpoena....”). The District Court will no doubt want to learn about Applicant’s conduct and has the jurisdiction and powers necessary to fully address it.

Moreover, short of judgment, the range of sanctions that we may impose is limited. For example, we cannot compel a third party witness to appear for

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deposition or issue a restraining order, as Opposer requests. The District Court may impose such remedies, and more if it deems them justified, and therefore is the necessary and appropriate forum for addressing Opposer's concerns.

In view of the foregoing, Opposer's motion for sanctions is **DENIED WITHOUT PREJUDICE** pending Opposer bringing Applicant's conduct to the attention of the District Court.<sup>3</sup> Nevertheless, we understand Opposer's reluctance to further engage Applicant in this proceeding. For this reason, as well as those discussed below, the parties should utilize Accelerated Case Resolution in an attempt to resolve this dispute.

#### ***Accelerated Case Resolution ("ACR")***

The ACR process is similar to summary judgment whereby parties submit briefs with evidence attached; however in an ACR proceeding, the parties agree to try the case via their briefs, declarations, and other evidence, and to allow the Board to resolve any genuine disputes of material fact raised by their filings or the record. As such, in cases where the parties adopt ACR, the Board is able to weigh the parties' evidence, make factual determinations and issue a final judgment.

The Board specifically proposes bifurcating Opposer's likelihood of confusion and dilution claims and utilizing ACR with respect to Opposer's likelihood of confusion claim.<sup>4</sup> See *Franpovi, S.A. v. Rosalinda Wessin and Daniel Pena*, 89 USPQ2d 1637,

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<sup>3</sup> After the District Court issues or declines to issue any order arising out of Applicant's conduct, the Board may invite Opposer to renew its motion, if appropriate, depending on what action the District Court takes. Suffice it to say, the Board has an interest in ensuring that this proceeding is conducted appropriately, and perhaps even more importantly, that incidents like the one at issue do not recur.

<sup>4</sup> The parties, however, may choose to pursue ACR with respect to both of Opposer's claims.

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1638 and 1640 (TTAB 2009) (acknowledging prior order bifurcating opposer's claims, deciding the parties' cross-motions for summary judgment on opposer's claim under the Santiago Convention and resuming proceedings with respect to opposer's bifurcated claim under the foreign well-known mark doctrine). Proceeding in this manner may significantly reduce costs for both parties and obviate the need for Opposer to have further significant contact with Applicant.

Opposer's likelihood of confusion claim is straightforward and particularly well-suited to ACR. In any likelihood of confusion case, the most important factors are typically the similarities between the parties' marks and the relationship between their respective goods or services.<sup>5</sup> See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.").

The parties' marks are as depicted in the drawings of the involved application and in Opposer's pleaded registrations, and no additional evidence on this factor is required. Similarly, in assessing the similarities between the parties' goods and services we may consider only the goods and services as set forth in the intent to use application, so no additional evidence on this factor is necessary. We may not consider any evidence regarding the particular nature of Applicant's goods and services, the particular channels of trade, or the classes of purchasers to which sales of the goods and services are directed. See *Octocom Syst. Inc. v. Houston Computers*

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<sup>5</sup> The Board recognizes that the parties may submit evidence probative of additional *duPont* factors.

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*Svcs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). Moreover, absent trade channel restrictions in the parties' identifications of goods and services we must presume that the parties' goods and services move in all channels of trade normal for those goods and services of that type, and that they are available to all classes of purchasers for those goods and services. *See Paula Payne Prods. Co. v. Johnson Publ'g Co.*, 473 F.2d 901, 177 USPQ 76 (CCPA 1973); *Kalart Co. v. Camera-Mart, Inc.*, 258 F.2d 956, 119 USPQ 139 (CCPA 1958); *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992).

If Opposer prevails on ACR, the opposition will be sustained and registration to Applicant will be refused, making it unnecessary to resolve Opposer's other claims. If, however, Opposer's likelihood of confusion claim is dismissed, Opposer will be allowed thirty days to inform the Board whether it wishes to proceed with its dilution claim, and if Opposer decides to proceed, the Board will resume proceedings and extend discovery.

The parties are required, within **THIRTY DAYS** from the mailing date of this order, to contact the Interlocutory Attorney assigned to this case to arrange an ACR conference. In view of the serious allegations regarding Applicant's conduct in this proceeding, Applicant, who is represented by counsel, may not participate in the teleconference.

Finally, the parties are strongly reminded that proceedings before the Board are to be "conducted with decorum and courtesy." Trademark Rule 2.192. Although out of the physical presence of the Board during nearly all of a proceeding, parties are

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nonetheless expected to meet the standard of Trademark Rule 2.192 in their activities taken in prosecuting or defending a Board proceeding.

Proceedings otherwise remain suspended.

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# **EXHIBIT 2**

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

3 In Re: Application Serial No. 86/184,144  
4 For the Mark: ROCK SOLID INVESTMENT  
5 Filed: February 4, 2014  
6 Published in the Official Gazette: August 5, 2014

7		)	
8	The Prudential Insurance Company of America	)	
9		)	
10	Opposer,	)	
11		)	
12	vs.	)	Opp No.
13		)	91-219,616
14	Daryl Bank,	)	
15		)	
16	Applicant.	)	
17		)	

18 DEPOSITION OF DARYL BANK

19 DATE: June 8, 2015

20 TIME: 9:40 a.m.

21 PLACE: 201 SW Port St. Lucie Blvd, #108  
Port St. Lucie, Florida 34984

22 TAKEN BY: Plaintiff

23 REPORTER: ROBIN J.P. RILEY, CP, a Notary Public of  
24 the State of Florida at Large

25 APPEARANCES:

FOR OPPOSER:

LATHROP & GAGE, LLP  
10851 Mastin Boulevard  
Building 82, Suite 1000  
Overland Park, Kansas 66210-1669  
BY: DAVID R. BARNARD, ESQUIRE

JOB NO.: 248173

DARYL BANK - 06/08/2015

Page 2

1 FOR APPLICANT:  
 2 OFFICE OF MARK TERRY, ESQUIRE  
 801 Brickell Avenue  
 3 Suite 900  
 Miami, Florida 33131-2979  
 4 BY: MARK TERRY, ESQUIRE  
 5  
 6 I N D E X  
 7  
 8 PAGE  
 9 Direct Examination by Mr. Barnard 3  
 10 Certificate of Reporter 160  
 11  
 12  
 13 EXHIBIT DESCRIPTION PAGE  
 14 Opposer's Exhibit No. 1 Trademark application 36  
 Opposer's Exhibit No. 2 Answers 37  
 15 Opposer's Exhibit No. 3 Responses 40  
 Opposer's Exhibit No. 4 Brochure 118  
 16 Opposer's Exhibit No. 5 Web Page 136  
 Opposer's Exhibit No. 6 Sunbiz printout 149  
 17 Opposer's Exhibit No. 7 LinkedIn for Daryl Bank 150  
 Opposer's Exhibit No. 8 LinkedIn for Dominion 151  
 18 Opposer's Exhibit No. 9 Trademark application 152  
 Opposer's Exhibit No. 10 Download from website 154  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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1 AND THEREUPON:  
 2 Daryl Bank,  
 3 called as a witness on behalf of the Plaintiff herein,  
 4 after having been first duly sworn, was examined and  
 5 testified as follows:  
 6 THE WITNESS: Yes.  
 7 DIRECT EXAMINATION  
 8 BY MR. BARNARD:  
 9 Q. Good morning. Can you please state your name  
 10 for the record?  
 11 A. Daryl Bank.  
 12 Q. And give your address?  
 13 A. 814 Southwest St. Julien Court, Port St. Lucie,  
 14 Florida.  
 15 Q. Have you ever been deposed before?  
 16 A. Yes.  
 17 Q. Can you tell me about that?  
 18 A. No.  
 19 Q. Why not?  
 20 A. I don't recall it.  
 21 Q. You've been deposed before but you don't  
 22 remember?  
 23 A. Yeah, I don't remember the details.  
 24 Q. Do you remember when you were deposed before  
 25 that you were placed under oath?

Page 4

1 A. I have been before.  
 2 Q. Do you understand what that means?  
 3 A. Uh-huh, yes.  
 4 Q. What does that mean to you?  
 5 A. It means that I'm under oath.  
 6 Q. Yes, and you gave a deposition before, is that  
 7 correct?  
 8 A. I believe so.  
 9 Q. You were in a room just like this with a court  
 10 reporter?  
 11 A. I guess.  
 12 Q. They swore you to tell the truth?  
 13 A. Yes.  
 14 Q. But you don't remember a thing about that?  
 15 A. You asked me the details and I don't remember  
 16 the details.  
 17 Q. One thing that will make the deposition go  
 18 better is you should let me ask the whole question --  
 19 A. Okay.  
 20 Q. -- because you will want to hear the whole  
 21 thing and then it will make it easier for her to type  
 22 everything, so if we don't talk over each other, it will  
 23 go better.  
 24 So again, you were deposed before but you don't  
 25 recall anything about that, is that correct?

Page 5

1 A. I didn't say I didn't recall anything.  
 2 Q. What do you recall?  
 3 A. I don't recall.  
 4 Q. You don't recall a thing about it?  
 5 A. I just remember I've been deposed before. I  
 6 don't remember details of when, how, where.  
 7 Q. Were you being sued?  
 8 A. No.  
 9 Q. Were you a witness to an accident?  
 10 A. I don't think so.  
 11 Q. Do you remember anything about the nature of  
 12 the legal dispute?  
 13 A. Not right this second, I don't recall.  
 14 Q. When did this happen?  
 15 A. Some time in the last ten years.  
 16 Q. Some time in the last ten years. Within the  
 17 last ten years? The last five years?  
 18 A. Asked and answered.  
 19 Q. Are you giving legal objections to --  
 20 A. No, I answered your question. I just didn't  
 21 want to hear the same question again. It will make it go  
 22 a lot faster if you didn't ask the same question.  
 23 Q. I didn't ask the same question, I asked a  
 24 different question. You said within the last ten years  
 25 and I asked was it the last ten years or the last five

Page 6

1 years.  
 2 A. I recall at least the last ten.  
 3 Q. Do you recall where that deposition occurred?  
 4 A. I don't.  
 5 Q. It was more than five years you think?  
 6 A. I don't recall right at this moment.  
 7 Q. Do you recall anything about any of the  
 8 questions that you were asked?  
 9 A. I don't right this second.  
 10 Q. Do you understand the nature of the dispute  
 11 that's going on that we're talking about here?  
 12 A. Counsel handles that.  
 13 Q. But do you understand why we're here?  
 14 A. As much as counsel has told me.  
 15 Q. Please briefly tell me what your understanding  
 16 is why we're here today.  
 17 A. That's between me and counsel.  
 18 Q. I'm not asking you for anything that you were  
 19 told by your counsel, I'm asking for your understanding  
 20 of why we're here today.  
 21 A. You found some opposition, that's what I know.  
 22 Q. Can you explain that any better?  
 23 A. That's the only thing I know outside of talking  
 24 to counsel.  
 25 Q. So the nature of the dispute that we have,

Page 8

1 A. '88.  
 2 Q. And then you said college?  
 3 A. Yes.  
 4 Q. Where is that?  
 5 A. Old Dominion University.  
 6 Q. What year did you graduate?  
 7 A. 1993.  
 8 Q. And what was your degree in?  
 9 A. I think it was a Bachelor of Science.  
 10 Q. Do you know what your major was?  
 11 A. I don't recall.  
 12 Q. Did you have any education after college?  
 13 A. Yes.  
 14 Q. What was that?  
 15 A. I have gone to graduate school.  
 16 Q. Where was that?  
 17 A. Virginia.  
 18 Q. UVA?  
 19 A. No.  
 20 Q. Where in Virginia?  
 21 A. Southeastern Virginia.  
 22 Q. And what program were you in?  
 23 A. Law, public policy and business.  
 24 Q. Did you receive a graduate degree of some  
 25 sort?

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1 there's going to be a person, probably in Washington DC,  
 2 who will look at the dispute and try to understand what's  
 3 going on here and there would be no reason for us to be  
 4 here today unless there was some kind of dispute we were  
 5 trying to work out.  
 6 Can you explain for that person who's in  
 7 Washington DC who's going to be reading this transcript  
 8 what your understanding of this dispute is?  
 9 A. That was lengthy. Was that a lecture or a  
 10 question?  
 11 Q. It's a question. I'm trying to explain to you  
 12 the purpose of what we're doing here and to find out  
 13 whether or not you would like to explain your side of the  
 14 story or your side of the dispute?  
 15 A. My job is to answer the questions.  
 16 Q. Fair enough. What is your education?  
 17 A. I've been to high school, college and graduate  
 18 school.  
 19 Q. Where did you go to high school?  
 20 A. Indian River.  
 21 Q. Is that here?  
 22 A. No.  
 23 Q. Where is that?  
 24 A. Virginia.  
 25 Q. When did you graduate?

Page 9

1 A. No.  
 2 Q. Law, possible policy and business?  
 3 A. Yes.  
 4 Q. And when did you complete your education  
 5 there?  
 6 A. 1996.  
 7 Q. What did you do after that?  
 8 A. Went to work.  
 9 Q. Where was that?  
 10 A. Dean Witter.  
 11 Q. Where did you work for Dean Witter?  
 12 A. Virginia.  
 13 Q. What city?  
 14 A. Virginia Beach.  
 15 Q. And what did you do at Dean Witter?  
 16 A. I was in training.  
 17 Q. What were you in training for?  
 18 A. I don't remember the title of the training.  
 19 Q. What type of training was it?  
 20 A. To go in their financial division.  
 21 Q. And how long were you at Dean Witter?  
 22 A. Three, four months.  
 23 Q. Did you end up working for Dean Witter?  
 24 A. No.  
 25 Q. What did you do after that?

Page 10

1 A. Went to another company.  
 2 Q. Why did you leave Dean Witter after being  
 3 there for three or four months?  
 4 A. Because I didn't finish the training program.  
 5 Q. Was there a reason you didn't finish the  
 6 training program?  
 7 A. Because I didn't finish the training program.  
 8 Q. Did you have a better opportunity?  
 9 A. I had better opportunities.  
 10 Q. What was the next place that you worked?  
 11 A. Paine Webber.  
 12 Q. When did you start working for Paine Webber?  
 13 A. I believe it was '96.  
 14 Q. And where was that?  
 15 A. Virginia.  
 16 Q. Was that in Virginia Beach?  
 17 A. Norfolk.  
 18 Q. What did you do at Paine Webber?  
 19 A. Worked as a financial person.  
 20 Q. Can you be more specific?  
 21 A. No.  
 22 Q. There are many different things involved in  
 23 being in finance. What type of job did you do?  
 24 A. I worked in their financial division.  
 25 Q. What did you do on a daily basis?

Page 12

1 Q. You understand that the purpose of this --  
 2 A. Are you lecturing me or are you here to ask  
 3 questions?  
 4 Q. You understand that the purpose of this is  
 5 somebody is going to read this and evaluate whether or  
 6 not you're trying to be helpful or not. I'm going to do  
 7 my best to help you to be helpful. Can you work with me  
 8 on that or --  
 9 A. I'm answering your questions.  
 10 Q. -- do you want to argue about all this?  
 11 A. I'm not arguing. I'm here to answer questions  
 12 not get lectured.  
 13 Q. Okay. How long were you at Paine Webber?  
 14 A. I don't recall.  
 15 Q. Were you there for a day or a month or a  
 16 year?  
 17 A. More than a day.  
 18 Q. More than a month?  
 19 A. Probably, yeah.  
 20 Q. Were you there for more than a year?  
 21 A. Several years, I don't recall exactly how  
 22 many.  
 23 Q. You were there for several years. Did you do  
 24 anything else during the several years at Paine Webber  
 25 besides talk to customers about their kids?

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1 A. I did all types of things.  
 2 Q. Give me some examples.  
 3 A. Talked to customers.  
 4 Q. What did you talk to customers about?  
 5 A. All types of things.  
 6 Q. Give me an example, please?  
 7 A. How their kids were.  
 8 Q. Were you talking to them about investing in  
 9 college or retirement? What kinds of things?  
 10 A. All types of financials. I don't know how to  
 11 define it any better for you.  
 12 Q. When you were talking to customers, were you  
 13 talking to them face to face or were you talking to them  
 14 on the phone?  
 15 A. I'm sorry, that was multiple questions.  
 16 Q. Did you meet customers face to face or did you  
 17 talk to them on the phone?  
 18 A. Yes.  
 19 Q. Is that all the above?  
 20 A. You asked two questions, it was a yes.  
 21 Q. Yes to both questions, you talked to customers  
 22 face to face and you talked to them on the phone?  
 23 A. Should we break the questions down?  
 24 Q. I'm just asking for a yes or no.  
 25 A. I answered you. Asked and answered.

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1 A. Yes.  
 2 Q. What did you do?  
 3 A. I worked in areas of finance with Paine  
 4 Webber.  
 5 Q. Did that include investments?  
 6 A. Yes.  
 7 Q. Did you do any other kind of financial work at  
 8 Paine Webber besides investments?  
 9 A. I'm not sure I understand the question.  
 10 Q. In finance you might be talking to people about  
 11 insurance, you might be talking about a variety of  
 12 things.  
 13 I'm just curious, what did you do at Paine  
 14 Webber in terms of the types of financial --  
 15 A. The variety of things you suggested.  
 16 Q. So you talked to people about insurance too?  
 17 A. Yes.  
 18 Q. What else?  
 19 A. All types of matters in finance.  
 20 Q. Did you talk to them about commodities?  
 21 A. Yes.  
 22 Q. What types of commodities?  
 23 A. I don't recall.  
 24 Q. Can you give me an example of what you might  
 25 have done during a typical day at Paine Webber when you

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1 privileged.

2 A. Yes.

3 Q. Your intent is not, what you want to do.

4 A. I'm sorry, I don't recall my intent at that

5 moment.

6 Q. When you first came up with the idea for Rock

7 Solid Investment, did you talk about it with anyone

8 besides William J. Seabolt?

9 A. I don't recall.

10 Q. And specifically what did you talk to William

11 J. Seabolt about that involved Rock Solid Investment?

12 MR. TERRY: Objection, that would be

13 privileged. You're asking Mr. Bank about his

14 communications with an attorney.

15 MR. BARNARD: There's some real questions about

16 what capacity Mr. Seabolt was in. Are you

17 instructing him not to answer?

18 MR. TERRY: I'm instructing Mr. Bank not to

19 answer any questions related to attorney-client

20 privilege.

21 MR. BARNARD: So you're instructing him not to

22 answer that particular question?

23 MR. TERRY: What question are you referring to?

24 MR. BARNARD: Can you read that back.

25 (Thereupon, the court read back the last

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1 Q. Did you do any search of your e-mails to answer

2 any of the questions that were asked here?

3 A. I did whatever was asked of me.

4 Q. Specifically on Exhibit 3 in terms of answering

5 these questions that are in Exhibit 3, do you recall

6 doing any searches of electronic documents?

7 A. I did whatever the questions asked me to do and

8 counsel directed me to do.

9 Q. I'm not asking you what instructions you think

10 you were following I'm asking you did you do a search?

11 A. If that was the instructions in there, then I

12 must have.

13 Q. You must have but you don't recall specifically

14 doing a search?

15 A. I do a lot of things every day.

16 Q. My question is do you have any specific

17 recollection of doing any searches of electronic

18 documents to answer any of the questions that were

19 posed --

20 A. If it was asked --

21 Q. You have to let me finish because she --

22 A. She can plug it in at the end when you get

23 done.

24 Q. I'm trying to make her job easier. The whole

25 purpose of this proceeding is so that somebody can read

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1 question.)

2 MR. TERRY: That is correct, I am instructing

3 Mr. Bank not to answer that question.

4 BY MR. BARNARD:

5 Q. Did you talk about when you first came up with

6 the idea with anybody other than Mr. William J.

7 Seabolt?

8 A. I don't recall.

9 Q. Do you have any documents that would reflect

10 when you first came up with the idea?

11 A. Outside of my counsel, I don't recall.

12 Q. Do you have any e-mails?

13 A. Not that I recall.

14 Q. Let's talk about your business. Do you have

15 any other business e-mail address, I think we talked

16 about this before, besides Dominion Investment Group that

17 you use for business e-mails?

18 A. Not that I recall.

19 Q. You understand the question that we asked about

20 documents that you had, those were directed to electronic

21 documents as well as paper documents, correct?

22 A. You're asking me what I understood?

23 Q. Yes.

24 A. I don't know. You need to ask my attorney what

25 he understood.

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1 what we talked about today and understand what happened.

2 A. Is that a question or am I being lectured

3 again?

4 Q. You're being told what the purpose of this is.

5 A. I don't need to be told.

6 Q. Okay. Why I'm here is to try to be helpful

7 to the person who will read this afterwards.

8 A. Am I being lectured again?

9 Maybe you should file an amendment and then you

10 can tell them.

11 Q. I'm telling you why I'm here.

12 A. I didn't ask you why you were here.

13 Q. If it is not your choice to be helpful today --

14 A. I'm answering your questions, that's what I'm

15 doing.

16 Q. Are you?

17 A. I am.

18 Q. So you were deposed earlier?

19 A. Here we go.

20 Q. You don't recall anything whatsoever about why

21 you sat --

22 A. At this moment I don't.

23 Q. You don't know the name of any of the parties

24 involved?

25 A. Asked and answered.

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1 Q. Is this a sales force you're talking about the  
 2 people all over the country? What do these people do?  
 3 A. Sales force and others.  
 4 Q. How many people are we talking about?  
 5 A. I have no idea.  
 6 Q. Is it more than 100?  
 7 A. Yes.  
 8 Q. Is it more than 1,000?  
 9 A. Probably not.  
 10 Q. But you can't give me any more specificity  
 11 other than more than 100, less than 1,000?  
 12 A. Less than 250.  
 13 Q. And you said all over the country. Are they in  
 14 every state?  
 15 A. I don't know. I think we answered that  
 16 somewhere in here.  
 17 Q. Is your business or is the Dominion group of  
 18 companies, is the business focused in any particular  
 19 geographical area?  
 20 A. No.  
 21 Q. Do you have people in one state that work for  
 22 the Dominion group of companies that contact people in  
 23 other states?  
 24 A. I don't know.  
 25 Q. Do you know whether --

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1 What burdens were did you encounter in trying  
 2 to --  
 3 A. What do you want me to look at?  
 4 Q. It's several of these.  
 5 A. Can you narrow it down?  
 6 Q. I'm going to ask you generally first and then  
 7 we can look at specific but generally speaking there are  
 8 requests in here that said the requests are overbroad and  
 9 unduly burdensome.  
 10 What burdens did you run into in terms of  
 11 answering these questions?  
 12 A. These were generally overburdensome.  
 13 Q. How so?  
 14 A. You want me to get specific?  
 15 Q. Yes.  
 16 A. You asked me a general question so I generally  
 17 answered it. It's generally overburdensome.  
 18 Q. For example, were there any of these requests  
 19 that generated more than 1,000 documents when you tried  
 20 to go search for something?  
 21 A. Which one are you talking about?  
 22 Q. I'm asking for any of them.  
 23 A. Generally, it was overburdensome.  
 24 Q. My question was were there any of these  
 25 requests that we made where you found that there were

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1 A. I would say yes because I do.  
 2 Q. Okay. In terms of investment opportunities, is  
 3 it a regular practice, as far as you're aware, for people  
 4 to offer those to potential customers in any state that  
 5 they want to?  
 6 A. Offer what?  
 7 Q. For the Dominion group of companies.  
 8 A. Offer what across the state?  
 9 Q. In terms of the these people who are all in the  
 10 company in the sales force, are they restricted to only  
 11 selling in their state or can they sell or offer  
 12 different kinds of services or products to people in  
 13 other states?  
 14 A. Which service are you referring to?  
 15 Q. Any services.  
 16 A. That would depend on the regulatory  
 17 requirements on them.  
 18 Q. Do you know as to any of the services, are they  
 19 being offered across state lines?  
 20 A. Which services?  
 21 Q. Again, any of them.  
 22 A. It would be correct to assume they are.  
 23 Q. Now in Exhibit No. 3 there are several of these  
 24 exhibits that say the request is overbroad, unduly  
 25 burdensome.

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1 more than 1,000 documents that would respond to it?  
 2 A. I don't recall.  
 3 Q. Do you recall any specific burdens that you ran  
 4 into in terms of trying o answer these questions?  
 5 A. Is it still under the general question?  
 6 Q. Yes.  
 7 A. Then it's generally burdensome.  
 8 Q. But do you recall any specific burdens?  
 9 A. Can you get me to a specific question?  
 10 Q. We can do that but first I'm asking do you  
 11 recall any specific burden --  
 12 A. They were generally overburdensome.  
 13 Q. You have no specific information?  
 14 A. Am I not coming across well?  
 15 Q. I'm just asking you whether you want to offer  
 16 any --  
 17 A. Asked and answered, but if you want to get into  
 18 specifics, let's do it.  
 19 Q. We talked about documents relating to the first  
 20 time that you wanted to use Rock Solid Investment and it  
 21 says here that you don't want to provide documents  
 22 because the request is overbroad and unduly burdensome.  
 23 A. Which one are we on?  
 24 Q. This is number 14.  
 25 A. Oh, okay.

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1 Q. All of your corporate activities are  
 2 confidential?  
 3 A. Sure.  
 4 Q. If Prudential were willing to enter into a  
 5 protective order that would ensure that these documents  
 6 were kept confidential, are there other documents you  
 7 would send to us at that point?  
 8 A. I don't know what I would do. That would be a  
 9 question for counsel.  
 10 Q. Are there any documents that you withheld here  
 11 because you thought they were proprietary or  
 12 confidential?  
 13 A. We, again, found it overbroad, unduly  
 14 burdensome and it's answered right there.  
 15 Q. Again, do you remember whether any documents  
 16 were withheld?  
 17 A. No, but, again, we found it overbroad and  
 18 burdensome.  
 19 Q. And again, different question.  
 20 A. It's not a different question.  
 21 Q. Did you withhold any documents?  
 22 A. Asked and answered.  
 23 Q. That's your best response?  
 24 I'm asking, is that your best and most helpful  
 25 response to the question of whether you withheld

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1 A. Yes. Yeah.  
 2 Q. So in terms of 18, you're saying that it's a  
 3 burden to respond to that?  
 4 A. No. No, I responded. I gave you the response.  
 5 I didn't say it was a burden to respond.  
 6 Q. It says here that you object because the  
 7 request is unduly burdensome.  
 8 A. Don't miss words, read it correctly. It says  
 9 overbroad, unduly burdensome and seeking irrelevant  
 10 information.  
 11 Q. And again, I'm asking about the piece that says  
 12 unduly burdensome. What burden did you --  
 13 A. It's the totality. It's the totality of  
 14 sentence and I've answered it.  
 15 Q. So you can't identify any specific burden that  
 16 you encountered in terms of trying to respond to number  
 17 18?  
 18 A. It was unduly burdensome.  
 19 Q. And you can't identify --  
 20 A. I responded.  
 21 Q. I haven't asked a question.  
 22 A. I did, I just answered you.  
 23 Q. You cannot identify any specific burden that  
 24 you encountered in terms of responding to number 17, can  
 25 you?

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1 documents or not?  
 2 A. It's answered.  
 3 Q. The next on number 18 we asked for documents  
 4 concerning any variations of the Rock Solid Investment  
 5 mark that you're using and it also says that you object  
 6 to that because it was unduly burdensome.  
 7 What burden did you encounter in terms of  
 8 trying to find documents that would show the different  
 9 variations of the Rock Solid Investment mark?  
 10 A. It was overbroad.  
 11 Q. Was there any burden?  
 12 A. Yes.  
 13 Q. What was the burden?  
 14 A. This whole process.  
 15 Q. By this whole process, I'm not sure I  
 16 understand what you mean.  
 17 A. Just that.  
 18 Q. Which process?  
 19 A. This is overbroad.  
 20 Q. When you say this, you're pointing at the  
 21 document?  
 22 A. I'm referring to your question. You asked me  
 23 about the question, I answered the question.  
 24 Q. By the question, do you mean the request number  
 25 18 that's on this document?

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1 A. It was asked and answered.  
 2 Q. And you can't identify any specific burden that  
 3 you encountered in terms of trying to respond to number  
 4 14?  
 5 A. It was all unduly burdensome and seeking  
 6 irrelevant information.  
 7 Q. Number 19 it asks for documents referring to or  
 8 relating to or documenting the amount of money that you  
 9 spent developing, promoting, marketing and advertising  
 10 the goods and services that will bear this and there's an  
 11 objection there that there was a burden that you  
 12 encountered in terms of responding to that.  
 13 A. Yes.  
 14 Q. What was the burden?  
 15 A. It was overbroad and unduly burdensome.  
 16 Q. How much money did you spend advertising this  
 17 mark so far?  
 18 A. I don't recall.  
 19 Q. Was it more than \$1,000?  
 20 A. I don't recall.  
 21 Q. Do you know if it's more than a million  
 22 dollars?  
 23 A. Asked and answered.  
 24 Q. Do you know if it's more than a dollar? You  
 25 have no other answer to that question?

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1 been withheld from us that says Rock Solid Investment on  
 2 it?  
 3 A. I'm not aware.  
 4 Q. Have you done any other advertisements using  
 5 Rock Solid Investment other than what you provided to us,  
 6 the You Tube video and the radio spots?  
 7 A. We may have, I don't know.  
 8 Q. You have no specific knowledge of anything else  
 9 besides that right now?  
 10 A. I don't. We may have, we may not have.  
 11 Q. As far as the radio spot, going back to that,  
 12 did they refer to Rock Solid Investment specifically?  
 13 A. I don't recall.  
 14 Q. Do you know one way or the other whether they  
 15 actually said Rock Solid Investment during that radio  
 16 ad?  
 17 A. I don't recall the exact words used on the  
 18 radio show.  
 19 Q. What about on the You Tube video, do they ever  
 20 actually say Rock Solid Investment?  
 21 A. I don't know.  
 22 Q. Do you know if there was an image shown that  
 23 said Rock Solid Investment?  
 24 A. I don't know. I don't handle that.  
 25 Q. That would be Jessica Berford?

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1 places you had to look?  
 2 A. I don't recall a specific answer right now.  
 3 Q. Okay. There's a question on 34 that asks about  
 4 documents concerning and identifying the trade channels  
 5 that you would sell services through that use Rock Solid  
 6 investment mark.  
 7 Do you recall any burdens in terms of trying to  
 8 figure out what those trade channels are?  
 9 A. Yeah, it was overly broad, unduly burdensome  
 10 and seeking irrelevant information.  
 11 Q. What was the burden?  
 12 A. It was unduly burdensome.  
 13 Q. Is there any more specific information you have  
 14 about the burden?  
 15 A. Yes, just that it was unduly burdensome.  
 16 Q. On 35 it asks for documents that refer to study  
 17 surveys or research that you conducted in terms of  
 18 potential customers for the Rock Solid Investment.  
 19 A. Yes.  
 20 Q. Are you reading the paper right now, Mr.  
 21 Bank?  
 22 A. Yes, I can multi task but you go right ahead.  
 23 Q. I would like the record to reflect that I'm  
 24 looking at and upside down copy of Palm Beach Post and  
 25 the Wall Street Journal.

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1 A. Yeah.  
 2 Q. Or Brad?  
 3 A. Or Brad or any other person involved.  
 4 Q. Are there any specific burdens that you recall  
 5 encountering in terms of trying to locate any  
 6 advertisements that say Rock Solid Investment?  
 7 A. Are you directing me to a question?  
 8 Q. I'm asking you whether there are any burdens  
 9 that you encountered in terms of just trying to respond  
 10 to a question about your advertising of the Rock Solid.  
 11 A. Which question are you referring to?  
 12 Q. I'm asking you a question.  
 13 A. I'm asking you, you said you're referring to a  
 14 question. Which one are you referring to?  
 15 Q. I don't believe I actually said that but I'll  
 16 ask a few questions.  
 17 Do you recall encountering any burdens in terms  
 18 of trying to respond to a question about whether or not  
 19 you've advertised Rock Solid Investment?  
 20 A. If I put in here it was overly burdensome, then  
 21 it would have been.  
 22 Q. What was the burden?  
 23 A. Responding to that.  
 24 Q. Do you have any more information about the  
 25 nature of the burden? Was it the number documents or the

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1 Is there something about this process that  
 2 makes you not want to answer these questions?  
 3 A. I've been answering them. Which one did I not  
 4 answer?  
 5 Q. Was there any burden that you encountered in  
 6 terms of trying to locate any studies or surveys you did  
 7 about potential customers?  
 8 A. Is this back to 35?  
 9 Q. Yes.  
 10 A. Yes, it was unduly burdensome and overbroad.  
 11 Q. Was there any specific burden you  
 12 encountered?  
 13 A. It was overly, unduly burdensome.  
 14 Q. Do you know what a privilege log is?  
 15 A. It's a privilege log.  
 16 Q. I'm asking whether you know what that is.  
 17 A. Is there a question on here?  
 18 Q. It's referred to multiple times in this  
 19 document. I'm asking you if you know what one is.  
 20 A. Where? Could you bring me to wherever that is  
 21 you are?  
 22 Q. If you go to, for instance, number 36 and you  
 23 look at your response there, the second question says  
 24 privilege log, colon, attorney file, do you see that?  
 25 A. That would be information traded between my

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1 A. To report to me or anybody in management if  
 2 there's been any confusion of which there has been  
 3 none.  
 4 **Q. Was there any e-mail or any kind of a written**  
 5 **communication that was sent out regarding this issue?**  
 6 A. I don't recall anything being written.  
 7 **Q. You don't remember writing any kind of an**  
 8 **instruction to anybody or question to any of the people**  
 9 **in --**  
 10 A. No, I try to communicate verbally as much as I  
 11 can with my people.  
 12 **Q. You said that it would be -- is there any kind**  
 13 **of a policy in terms of if somebody was going to be**  
 14 **encountering that kind of an issue in the field about**  
 15 **reporting it up to management?**  
 16 A. I don't understand the question.  
 17 **Q. Are there any sorts of, let's say that you have**  
 18 **consumers who are confused between two products that are**  
 19 **being offered, how would that normally be dealt with?**  
 20 A. Depending on what the confusion was, it would  
 21 typically be reported up the chain.  
 22 **Q. Is there any kind of a written policy that**  
 23 **addresses that situation?**  
 24 A. No.  
 25 MR. BARNARD: I'm going to adjourn the

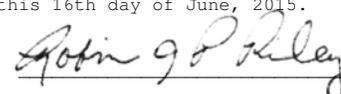
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1 CERTIFICATE OF OATH  
 2  
 3 STATE OF FLORIDA )  
 4 : SS  
 5 COUNTY OF ST. LUCIE )  
 6  
 7 I, ROBIN J.P. RILEY, a Notary Public of the  
 8 State of Florida at Large, authorized to administer  
 9 oaths, certify that Daryl Bank appeared before me and was  
 10 duly sworn on June 8, 2015.  
 11 WITNESS my hand and official seal this  
 12 16th day of June, 2015.  
 13  
 14 \_\_\_\_\_  
 15 ROBIN J.P. RILEY, CP  
 16 My Commission Expires:  
 17 (Notary Seal) May 9th, 2016  
 18 (This signature is valid only  
 19 if signed in blue ink.)  
 20  
 21 Personally Known \_\_\_\_\_  
 22 Or Produced Identification  X  
 23 Type of Identification Produced - driver's  
 24 license  
 25

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1 deposition right now. There are some of these  
 2 questions that I didn't get a lot of information on  
 3 but I'm hopeful that we will be able to get that by  
 4 working together to get through some of them.  
 5 Obviously I can't anticipate every question I'm  
 6 going to ask but I'm just going to adjourn this for  
 7 now unless you have any questions.  
 8 MR. TERRY: No.  
 9 MR. BARNARD: I'll order.  
 10 THE COURT REPORTER: Would you like a copy?  
 11 MR. TERRY: Yes, definitely, PDF.  
 12 (Thereupon, the deposition concluded  
 13 at 12:55 p.m.)  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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1 STATE OF FLORIDA )  
 2 COUNTY OF ST. LUCIE )  
 3  
 4 CERTIFICATE  
 5 I, ROBIN J.P. RILEY, a Shorthand Reporter and  
 6 Notary Public of the State of Florida at Large, certify  
 7 that the foregoing deposition of Daryl Bank was  
 8 stenographically reported by me and is a true and  
 9 accurate transcription of said deposition of Daryl Bank.  
 10 I certify further I am neither attorney nor  
 11 counsel for, nor related to, nor employed by any of the  
 12 parties to the action in which the deposition is taken  
 13 and, further, that I am not a relative or an employee of  
 14 any attorney or counsel employed in this case, nor am I  
 15 financially interested in the outcome of this action.  
 16 DATED this 16th day of June, 2015.  
 17  
 18   
 19 ROBIN J.P. RILEY, CP  
 20  
 21  
 22  
 23  
 24  
 25

# **EXHIBIT 3**

**Mueller, Terry L.**

---

**From:** Mark MPT Terry <mark@terryfirm.com>  
**Sent:** Tuesday, July 07, 2015 3:49 PM  
**To:** Barnard, David  
**Cc:** Meriwether, Luke M.; Gonzales, Donna P.; Mueller, Terry L.  
**Subject:** RE: Prudential/Rock Solid Investment

I am out of the office this week but will return next week and will attend to this then.

**MARK TERRY, ESQ.**

*Board Certified Specialist*  
Registered Patent Attorney

786-443-7720 (w)  
786-513-0381 (f)

[mark@terryfirm.com](mailto:mark@terryfirm.com)

<http://www.terryfirm.com/>

---

**From:** Barnard, David (LG) [<mailto:DBarnard@LATHROPGAGE.COM>]  
**Sent:** Tuesday, July 7, 2015 4:17 PM  
**To:** Mark MPT Terry  
**Cc:** Meriwether, Luke M. (LG); Gonzales, Donna P. (LG); Mueller, Terry L. (LG)  
**Subject:** Prudential/Rock Solid Investment

Mark, we are in the process of getting subpoenas ready for 30(b)(6) depositions of Dominion Investment Group and Dominion Diamonds, as well as subpoenas for Catrina Davis, Elizabeth Greco and Doug Dunn. We are looking at the week of August 3 for the document productions and depositions. Please confirm that you will be serving as the attorney for these entities and individuals and that the witnesses are available that week. We will be sending you the formal notices soon.

Dave



**David Barnard**

**Chairman, Intellectual Property Litigation Teams**

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# **EXHIBIT 4**

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

The Prudential Insurance Company of America
Plaintiff
v.
Daryl Bank
Defendant
Civil Action No. Opp No. 91219616 (Trademark Trial and Appeal Board)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Dominion Diamonds LLC, c/o Daryl G. Bank, 2710 SW Port St. Lucie Blvd., Port St. Lucie, FL 34953

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment: See Exhibit A

Place: First Choice Court Reporting
500 S. Australian Ave, Suite 600
West Palm Beach, FL 33401
Date and Time: 08/04/2015 9:00 am

The deposition will be recorded by this method: Stenographic

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: See Exhibit A

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: JUL 14 2015
Signature of Steven M. Larimore
Signature of Clerk or Deputy Clerk

OR
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) The Prudential Insurance Company of America, who issues or requests this subpoena, are: David R. Bamard (dbamard@lathropgagelaw.com), Luke M. Meriwether (lmeriwether@lathropgagelaw.com), Donna P. Gonzales (dgonzales@lathropgagelaw.com), Lathrop & Gage LLP, 2345 Grand Blvd., Ste 2200, Kansas City, MO 64108; 816-292-2000

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. Opp No. 91219616 (Trademark

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*  
\_\_\_\_\_  
*Printed name and title*  
\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

2016-02-04 10:00 AM

## Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

**(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**AFFIDAVIT OF SERVICE**

UNITED STATES DISTRICT COURT  
District of Florida

Case Number: 91219616

Plaintiff:

**THE PRUDENTIAL INSURANCE COMPANY OF AMERICA**

vs.

Defendant:

**DARYL BANK**

For:

David Barnard

LATHROP & GAGE, LLP

Received by HPS PROCESS SERVICE & INVESTIGATIONS, INC. on the 17th day of July, 2015 at 1:48 pm to be served on **Dominion Diamonds, LLC c/o Daryl G. Bank, 2710 SW Port St. Lucie Blvd., Port St. Lucie, FL 34953.**

I, Marcia Gillings-CPS# 89-23, being duly sworn, depose and say that on the **21st day of July, 2015 at 5:23 pm, I:**

served a **CORPORATION** by delivering a true copy of the **Subpoena to testify at a Deposition in a Civil Action, Exhibit "A", Opposer's Notice of Deposition of Dominion Diamonds, LLC and Witness Fee check for \$96.53** with the date and hour of service endorsed thereon by me, to: **Daryl G. Bank as Registered Agent for Dominion Diamonds, LLC**, at the alternate address of: **814 SW Saint Julien Court, Port St. Lucie, FL 34986**, and informed said person of the contents therein, in compliance with state statutes.

**Military Status:** Based upon inquiry of party served, Defendant is not in the military service of the United States of America.

**Marital Status:** Based upon inquiry of party served, Defendant is married.

**Additional Information pertaining to this Service:**

Elizabeth McIntyre PS#10-21 attempted service at the business address at 2710 SW Port St Lucie Blvd, FL 34953 on July17, 2015 at 2:30 pm and again on July 20, 2015 at 9:55 am and was informed by the employees that Mr. Bank was not in the office and they were unhelpful as to when he could be served. It became apparent that they were not being truthful and any further attempts would be futile. A home address was obtained of 814 Saint Julien Court, Port St. Lucie, FL 34986 and on the above time and date, Process server, Marcia Gillings went to the home. After knocking on the door, no one answered so Gillings waited in her vehicle parked on the road. A small boy about 8 yrs. of age came out of the house walking a dog. He was asked if his mother was inside and he said she was. He was asked to tell the mother that she was waiting at the door after confirming that her name was Catrina.

The home has a large courtyard with a door to the outside leading into the driveway. The door to the main living area was at the far end of the courtyard. The boy left the outside doors open at this time. He came out and stated that his mother was in the shower and at this time, it was explained to him that the server had documents from the court and that this was important to go and tell her to come outside. He then stated that she was not at home. Again it was explained to him that the server needed to see her. He went back inside the home and did not come back out. Gillings waited on the doorstep and could see the boy and a younger girl walking back and forth. No adult was seen so it was assumed that either the children were alone or that the mother was refusing to come to the door to accept the subpoenas.

As no one did come out, Gillings went to her car and viewed the home from her vehicle with the passenger window down. It should be noted that the outside door remained open.

After a few minutes, a white sedan came into the driveway and pulled into the garage. Gillings walked towards the garage and shouted who she was and at that time, Mr. Banks exited his vehicle and closed the garage doors. From a photograph on the website, he was identified as Mr. Bank.

Gillings went immediately to the front door which was still open and threw both subpoenas into the court yard informed Bank in a loud voice that he had been served. They landed about 8 – 10 inches into the room. At no time did Gillings step inside the room.

As Gillings was about to leave, she saw Bank coming into the court yard and believed that he was coming to collect the

**VERIFIED RETURN OF SERVICE For 91219616**

subpoenas. Gillings picked up the papers and was about to explain their contents, when she saw Bank walking towards her with a gun pointed at her body at arm's length. He was yelling to get off his property and that she was trespassing and calling her a whore. He continued to walk forward and immediately Gillings turned and walked back to her car. As she was starting her vehicle to leave, Bank was seen running towards her vehicle in a menacing manner. Gillings was trying to drive away and Bank came to the passenger side window and threw the paper into the car. Gillings was able to throw it out onto the street and leave the area. At this time it was believed that Bank may still have the gun and she was in fear of what could take place considering that Bank appeared to be in a rage and out of control. 911 was called immediately to report the incident and she was advised to go to the Port St Lucie Police station to make a full report. This is attached to this affidavit

**Description of Person Served:** Age: 50+, Sex: M, Race/Skin Color: White, Height: 5'10, Weight: 185, Hair: Black, Glasses: Y

Under penalties of perjury, I declare that I have read the foregoing and the facts stated in it are true. I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the county in which service was effected in accordance with State Statutes

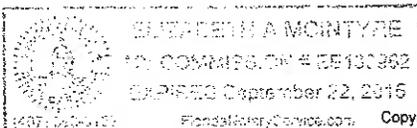
Subscribed and Sworn to before me on the 24th day of July, 2015 by the affiant who is personally known to me.

  
NOTARY PUBLIC

  
\_\_\_\_\_  
Marcia Gillings-CPS# 89-23  
PROCESS SERVER

**HPS PROCESS SERVICE &  
INVESTIGATIONS, INC.**  
1669 Jefferson Street  
Kansas City, MD 64108  
(800) 796-9559

Our Job Serial Number: BAK-2015001692



PORT ST. LUCIE POLICE DEPARTMENT  
STATEMENT FORM

DATE: 7/21/15  
OFFICER: [unclear]  
SUBJECT: DARYL BANK  
REPORTING OFFICER: MARCIA GANNING (FNO 2452545410330 C11)  
OFFICER ID: P.E. BER 564 STAIR Fa 32995  
WORKPHONE: 7728787399  
DATE OF INCIDENT: 7/22/15  
TIME: 7/21/15  
LOCATION: 814 St Julien Ct, KSL3, FL

I was wearing my Court Certified Process Badge # 3993  
I am a certified Process Server through the 19th Circuit Court.  
On 7/21/15 I was ask to serve 2 Subpoenas (Federal) re  
The Prudential Insurance Co vs. DARYL BANK  
concerning a deposition on 8/3/15 together with witness  
Lies for 9653 to DARYL BANK and his wife  
CATRINIA DAVIS (his bondswoman). They had previously  
been attempted at their place of work - DANIELA'S BROWARDS  
NHC 2710 Fort St Lucie Blvd, RSh. The note was  
a wish to personal that these were trying to be served.  
It became apparent that we were being lied to as to  
their home and availability.  
At approx 5pm I went to the home and knocked on the door  
at 814 St Julien Ct. There was no bell. No one came to answer.  
I returned to my vehicle and parked outside. A young boy about  
8 yrs old came out with a small white bulldog. I walked  
up to him and asked him the dogs name. Told him it was cute

[Handwritten signature]

[Handwritten signature]

and remained - was called later. I don't know if I was  
 at his home. ~~He~~ I confirmed his name was  
 Patrick. He went into a court yard and was  
 inside glass doors. He got the dog and came out  
 and told me that his mother was in the street.  
 I told him I was important and I was from the court.  
 At this time I had called my office with branch that  
 I had called the call but realized that my  
 was private & he asked for information with the dog.  
 This is recorded on my cell.  
 I explained to the boy that I needed to see her and  
 could he get her name. He went back inside and  
 I stood in the driveway outside of the courtyard  
 believing that his mother would appear. There was  
 a young female child running back & forth.  
 As she came, I went to my vehicle and waited  
 as the child had suggested WAIT TIME.  
 A few minutes later a white sedan pulled into  
 the driveway and parked in the garage. The door  
 was immediately closed. I spoke to him but  
 it was ignored. I therefore threw the disruptive  
 inside the courtyard approx. 5-10 ins on the floor.  
 I was about to leave when Bank came out and  
 as I actually thought he was here to accept disruptive  
 I picked them up to give them to him in a  
 professional manner. At that time I saw he was  
 pointing a gun at me and was screaming for me to  
 get off his property. I immediately turned and walked  
 away. He said something about being a whore or  
 something to that extent. I was about to drive away when  
 he ran at me <sup>in my passenger side window</sup> and threw  
 the papers at me. I threw the ora back into the road drive away. called 911



AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

The Prudential Insurance Company of America
Plaintiff
v.
Daryl Bank
Defendant
Civil Action No. Opp No. 91219616 (Trademark Trial and Appeal Board)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Catrinia Davis, 2710 SW Port St. Lucie Blvd., Port St. Lucie, FL 34953

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place (First Choice Court Reporting, 500 S. Australian Ave, Suite 600, West Palm Beach, FL 33401) and Date and Time (08/03/2015 9:00 am)

The deposition will be recorded by this method: Stenographic

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: See Exhibit A

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date:

JUL 14 2015

Signature of Steven M. Larimore, Clerk of Court

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) The Prudential Insurance Company of America, who issues or requests this subpoena, are:

David R. Barnard (dbarnard@lathropgagelaw.com), Luke M. Meriwether (lmeriwether@lathropgagelaw.com), Donna P. Gonzales (dgonzales@lathropgagelaw.com), Lathrop & Gage LLP, 2345 Grand Blvd., Ste 2200, Kansas City, MO 64108; 816-292-2000

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. Opp No. 91219616 (Trademark

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_

I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*  
\_\_\_\_\_  
*Printed name and title*  
\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

## Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

**(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
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**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

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**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

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**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**AFFIDAVIT OF SERVICE**

UNITED STATES DISTRICT COURT  
District of Florida

Case Number: 91219616

Plaintiff:

**THE PRUDENTIAL INSURANCE COMPANY OF AMERICA**

vs.

Defendant:

**DARYL BANK**

For:

David Barnard

LATHROP & GAGE, LLP

Received by HPS PROCESS SERVICE & INVESTIGATIONS, INC. on the 17th day of July, 2015 at 1:48 pm to be served on **Catrinia Davis, 2710 SW Port St. Lucie Blvd., Port St. Lucie, FL 34953.**

I, Marcia Gillings-CPS# 89-23, being duly sworn, depose and say that on the **21st day of July, 2015 at 5:23 pm, I:**

**SUBSTITUTE** served by delivering a true copy of the **Subpoena to testify at a Deposition in a Civil Action, Exhibit "A", Opposer's Notice of Deposition of Dominion Diamonds, LLC and Witness Fee check for \$96.53** with the date and hour of service endorsed thereon by me, to: **Daryl Bank as Spouse/Co-Resident** at the alternate address of: **814 Saint Julien Court, Port St. Lucie, FL 34986**, the within named person's usual place of **Abode**, who resides therein, who is fifteen (15) years of age or older and informed said person of the contents therein, in compliance with state statutes.

**Military Status:** Based upon inquiry of party served, Defendant is not in the military service of the United States of America.

**Marital Status:** Based upon inquiry of party served, Defendant is married.

**Additional Information pertaining to this Service:**

Elizabeth McIntyre PS#10-21 attempted service at the business address at 2710 SW Port St Lucie Blvd, FL 34953 on July 17, 2015 at 2:30 pm and again on July 20, 2015 at 9:55 am and was informed by the employees that Mr. Bank was not in the office and they were unhelpful as to when he could be served. It became apparent that they were not being truthful and any further attempts would be futile. A home address was obtained of 814 Saint Julien Court, Port St. Lucie, FL 34986 and on the above time and date, Process server, Marcia Gillings went to the home. After knocking on the door, no one answered so Gillings waited in her vehicle parked on the road. A small boy about 8 yrs. of age came out of the house walking a dog. He was asked if his mother was inside and he said she was. He was asked to tell the mother that she was waiting at the door after confirming that her name was Catrina.

The home has a large courtyard with a door to the outside leading into the driveway. The door to the main living area was at the far end of the courtyard. The boy left the outside doors open at this time. He came out and stated that his mother was in the shower and at this time, it was explained to him that the server had documents from the court and that this was important to go and tell her to come outside. He then stated that she was not at home. Again it was explained to him that the server needed to see her. He went back inside the home and did not come back out. Gillings waited on the doorstep and could see the boy and a younger girl walking back and forth. No adult was seen so it was assumed that either the children were alone or that the mother was refusing to come to the door to accept the subpoenas.

As no one did come out, Gillings went to her car and viewed the home from her vehicle with the passenger window down. It should be noted that the outside door remained open.

After a few minutes, a white sedan came into the driveway and pulled into the garage. Gillings walked towards the garage and shouted who she was and at that time, Mr. Banks exited his vehicle and closed the garage doors. From a photograph on the website, he was identified as Mr. Bank.

Gillings went immediately to the front door which was still open and threw both subpoenas into the court yard informed Bank in a loud voice that he had been served. They landed about 8 – 10 inches into the room. At no time did Gillings step inside the room.

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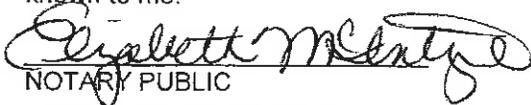
**VERIFIED RETURN OF SERVICE For 91219616**

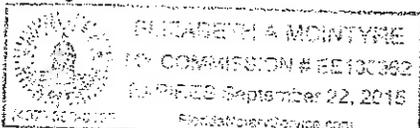
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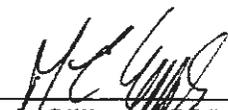
**Description of Person Served:** Age: 50+, Sex: M, Race/Skin Color: White, Height: 5'10, Weight: 185, Hair: Black, Glasses: N

Under penalties of perjury, I declare that I have read the foregoing and the facts stated in it are true. I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the county in which service was effected in accordance with State Statutes

Subscribed and Sworn to before me on the 24th day of July, 2015 by the affiant who is personally known to me.

  
NOTARY PUBLIC



  
\_\_\_\_\_  
Marcia Gillings, PS# 89-23  
PROCESS SERVER

**HPS PROCESS SERVICE &  
INVESTIGATIONS, INC.**  
1669 Jefferson Street  
Kansas City, MD 64108  
(800) 796-9559

Our Job Serial Number: BAK-2015001693

814 SW St Julien Ct

# PORT ST. LUCIE POLICE DEPARTMENT STATEMENT FORM

15388

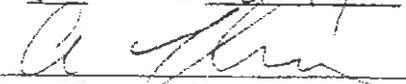
VICTIM     WITNESS     SUSPECT     OTHER 2015-388

CASE NUMBER: \_\_\_\_\_ SUSPECT: DARVI BANK  
NAME: MARCIA GILLINGS (FNOI G452545468800 DOB: 1/46)  
ADDRESS: P.O. Box 564 STUART FL 34995  
HOME PHONE: \_\_\_\_\_ WORK PHONE: 772 878 7399 CELL PHONE: 772 201 1271  
DATE AND TIME: 7/21/15 LOCATION: 814 SW St Julien Ct, PSL 34995

NARRATIVE: I was wearing my court Certified Process Badge # 8923  
I am a certified Process Server through the 19<sup>th</sup> Circuit Court  
On 7/21/15 I was ask to serve 2 Subpoenas (Federal) re  
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8 yrs old came out with a small white bull dog. I walked  
up to him and asked him the dogs name. Told him it was cute

ANY form of SEXUAL BATTERY, AGGRAVATED CHILD ABUSE, AGGRAVATED STALKING, HARRASSMENT, AGGRAVATED BATTERY, I hereby request that my name and home address and telephone number(s), and my personal, business and professional information be withheld from Public Record Disclosure pursuant to F.S. 119.07, or otherwise to 39, 39A, 39B, 39C, 39D, 39E, 39F, 39G, 39H, 39I, 39J, 39K, 39L, 39M, 39N, 39O, 39P, 39Q, 39R, 39S, 39T, 39U, 39V, 39W, 39X, 39Y, 39Z, 39AA, 39AB, 39AC, 39AD, 39AE, 39AF, 39AG, 39AH, 39AI, 39AJ, 39AK, 39AL, 39AM, 39AN, 39AO, 39AP, 39AQ, 39AR, 39AS, 39AT, 39AU, 39AV, 39AW, 39AX, 39AY, 39AZ, 39BA, 39BB, 39BC, 39BD, 39BE, 39BF, 39BG, 39BH, 39BI, 39BJ, 39BK, 39BL, 39BM, 39BN, 39BO, 39BP, 39BQ, 39BR, 39BS, 39BT, 39BU, 39BV, 39BW, 39BX, 39BY, 39BZ, 39CA, 39CB, 39CC, 39CD, 39CE, 39CF, 39CG, 39CH, 39CI, 39CJ, 39CK, 39CL, 39CM, 39CN, 39CO, 39CP, 39CQ, 39CR, 39CS, 39CT, 39CU, 39CV, 39CW, 39CX, 39CY, 39CZ, 39DA, 39DB, 39DC, 39DD, 39DE, 39DF, 39DG, 39DH, 39DI, 39DJ, 39DK, 39DL, 39DM, 39DN, 39DO, 39DP, 39DQ, 39DR, 39DS, 39DT, 39DU, 39DV, 39DW, 39DX, 39DY, 39DZ, 39EA, 39EB, 39EC, 39ED, 39EE, 39EF, 39EG, 39EH, 39EI, 39EJ, 39EK, 39EL, 39EM, 39EN, 39EO, 39EP, 39EQ, 39ER, 39ES, 39ET, 39EU, 39EV, 39EW, 39EX, 39EY, 39EZ, 39FA, 39FB, 39FC, 39FD, 39FE, 39FF, 39FG, 39FH, 39FI, 39FJ, 39FK, 39FL, 39FM, 39FN, 39FO, 39FP, 39FQ, 39FR, 39FS, 39FT, 39FU, 39FV, 39FW, 39FX, 39FY, 39FZ, 39GA, 39GB, 39GC, 39GD, 39GE, 39GF, 39GG, 39GH, 39GI, 39GJ, 39GK, 39GL, 39GM, 39GN, 39GO, 39GP, 39GQ, 39GR, 39GS, 39GT, 39GU, 39GV, 39GW, 39GX, 39GY, 39GZ, 39HA, 39HB, 39HC, 39HD, 39HE, 39HF, 39HG, 39HH, 39HI, 39HJ, 39HK, 39HL, 39HM, 39HN, 39HO, 39HP, 39HQ, 39HR, 39HS, 39HT, 39HU, 39HV, 39HW, 39HX, 39HY, 39HZ, 39IA, 39IB, 39IC, 39ID, 39IE, 39IF, 39IG, 39IH, 39II, 39IJ, 39IK, 39IL, 39IM, 39IN, 39IO, 39IP, 39IQ, 39IR, 39IS, 39IT, 39IU, 39IV, 39IW, 39IX, 39IY, 39IZ, 39JA, 39JB, 39JC, 39JD, 39JE, 39JF, 39JG, 39JH, 39JI, 39JJ, 39JK, 39JL, 39JM, 39JN, 39JO, 39JP, 39JQ, 39JR, 39JS, 39JT, 39JU, 39JV, 39JW, 39JX, 39JY, 39JZ, 39KA, 39KB, 39KC, 39KD, 39KE, 39KF, 39KG, 39KH, 39KI, 39KJ, 39KK, 39KL, 39KM, 39KN, 39KO, 39KP, 39KQ, 39KR, 39KS, 39KT, 39KU, 39KV, 39KW, 39KX, 39KY, 39KZ, 39LA, 39LB, 39LC, 39LD, 39LE, 39LF, 39LG, 39LH, 39LI, 39LJ, 39LK, 39LL, 39LM, 39LN, 39LO, 39LP, 39LQ, 39LR, 39LS, 39LT, 39LU, 39LV, 39LW, 39LX, 39LY, 39LZ, 39MA, 39MB, 39MC, 39MD, 39ME, 39MF, 39MG, 39MH, 39MI, 39MJ, 39MK, 39ML, 39MN, 39MO, 39MP, 39MQ, 39MR, 39MS, 39MT, 39MU, 39MV, 39MW, 39MX, 39MY, 39MZ, 39NA, 39NB, 39NC, 39ND, 39NE, 39NF, 39NG, 39NH, 39NI, 39NJ, 39NK, 39NL, 39NM, 39NN, 39NO, 39NP, 39NQ, 39NR, 39NS, 39NT, 39NU, 39NV, 39NW, 39NX, 39NY, 39NZ, 39OA, 39OB, 39OC, 39OD, 39OE, 39OF, 39OG, 39OH, 39OI, 39OJ, 39OK, 39OL, 39OM, 39ON, 39OO, 39OP, 39OQ, 39OR, 39OS, 39OT, 39OU, 39OV, 39OW, 39OX, 39OY, 39OZ, 39PA, 39PB, 39PC, 39PD, 39PE, 39PF, 39PG, 39PH, 39PI, 39PJ, 39PK, 39PL, 39PM, 39PN, 39PO, 39PP, 39PQ, 39PR, 39PS, 39PT, 39PU, 39PV, 39PW, 39PX, 39PY, 39PZ, 39QA, 39QB, 39QC, 39QD, 39QE, 39QF, 39QG, 39QH, 39QI, 39QJ, 39QK, 39QL, 39QM, 39QN, 39QO, 39QP, 39QQ, 39QR, 39QS, 39QT, 39QU, 39QV, 39QW, 39QX, 39QY, 39QZ, 39RA, 39RB, 39RC, 39RD, 39RE, 39RF, 39RG, 39RH, 39RI, 39RJ, 39RK, 39RL, 39RM, 39RN, 39RO, 39RP, 39RQ, 39RR, 39RS, 39RT, 39RU, 39RV, 39RW, 39RX, 39RY, 39RZ, 39SA, 39SB, 39SC, 39SD, 39SE, 39SF, 39SG, 39SH, 39SI, 39SJ, 39SK, 39SL, 39SM, 39SN, 39SO, 39SP, 39SQ, 39SR, 39SS, 39ST, 39SU, 39SV, 39SW, 39SX, 39SY, 39SZ, 39TA, 39TB, 39TC, 39TD, 39TE, 39TF, 39TG, 39TH, 39TI, 39TJ, 39TK, 39TL, 39TM, 39TN, 39TO, 39TP, 39TQ, 39TR, 39TS, 39TT, 39TU, 39TV, 39TW, 39TX, 39TY, 39TZ, 39UA, 39UB, 39UC, 39UD, 39UE, 39UF, 39UG, 39UH, 39UI, 39UJ, 39UK, 39UL, 39UM, 39UN, 39UO, 39UP, 39UQ, 39UR, 39US, 39UT, 39UU, 39UV, 39UW, 39UX, 39UY, 39UZ, 39VA, 39VB, 39VC, 39VD, 39VE, 39VF, 39VG, 39VH, 39VI, 39VJ, 39VK, 39VL, 39VM, 39VN, 39VO, 39VP, 39VQ, 39VR, 39VS, 39VT, 39VU, 39VV, 39VW, 39VX, 39VY, 39VZ, 39WA, 39WB, 39WC, 39WD, 39WE, 39WF, 39WG, 39WH, 39WI, 39WJ, 39WK, 39WL, 39WM, 39WN, 39WO, 39WP, 39WQ, 39WR, 39WS, 39WT, 39WU, 39WV, 39WW, 39WX, 39WY, 39WZ, 39XA, 39XB, 39XC, 39XD, 39XE, 39XF, 39XG, 39XH, 39XI, 39XJ, 39XK, 39XL, 39XM, 39XN, 39XO, 39XP, 39XQ, 39XR, 39XS, 39XT, 39XU, 39XV, 39XW, 39XZ, 39YA, 39YB, 39YC, 39YD, 39YE, 39YF, 39YG, 39YH, 39YI, 39YJ, 39YK, 39YL, 39YM, 39YN, 39YO, 39YP, 39YQ, 39YR, 39YS, 39YT, 39YU, 39YV, 39YW, 39YZ, 39ZA, 39ZB, 39ZC, 39ZD, 39ZE, 39ZF, 39ZG, 39ZH, 39ZI, 39ZJ, 39ZK, 39ZL, 39ZM, 39ZN, 39ZO, 39ZP, 39ZQ, 39ZR, 39ZS, 39ZT, 39ZU, 39ZV, 39ZW, 39ZX, 39ZY, 39ZZ

I swear that the above statement is true and correct to the best of my knowledge.  


SIGNED, AND SUBSCRIBED BEFORE ME THE UNDERSIGNED AUTHORITY.  
THIS 21<sup>st</sup> DAY OF July 2015  
 PSLPD

MS. I SET UP THE MEETING FROM THE GARAGE AND I WAS THE ONLY ONE THERE.

and he said it was called 'Ace'. I asked him if he could get his mum. He said I confirmed her name was Patricia. He went into a courtyard and went inside glass doors. He got the dog and came out and told me that his mother was in the shower. I told him it was important and I was from the Court. At this time I had called my office and thought that I had ended the call but realized that my paralegal was privy to the whole conversation with the boy. This is revealed on my cell.

I explained to the boy that I needed to see her and could he get her know. He went back inside and I stood in the driveway outside of the courtyard believing that his mother would appear. There was a yarded female child running back & forth.

As the one came, I went to my vehicle and waited as the client had suggested WAIT TIME.

A few minutes later a white sedan pulled into the driveway and parked in the garage. The door was immediately closed. I shouted to him but it was ignored. I therefore threw the 2 suppressors inside the courtyard approx. 8-10 ins on the floor.

I was about to leave when Bank came out and as I actually thought he was here to accept service I picked them up to give them to him in a professional manner.

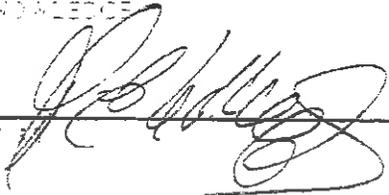
At that time I saw he was pointing a gun at me and was screaming for me to get off his property. I immediately turned and walked away. He said something about being a whore or something to that extent. I was about to drive away when he ran at <sup>in a</sup> ~~the~~ <sup>my</sup> ~~my~~ <sup>passenger</sup> side window and threw the papers at me. I threw the one back into the road & drove away.

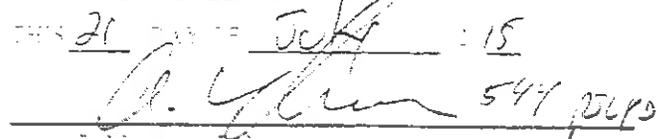
I swear that the above statement is true and correct to the best of my knowledge.

SWORN TO AND SUBSCRIBED BEFORE ME THE UNDERSIGNED AUTHORITY

Called 911.

THIS 21<sup>st</sup> DAY OF July 2015



 544 p.p.s

# **EXHIBIT 5**

**Mueller, Terry L.**

---

**From:** Barnard, David  
**Sent:** Thursday, July 16, 2015 10:33 AM  
**To:** Mark Terry (mark@terryfirm.com)  
**Cc:** Mueller, Terry L.; Meriwether, Luke M.; Gonzales, Donna P.  
**Subject:** Prudential/Rock Solid Investment opposition - subpoenas of Greco, Davis and Dominion Diamonds, LLC 30(b)(6)  
**Attachments:** 2015-07-14 Prudential Subpoena\_Davis (Official).pdf; 2015-07-14 Prudential Subpoena\_Dominion Diamond (Official).pdf; 2015-07-14 Prudential Subpoena\_Greco (Official).pdf

Mark, this follows up on my 7/7 email re scheduling depositions. Attached are subpoenas for Dominion Diamonds, Elizabeth Greco and Catrina Davis. Please let me know if you are representing them and if you will accept service.

Dave



**David Barnard**  
**Chairman, Intellectual Property Litigation Teams**  
2345 Grand Blvd., Suite 2200 | Kansas City, MO 64108-2618  
P: 816.460.5869 | F: 816.292.2001 | [DBarnard@LATHROPGAGE.COM](mailto:DBarnard@LATHROPGAGE.COM)  
bio: [www.lathropgage.com/dbarnard](http://www.lathropgage.com/dbarnard) | [www.lathropgage.com](http://www.lathropgage.com)

# **EXHIBIT 6**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In Re: Application Serial No. 86/184,144  
For the Mark: ROCK SOLID INVESTMENT  
Filed: February 4, 2014  
Published in the Official Gazette: August 5, 2014

<hr/>		)	
The Prudential Insurance Company of America		)	
		)	
Opposer		)	
		)	
v.		)	Opp. No. 91-219,616
		)	
Daryl Bank		)	
		)	
Applicant		)	
<hr/>		)	

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**DECLARATION OF ELIZABETH MCINTYRE**

I, Elizabeth McIntyre, do hereby give the following declaration:

1. I am 38 years of age and have personal knowledge of the matters set forth in this Declaration and testify hereto under penalty of perjury.
2. I was hired by Opposer, The Prudential Insurance Company of America, to serve subpoenas in this case.
3. I am employed as Process Server by Baker Street Investigations Inc, but work with HPS Process Service and Investigations, Inc.
4. On July 17, 2015, HPS Process Service received a subpoena to be served upon Dominion Diamonds, LLC (“Dominion Diamonds”), c/o Daryl G. Bank at the Dominion Diamonds office at 2710 S.W. Port St. Lucie Boulevard, Port St. Lucie, Florida 34953.

4. On July 17, 2015 at 2:30 p.m., I attempted service at Dominion Diamonds' business address. I was met by a young lady, while I was in the waiting room. I told her I had documents for Daryl Bank, Catrina Davis, and Elizabeth Greco. She said they were all out of the office. She further explained that most of the employees are out, since it was a Friday afternoon, and suggested I come back on Monday.

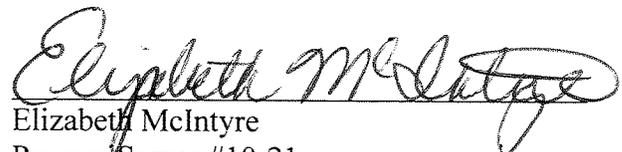
5. On July 20, 2015 at 9:55 a.m., I again attempted service at Dominion Diamonds' office. Another lady in her 50's was at the front desk. As I approached the desk, she started shaking her head. I asked whether Mr. Bank, Ms. Davis, or Ms. Greco were there. She told me that they were not in. She also said that Mr. Bank and Ms. Davis were never there, because "they travel a lot." She said she did not know when they will be in the office again, then turned around and left.

6. After attempting service twice, it became apparent to me that we needed to serve Mr. Bank and Ms. Davis at their residence. I asked my supervisor, Marcia Gillings, to attempt service the following day.

I swear that the foregoing is the truth under penalty of perjury.

Date: \_\_\_\_\_

7/30/15



Elizabeth McIntyre  
Process Server #10-21  
Baker Street Investigations

STATE OF FLORIDA        )  
  )SS  
COUNTY OF Martin        )

On this 30<sup>th</sup> day of July 2015, before me personally appeared Elizabeth McIntyre, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.



Marcia Gillings  
Notary Public

My Commission Expires:

\_\_\_\_\_

# **EXHIBIT 7**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In Re: Application Serial No. 86/184,144  
For the Mark: ROCK SOLID INVESTMENT  
Filed: February 4, 2014  
Published in the Official Gazette: August 5, 2014

The Prudential Insurance Company of America	)	
	)	
Opposer	)	
	)	
v.	)	Opp. No. 91-219,616
	)	
Daryl Bank	)	
	)	
Applicant	)	

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**DECLARATION OF MARCIA GILLINGS**

I, Marcia Gillings, do hereby give the following declaration:

1. I am 68 years of age and have personal knowledge of the matters set forth in this Declaration and testify hereto under penalty of perjury.
2. I was hired by Opposer, The Prudential Insurance Company of America, to serve subpoenas in this case.
3. I am the owner and operator of Baker Street Investigations, a fully-licensed private investigation and process service firm in Stuart, Florida. I opened this business in 1986 and since that time have been a full-time private investigator and process server.

4. I am originally from England. I attended university at Kettering College. I then served as a "Bobbie" in the British police, including Her Majesty's Detective Service. Specifically, I served as a police sergeant in Warwickshire, England from 1967-1976.

5. I work with HPS Process Service and Investigations, Inc. On July 17, 2015, HPS Process Service received a subpoena to be served upon Dominion Diamonds, LLC, c/o Daryl G. Bank at the Dominion Diamonds office at 2710 S.W. Port St. Lucie Boulevard, Port St. Lucie, Florida 34953. Another process server from my office, Elizabeth "Beth" McIntyre (PS #10-21) attempted service at the business address, but was unable to complete service on Mr. Bank was not in the office. She believed that they were unhelpful and were not being truthful.

6. I then went to serve the subpoena on Mr. Bank at his home, 814 Saint Julien Court, Port St. Lucie, Florida 34986. I was wearing a dress and my badge identifying me as a process server. Attached to as Exhibit 1 is an image of me wearing the same outfit and badge that I wore on the day I served Mr. Bank.

7. I knocked on the door. No one answered. I then waited in my vehicle, which was parked on the road. During this time, I called Beth McIntyre from my mobile phone.

8. A small boy about 8 years of age came out of the house walking a dog. I talked with the boy. I asked if his parents were inside. He said his mother was. He also confirmed that her name was Catrina. I was aware that Mr. Bank's wife was Catrina Davis. The boy went inside, came out and said his mother was in the shower. I asked the boy to have his mother come to the door.

9. The boy went back inside and after some time, came out and said his mother was not home. I explained to the boy that I was from the court, that I had documents for his

mother, and that it was important to tell her to come outside. The boy went back inside the home and did not come back out.

10. The boy left the front door open. I could see him and a younger girl walking back and forth inside. I did not see any adults inside. I assumed that either the children had been left alone or, more likely, that Ms. Davis was inside and was refusing to come to the door to accept the subpoenas.

11. As no one came out, I went back to my car and viewed the home from my vehicle with the passenger window down.

12. After a few minutes, a white sedan came into the driveway and pulled into the garage. Mr. Daryl Bank was driving the car. I was able to identify him based on a picture on his website. I was also familiar with Mr. Bank, as I had served process on him for a different action before.

13. As Mr. Bank exited his vehicle, I went toward Mr. Bank and shouted to him letting him know that I was a process server and was there to serve him legal papers. He then closed the garage door while I was standing about six feet away from him, still on the driveway.

14. I then went to the front door which was still open and threw both subpoenas inside the front door and informed Mr. Bank in a loud voice that he had been served. The papers landed approximately 8 to 10 inches inside the house. I did not step inside the house.

15. As I was about to leave, I saw Mr. Bank coming toward the door. I picked up the papers and was about to hand them to him and explain their contents when I saw he had a gun pointed at me. Specifically, it was a handgun. He had his arm completely outstretched and was pointing it right at me. Mr. Bank held the gun on me and was yelling at me to get off of his property and that I was trespassing. Mr. Bank also called me a "whore."

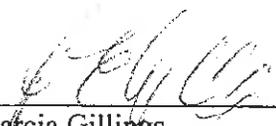
16. Mr. Bank continued to walk forward. I immediately turned, dropped the papers, and walked back toward my car. As I started my vehicle, I saw Mr. Bank running toward my vehicle in a menacing manner carrying the papers I had dropped. I did not know whether he still had the gun. Mr. Bank ran to the passenger side window as I was starting the car and threw some of the papers into my car. I threw them back out of the window and drove away. At all times during the incident, Mr. Bank appeared to be enraged and out of control.

17. I immediately called 911 to report the incident and was advised to go to Port St. Lucie police station to make a full report. I did so. A true and accurate copy of that report is attached to this Declaration as Exhibit 2. Also attached as Exhibit 3 is the Affidavit of Service, which reports some of these same facts.

I swear that the foregoing is the truth under penalty of perjury.

Date: \_\_\_\_\_

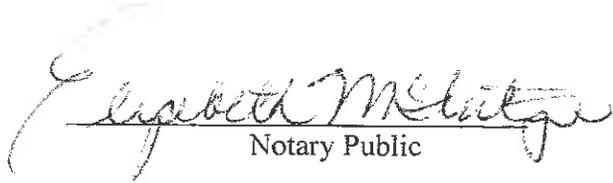
8/3/15

  
\_\_\_\_\_  
Marcia Gillings  
Owner, Operator  
Baker Street Investigations

STATE OF FLORIDA        )  
  )SS  
COUNTY OF St. Lucie    )

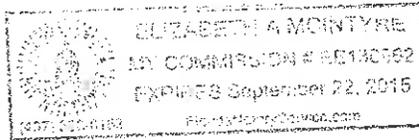
On this 3<sup>rd</sup> day of August 2015 before me personally appeared Marsha Gillings, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

  
Notary Public

My Commission Expires:

9/22/15



**DECLARATION OF MARCIA GILLINGS**  
**EXHIBIT 7.1**



**DECLARATION OF MARCIA GILLINGS**  
**EXHIBIT 7.2**

814 SW, St Julien Ct

# PORT ST. LUCIE POLICE DEPARTMENT STATEMENT FORM

15388

VICTIM     WITNESS     SUSPECT     OTHER    2015-~~380~~

CASE NUMBER: \_\_\_\_\_ SUSPECT: DARYL BANK  
NAME: MARCIA GIBBINGS (FIDOL G 452545468800 DOB: \_\_\_\_\_; 146.  
ADDRESS: P.O. Box 564 STUART, FL 34995  
HOME PHONE: \_\_\_\_\_ WORK PHONE: 772 787399 CELL PHONE: 772 201 1271  
DATE AND TIME: 7/21/15 LOCATION: 814 SW ST JULIEN CT, PSL 34995

NARRATIVE: I was wearing my court Certified Process badge # 8923  
I am a certified Process Server through the 19<sup>th</sup> Circuit Court  
On 7/21/15 I was ask to serve 2 Subpoenas (Federal) re  
The Prudential Insurance Co. vs. DARYL BANK  
concerning a deposition. on 8/3/15 together with witness  
for 9653 to DARYL BANK and his wife  
CATRINIA DAVIS (no board e wife). They had previously  
been attempted at their place of work - Dominion Diamonds  
N/C 2710 Port St Lucie Blvd PSL. The info was  
given to personnel that these were trying to be served  
It became apparent that we were being lied to as to  
their home and availability.  
At approx 5pm I went to the home and knocked on the door  
at 814 St Julien Ct. There was no bell. No one came to answer.  
I returned to my vehicle and parked outside. A young boy about  
8 yrs old came out with a small white bull dog. I walked  
up to him and asked him the dogs name. Told him it was cute

Info: \_\_\_\_\_ ANY claim of SEXUAL BATTERY, AGGRAVATED CHILD ABUSE, AGGRAVATED STALKING, HARRASSMENT, AGGRAVATED BATTERY, I hereby request that my name and e-mail address and telephone numbers, and my personal life not be withheld from Public Record Disclosure pursuant to F.S. 119.07, or otherwise under 3-4, or in accordance with the statutory provisions of the state and federal laws, the exemption five years after the receipt of this request.

US HEAR THAT THE ABOVE STATEMENT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE  


SIGNED, SWORN AND SUBSCRIBED BEFORE ME THE UNDERSIGNED AUTHORITY  
THIS 21<sup>st</sup> DAY OF July 2015  
 PSL/PS

MS. I still investigate from into inclusion and what can improve currently to my next file

and he said it was called 'Ace'. I asked him if he could get his mum. He ~~so~~ I confirmed her name was Patricia. He went into a courtyard and went inside glass doors. He got the dog and came out and told me that his mother was in the shower. I told him it was important and I was from the Court. At this time I had called my office and thought that I had ended the call but realized that my privilege was given to the whole conversation with the boy. This is recorded on my ~~cell~~ cell.

I explained to the boy that I needed to see her and could he get her know. He went back inside and I stood in the driveway outside of the courtyard believing that his mother would appear. There was a younger female child running back & forth. As he came, I went to my vehicle and waited as the client had suggested WAIT TIME. A few minutes later a white sedan pulled into the driveway and parked in the garage. The door was immediately closed. I shouted to him but it was ignored. I therefore threw the 2 suppressors inside the courtyard approx. 8-10 ins on the floor. I was about to leave when Tank came out and as I actually thought he was here to accept service I picked them up to give them to him in a professional manner. At that time I saw he was pointing a gun at me and was screaming for me to get off his property. I immediately turned and walked away. He said something about being a whore or something to that extent. I was about to drive away when he ran at full <sup>in a ~~grabbing~~ ~~my~~ ~~passenger~~ ~~side~~ ~~window~~</sup> and threw the papers at me. I threw the ore back into the road's drive away.

I swear that the above statement is true and correct to the best of my knowledge.

SWORN TO AND SIGNED BEFORE ME THE UNDERSIGNED A Notary Public

Called 911.

THIS 21<sup>st</sup> DAY OF July 2015

*[Handwritten Signature]*

*[Handwritten Signature]* 544 2540

**DECLARATION OF MARCIA GILLINGS**  
**EXHIBIT 7.3**

**AFFIDAVIT OF SERVICE**

UNITED STATES DISTRICT COURT  
District of Florida

Case Number: 91219616

Plaintiff:

**THE PRUDENTIAL INSURANCE COMPANY OF AMERICA**

vs.

Defendant:

**DARYL BANK**

For:

David Barnard

LATHROP & GAGE, LLP

Received by HPS PROCESS SERVICE & INVESTIGATIONS, INC. on the 17th day of July, 2015 at 1:48 pm to be served on **Dominion Diamonds, LLC c/o Daryl G. Bank, 2710 SW Port St. Lucie Blvd., Port St. Lucie, FL 34953.**

I, Marcia Gillings-CPS# 89-23, being duly sworn, depose and say that on the **21st day of July, 2015 at 5:23 pm, I:**

served a **CORPORATION** by delivering a true copy of the **Subpoena to testify at a Deposition in a Civil Action, Exhibit "A", Opposer's Notice of Deposition of Dominion Diamonds, LLC and Witness Fee check for \$96.53** with the date and hour of service endorsed thereon by me, to: **Daryl G. Bank as Registered Agent for Dominion Diamonds, LLC**, at the alternate address of: **814 SW Saint Julien Court, Port St. Lucie, FL 34986**, and informed said person of the contents therein, in compliance with state statutes.

**Military Status:** Based upon inquiry of party served, Defendant is not in the military service of the United States of America.

**Marital Status:** Based upon inquiry of party served, Defendant is married.

**Additional Information pertaining to this Service:**

Elizabeth McIntyre PS#10-21 attempted service at the business address at 2710 SW Port St Lucie Blvd, FL 34953 on July 17, 2015 at 2:30 pm and again on July 20, 2015 at 9:55 am and was informed by the employees that Mr. Bank was not in the office and they were unhelpful as to when he could be served. It became apparent that they were not being truthful and any further attempts would be futile. A home address was obtained of 814 Saint Julien Court, Port St. Lucie, FL 34986 and on the above time and date, Process server, Marcia Gillings went to the home. After knocking on the door, no one answered so Gillings waited in her vehicle parked on the road. A small boy about 8 yrs. of age came out of the house walking a dog. He was asked if his mother was inside and he said she was. He was asked to tell the mother that she was waiting at the door after confirming that her name was Catrina.

The home has a large courtyard with a door to the outside leading into the driveway. The door to the main living area was at the far end of the courtyard. The boy left the outside doors open at this time. He came out and stated that his mother was in the shower and at this time, it was explained to him that the server had documents from the court and that this was important to go and tell her to come outside. He then stated that she was not at home. Again it was explained to him that the server needed to see her. He went back inside the home and did not come back out. Gillings waited on the doorstep and could see the boy and a younger girl walking back and forth. No adult was seen so it was assumed that either the children were alone or that the mother was refusing to come to the door to accept the subpoenas.

As no one did come out, Gillings went to her car and viewed the home from her vehicle with the passenger window down. It should be noted that the outside door remained open.

After a few minutes, a white sedan came into the driveway and pulled into the garage. Gillings walked towards the garage and shouted who she was and at that time, Mr. Banks exited his vehicle and closed the garage doors. From a photograph on the website, he was identified as Mr. Bank.

Gillings went immediately to the front door which was still open and threw both subpoenas into the court yard informed Bank in a loud voice that he had been served. They landed about 8 – 10 inches into the room. At no time did Gillings step inside the room.

As Gillings was about to leave, she saw Bank coming into the court yard and believed that he was coming to collect the

**VERIFIED RETURN OF SERVICE For 91219616**

subpoenas. Gillings picked up the papers and was about to explain their contents, when she saw Bank walking towards her with a gun pointed at her body at arm's length. He was yelling to get off his property and that she was trespassing and calling her a whore. He continued to walk forward and immediately Gillings turned and walked back to her car. As she was starting her vehicle to leave, Bank was seen running towards her vehicle in a menacing manner. Gillings was trying to drive away and Bank came to the passenger side window and threw the paper into the car. Gillings was able to throw it out onto the street and leave the area. At this time it was believed that Bank may still have the gun and she was in fear of what could take place considering that Bank appeared to be in a rage and out of control. 911 was called immediately to report the incident and she was advised to go to the Port St Lucie Police station to make a full report. This is attached to this affidavit

**Description** of Person Served: Age: 50+, Sex: M, Race/Skin Color: White, Height: 5'10, Weight: 185, Hair: Black, Glasses: Y

Under penalties of perjury, I declare that I have read the foregoing and the facts stated in it are true. I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the county in which service was effected in accordance with State Statutes

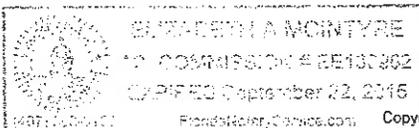
Subscribed and Sworn to before me on the 24th day of July, 2015 by the affiant who is personally known to me.

*Elizabeth McIntyre*  
NOTARY PUBLIC

*Marcia Gillings*  
\_\_\_\_\_  
Marcia Gillings-CPS# 89-23  
PROCESS SERVER

HPS PROCESS SERVICE &  
INVESTIGATIONS, INC.  
1669 Jefferson Street  
Kansas City, MD 64108  
(800) 796-9559

Our Job Serial Number: BAK-2015001692



# **EXHIBIT 8**

Agency Case # 201515380

ON 7/23/15

**Warrant Affidavit**

Use separate forms for each defendant and for multiple offenses occurring at different time, date or location

Court Case #

Copy To: Clerk of Court / State Attorney / Jail / Arresting Agency / Defendants

Juvenile

Warrant

56 2015CF001913A

**Defendant Information**

Bank	Daryl	Gene		(757) 651-1587	1970	45	18304	Male
Last Name	First Name	Middle Name	Aliases (A.K.A.)	Phone Number	Date of Birth	Age	SSN	Gender
814 Sw Saint Julien Ct	Port St Lucie	FL	34986	B520167701310	FL			
Permanent Address	City	State	Zip	Drivers License #	State	Citizenship		
White			5'08					
Race	Hair Color	Eye Color	Height	Weight	Distinguishing Marks	Occupation / Employer / School		

**Offense Information**

201515380	Ludmerer, Alan	2912	Port St. Lucie Police Department	FL0560200	No	
Agency Case #	Officer	Officer ID #	Agency	Agency ORI #	Domestic Related	
07/21/2015	1700	814 Sw St Julien Ct	Port St Lucie	FL	34986	Felony Warrant
Offense Date	Offense Time	Offense Street Address	Offense City	State	Zip	Charge Status
			No			
Warrant(s) #	Alcohol Influence	BAL	Drug Influence	Weapon(s) Seized	Weapon(s) Type	

Statute #	Statute Subsection & Definition	Counts	Type	Activity
784.021 (1A)   FT2558	Aggrav Asslt - Weapon-w Deadly Weapon Without Intent To Kill	1	Felony	Committed
784.08 (2B)   FS2581	Assault-on Person 65 Years Of Age Or Older	1	Felony	Committed
843.01   FT3142	Resist Officer-with Violence	1	Felony	Committed

Party Type	Name	Address	City	State	Zip	Phone
------------	------	---------	------	-------	-----	-------

Property Status	Property Value	Injury Sustained	Injury Type	Injury Severity

On July 21 2015, I was dispatched to the Port St Lucie Police Station, 121 Port St Lucie Blvd, in reference to an Aggravated Assault. When I arrived at the station, I met with the victim, Ms. Maricia Gillings.

Ms. Gillings explained that she was a Process Server for the 19th Judicial Circuit. She was wearing a Lanyard with a picture identification, Badge # 8923. She made the following statements:

Ms. Gillings said that she was working in a official capacity to serve 2 subpoena's for a civil action at 814 SW St. Julien Court in the Vineyards community in St. Lucie West. The Civil paperwork was for Prudential Insurance Company Vs, Mr. Daryl Bank and his wife Ms. Katrina Davis. Both Mr. Bank and his wife live at this residence. Ms. Gillings said she tried to serve them at their place of business, Dominion Diamonds and was unsuccessful. Once she arrived at Mr. Bank's residence, she approached the front door and rang the bell but no one answered. She said that she waited in her parked vehicle per the instructions of her employer.

Ms. Gillings said that she observed a small child, that was approximately 8 years old, walk out of the residence with a small white dog. She said that she thought a small child would have an adult with them and walked to the outside front of the home. Ms. Gillings said that the child appeared to be outside by himself so she asked the child to go inside the residence and get his parent. The child obeyed and went back inside the home. Ms. Gillings said that the front door of the home was open at this time. The door was opened by the child and remained open (the front doors lead to a courtyard and pool area and do not enter the interior of the residence). The child returned and said his mother, Katrina, was currently taking a shower. Ms. Gillings asked the child to tell his mother that she was from "the courts", she had some important information to give to his mother and she would be waiting outside. Ms. Gillings said that she returned to her vehicle and Ms. Davis never came out.

A few minutes later, Ms. Gillings observed a white sedan pull into the driveway of he residence. The garage door opened and the vehicle entered the garage. She said she shouted to the driver (Mr. Bank) who she was and identified herself as a Process Server. She said she was ignored by Mr Bank. Ms. Gillings said she was outside the home at this point and the front door was still open. She then threw the 2 subpoena's approximately 8-10" into the front door area and they landed on the ground of the courtyard. Ms. Gillings said she was turning to leave and she saw Mr. Bank coming towards her from inside the home. She said she thought he was going to accept service of the subpoenas so she bent down and picked up the two pieces of

paperwork in order to hand it to Mr. Banks in a professional manner.

At this time Ms. Gillings observed Mr. Bank pointing a black handgun directly at her. His arm was out reached and the muzzle of the weapon was pointed in her direction. She said he was enraged and ordered her to leave the property. She said he called her a "whore" and was cursing at her. Ms. Gillings said she turned and ran to her vehicle. Mr. Bank then ran after her verbally abusing her. Ms. Gillings said she got into her car and was starting the engine when Mr. Bank threw the paperwork she left on scene back at her. One of the pieces of paper landed back inside her car and the other she is not sure where it landed. Mr. Gillings is unsure if Mr. Bank was still carrying the weapon when he chased her. She said that after she witnessed the gun pointed at her, she was afraid for her life at that point. Ms. Gillings claimed she turned and just ran to her vehicle and left as quickly as she could.

Ms Gillings said she immediately called 911 at this time. She was told by the 911 dispatcher to go to the police station at 121 SW Port St. Lucie Blvd. to file a report. I was notified of the incident and responded to the police station.

Mr. Bank did not call 911 dispatch after the incident. I later went to the residence at 814 SW St. Julien Court and Sgt. C. Lumpkin #321 was also on scene with me and was briefed on the incident prior to our arrival.

I was unsuccessful in making any contact with Mr. Bank and left my business card with instructions for him to call me in reference the earlier incident. Mr. Bank later called the PSA at approximately 21:00 hrs. He refused to leave a call back number. The PSA then directed the call to Sgt. Lumpkin and he was able to have Mr. Bank call me back at the Police station at 2300 hours. Mr. Banks refused to meet me in person.

I received the call from Mr. Bank at approximately 2300 hours at the station.

Mr. Bank stated he was not at home and left shortly after the incident occurred. He made the following statements on a recorded line in the police station's report writing room:

Mr. Bank said that he never saw Ms. Gillings before. When he saw her standing in the doorway of the courtyard, once he was inside his residence, he was afraid for his life and the safety of his family. He accused Ms. Gillings of "breaking and entering" and he wanted a report stating it via instructions from his lawyer. I explained to Mr. Gillings the criteria for a forced entry (Burglary). I asked if I could come to his home and examine the crime scene and he refused. He stated several times that his lawyer had instructed him to do everything through him. Mr. Bank said that he did follow Ms. Gillings to her vehicle saying he wanted to make sure "the threat" was gone.

Mr. Bank stated he had photographic evidence of Ms. Gillings illegally entering her home and he wanted her arrested for Burglary. I stated I would need to see the evidence he spoke about and he refused to let me come to his home. He asked for my City E-mail and stated that his lawyer would digitally send them to me.

The conversation lasted approximately 30 minutes and a copy of the conversation was downloaded to a CD for the investigation. A copy was placed into evidence for future reference.

Today, on 7/22/15, Mr. Bank made contact with me through the city E-mail address I gave him. He was much more cooperative than he was the day before and had me meet him at his residence at 1900 hours. My Supervisor, Sgt. C. Lumpkin 321, was also on scene with me.

Mr. Bank made the following statements:

He arrived home and he did not see Ms. Gillings sitting in her car out front but he did notice her vehicle. He parked his vehicle inside his garage and closed the door. He removed his 9MM Glock, that he carries in his vehicle glove box, and walked with it from the garage into the home. Mr. Bank states he was going to place the handgun in his vault inside the home. As he walked past his front interior door, he saw his front courtyard door was opened and a woman standing at the threshold.

It needs to be explained that the front door of the home opens into a large open space that contains a swimming pool in a court yard. Mr. Banks claimed the unknown woman was throwing something into his home and he stated in a loud voice, "Are you breaking into my house? Your breaking in and trespassing!". The female then leans into the open door and throws the papers and stated, " You have been served"! Mr. Bank said he was in fear for his life and pointed his firearm at Ms. Gillings and told her to leave. Ms. Gillings turned and left. He walked outside with the firearm to make sure Ms. Gillings was leaving and the threat was gone. Mr. Bank then walked back inside and stopped and inspected the paperwork that was left by Ms. Gillings. He discovered the paperwork was not for him. Mr. Bank then placed the firearm on a table in the courtyard and walked out to where Ms. Gillings was parked. He then claims he handed her the paperwork back through the vehicle window.

Mr. Bank did not call 911 dispatch for help despite being in fear for his life. Mr. Bank supplied me 18 picture stills from a snap shot camera installed inside his doorbell. He said that he did not have the video available and it was erased by the time we had our meeting.

Pictures 1-4 shows Ms. Gillings at the front entrance of the home.  
 Picture 5 shows Ms. Gillings standing in the door frame with half of her foot inside the door.  
 Pictures 6-7 shows Ms. Gillings bending down to retrieve the Subpoenas and pick them up.  
 Pictures 8-9 shows Ms. Gillings turning and leaving the premises.  
 Pictures 10-12 shows Mr. Bank exiting the front door with a firearm in his right hand.  
 Pictures 13-18 shows Mr. Bank returning back into the home with the weapon in his right hand.

Sgt. Lumpkin was on scene and had Mr. Bank number the pictures as they occurred. These are listed in the order in which Mr. Bank claims they occurred.

After looking at the evidence and listening to both Mr. Bank and Ms. Gillings I was able to determine the following:

Ms. Gillings did not commit a Burglary or a Trespass. She never entered the home and did not have any intention to commit a crime. The front door was opened by Mr. Bank's 10 year old son. Ms. Gillings was acting in an official capacity and was legally authorized to execute process in the lawful execution of her legal duty. Ms. Gillings was wearing a badge around her neck that identified her as an employee of the 19th Judicial Circuit. As soon as she was told to leave by Mr. Bank she turned away and complied.

I was also able to determine that Mr. Bank was in violation of Florida S.S. 843.01 Resisting Officer with Violence to his or her Person. Ms. Gillings is employed by the 19th Judicial Circuit and was acting within her jurisdiction trying to execute her legal duties as ordered by the Courts.

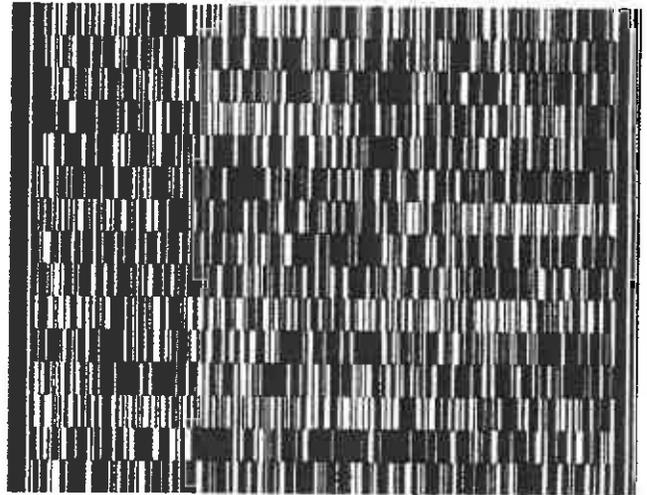
I also found probable cause for Florida S.S 784.021 Aggravated Assault. He stated to me that he was aware he was being sued for a civil matter by Prudential for a copy right infringement. His 10 year old son was outside unsupervised with his dog and left the front door open. Mr. Bank claims he saw Ms. Gillings was at the courtyard door and not acting in a stealthy manner or trying to enter the home. The picture stills show Ms Gillings standing in the door frame trying to complete her job. She was not acting in a threatening or menacing way. Mr Bank pointed the gun at Ms Gillings while he was in the home. In the picture stills provided you can see him leave the home with the weapon and follow her to the edge of his walkway and disappear. Ms Gillings said he chased her to her car and Mr Bank admits going to her vehicle and handing her papers , after admitting he was scared for his life and pointed a weapon at her only seconds before. Additionally Ms Gillings is a 69 year old elderly female. She meets the criteria for the enhanced penalty Florida S.S 784.08 (b) assault or battery on persons 65 or older.

I respectfully request a warrant for the above violations for Mr Daryl Bank.

Mr Bank did not have any criminal history.

AN 7/23/15

562015CFC001913A



The preceding is true to the best of my present knowledge or belief.  
\* Sequence numbers taken from finger print card containing this OBTS # for this arrest.

[Signature] 544  
Signature

Sworn & Subscribed before me this 23 Day of July, 2015  
Notary / ASA [Signature] 573  
My Commission Expires LEO 11/23  
Agency FORT ST LUCIE P.D. 11/20

7/29/2015



CCIS USER Logout

Summary History

SUMMARY

Judge: BELANGER, ROBERT E Case Type: CRIMINAL FELONY Status: OPEN  
 Case Number: 2015CF001913 A Uniform Case Number: 562015CF001913A00000  
 Clerk File Date: 7/23/2015 Status Date: 7/23/2015  
 Agency: PORT ST. LUCIE POLICE DEPARTMENT Total Fees Due: 0.00 Booking #: 237012  
 Agency Report #: 201515380 Custody Location: SURETY BOND

PARTIES

DEFENDANT: [REDACTED]  
 PLAINTIFF: STATE OF FLORIDA

CHARGES

CHARGE DESCRIPTION	CLASS	LEVEL	STATUS
1 AGGRAVATED ASSAULT-DEADLY WEAPON (784.021.1A)	F	T	
2 ASSAULT ON PERSON 65 YOA (784.08.2D)	M	F	

EVENTS

No Events on Case

OUTSTANDING AMOUNT

No Fees on Case

RECEIPTS

No Receipts on Case

CASE DOCKETS

SEQUENCE	DATE	DESCRIPTION
0	7/28/2015	SURETY BOND IS6K806531 POSTED \$5,000.00
0	7/28/2015	SURETY BOND IS15K335829 POSTED \$15,000.00
0	7/28/2015	ARREST WARRANT STATUS CHANGED TO SERVED
0	7/28/2015	CASE UNSECURED
0	7/28/2015	BOND RECEIVED
0	7/28/2015	NOTICE ON DEMAND
0	7/28/2015	WARRANT RETURNED SERVED
0	7/28/2015	ARREST REPORT - INITIATING CASE
0	7/28/2015	DEFENSE ATTORNEY: DECKARD, JOSHUA WESLEY ASSIGNED
0	7/28/2015	NOTICE OF INTENT TO PARTICIPATE IN DISCOVERY
0	7/28/2015	WAIVER OF ARRAIGNMENT AND WRITTEN PLEA OF NOT GUILTY
0	7/28/2015	NOTICE OF APPEARANCE
0	7/23/2015	COMPLAINT FILED
0	7/23/2015	WARRANT FILED-- NO CONTACT WITH VICTIM: UNTIL FURTHER ORDER OF THE COURT OR THE CHARGE IS DISMISSED BY THE STATE, THE DEFENDANT SHALL NOT DIRECTLY OR INDIRECTLY CONTACT THE VICTIM IN PERSON, BY MAIL, E-MAIL, FAX, TELEPHONE, THROUGH ANOTHER PERSON, OR IN ANY OTHER MANNER. DEFENDANT MAY NOT KNOWINGLY COME CLOSER THAN 50 FEET TO THE VICTIM AT ANY PUBLIC PLACE, EXCEPT FOR COURT PROCEEDINGS, OR WITHIN 500 FEET OF THE VICTIM'S RESIDENCE OR PLACE OF EMPLOYMENT, OR 100 FEET OF ANY VEHICLE REGULARLY DRIVEN BY THE VICTIM.
0	7/23/2015	ARREST WARRANT ISSUED: WARRANT OF ARREST
0	7/23/2015	ARREST WARRANT BOND AMOUNT SET TO \$20000.00

7/29/2015

2015CF001913-A STATE OF FLORIDA vs. BANKS, DARYL GENE

0 7/23/2015 WARRANT NUMBER: 201515380

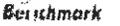
0 7/23/2015 ARREST WARRANT STATUS CHANGED TO SENT TO SHERIFF

0 7/23/2015 CASE SECURED FOR ACTIVE PROCESS

0 7/23/2015 CIRCUIT JUDGE BELANGER, ROBERT E: ASSIGNED

0 7/23/2015 CASE FILED 07/23/2015 CASE NUMBER 2015CF001913 A

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version 2.5.1.3



ARREST WARRANT

St. Lucie County, FLORIDA

Clerk Case No: 562015CF001913A

STATE OF FLORIDA

Agency: Port St. Lucie Police Dept.

-vs-

Agency#: 2015-15380

Daryl Gene Banks

Lead Officer: Alan Ludmerer

Defendant

ASA: Anastasia M. Norman

ASA Approve Initials&Date: AN 7/23/15

2015 JUL 23 PM 2:46  
ST. LUCIE CO. SHERIFF'S OFFICE WARRANT SECTION

DOMESTIC VIOLENCE

In the name of the State of Florida -

To all and Singular Sheriffs of the State of Florida and to Any State Attorney Investigator - Greetings:

Whereas upon the sworn affidavit, complaint or other sworn testimony of Alan Ludmerer of the Port St. Lucie Police Dept. the undersigned Judge, has found that there exists probable cause to believe that one Daryl Gene Banks, in St. Lucie County, Florida did commit the below listed offense(s), contrary to the provisions of Florida Statutes.

You are HEREBY COMMANDED to arrest **DARYL GENE BANKS** of 814 Sw Saint Julien Ct., Port Saint Lucie, FL 34986; DOB: 04/11/1970; Race/Sex: W/M; Ht/Wt: 5'08"/; Eye/Hair: /; SSN: 225-84-8304; DL#: B520-167-70-131-0; FDLE: ; FBI: ; Alias: . These Are Therefore to Command you to forthwith arrest and bring the above named defendant before me to be dealt with according to law.

- 1 Aggravated Assault-Deadly Weapon (F 3) Bond \$ 15,000
- 2 Assault On Elderly Person (M 1) Bond \$ 5,000 WA

COUNT 1: On or about July 21, 2015 Daryl Gene Banks did intentionally and unlawfully threaten by word or act to do violence to the person of Marcia Gillings, having the apparent ability to do so, and did an act which created a well-founded fear in Marcia Gillings that such violence was about to take place, and in the process thereof used a deadly weapon, to-wit: firearm, in violation of Florida Statute 784.021(1)(a);

COUNT 2: On or about July 21, 2015 Daryl Gene Banks did intentionally and unlawfully threaten by word or act to do violence to the person of Marcia Gillings, a person 65 years of age or older, having the apparent ability to do so, and did an act which created a well-founded fear in Marcia Gillings that such violence was about to take place, in violation of Florida Statutes 784.011 and 784.08;

Given under my hand and seal this 23 day of July, 2015, A.D.

Condition of Bond Release/Release on Recognizance: For Count(s): 1 & 2  
No Contact with Victim: Until further order of the Court or the charge is dismissed by the State, the Defendant shall not directly or indirectly contact the victim Marcia Gillings person, by mail, e-mail, fax, telephone, through another person, or in any other manner. This restriction shall include the following condition(s), if marked:

Defendant may not knowingly come closer than 50 feet to the victim at any public place, except for court proceedings, or within 500 feet of the victim's residence or place of employment, or 100 feet of any

562015CF001913A

vehicle regularly driven by the victim;

- Defendant may go to victim's residence one time with a law enforcement officer to get Defendant's clothing and personal effects;
- Defendant may speak to victim on the telephone *only* to discuss sharing parental responsibility for their minor child(ren).
- If marked, Defendant shall be held without bond until the First Appearance Hearing.

*wrook*  
 \_\_\_\_\_ (SEAL)  
 JUDGE

This Warrant/Cepias came to hand this 27 day  
 of July AD, 2015  
 and same was executed in St. Lucie County, Florida  
 by arresting the within named defendant.  
**KEN J. MASCARA**  
 Sheriff, St. Lucie County, Florida  
 By Det. Goldstein P.S.

# **EXHIBIT 9**

Trademark Trial and Appeal Board Electronic Filing System. <http://estta.uspto.gov>ESTTA Tracking number: **ESTTA687572**Filing date: **08/04/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91219616
Party	Plaintiff Prudential Insurance Company of America
Correspondence Address	<b>Amy Brozenic</b> Lathrop & Gage LLP 10851 Mastin Blvd.Bldg. 82, Suite 1000 Overland Park, KS 66210 UNITED STATES abrozen- ic@lathropgage.com,ipdocketing@lathropgage.com,tmueller@lathropgage.com, jpellant@lathropgage.com
Submission	Motion for Sanctions
Filer's Name	Amy Brozenic
Filer's e-mail	abrozen- ic@lathropgage.com,dgonzales@lathropgage.com,ipdocketing@lathropgage.co m,tmueller@lathropgage.com,dbarnard@lathropgage.com
Signature	/Amy Brozenic/
Date	08/04/2015
Attachments	2015-08-04 Prudential M_Sanctions or M_Ext Time.pdf(85285 bytes ) Ex A_2015-02-19 Prudential Interrs-RFPs to Applic_1st Set.pdf(882436 bytes ) Ex B_2015-03-10 Prudential Ntc of Depo_Bank.pdf(33254 bytes ) Ex C_2015-03-13 Prudential Initial Disclosures.pdf(47919 bytes ) Ex D_2015-03-18 Email (Meriwether to Terry) Initial Discls.pdf(67613 bytes ) Ex E_2015-03-24 Email (Meriwether to Terry) Initial Discl.pdf(53867 bytes ) Ex F_2015-03-24 Daryl Bank Rsp to Opposers RFPs-Interr(rdcd).pdf(916188 bytes ) Ex G_2015-04-10 Email (Gonzales to Terry) Insuff Disc Rsp.pdf(143124 bytes ) Ex H_2015-04-17 Ltr (Terry to Gonzales) Disc Rsp w_Priv Log.pdf(2138374 bytes ) Ex I_Depo Excerpts (new)_COLOR (rdcd).pdf(3629871 bytes ) Ex J_2015-07-07 Ltr (Barnard to Terry) Insuff Rsp-Reset Deadlines.pdf(321605 bytes ) Ex K.pdf(61807 bytes ) Ex L_2015-07-16 Email (Barnard to Terry) Subpoenas.pdf(675185 bytes ) Ex M_McIntyre Declaration (NEW).pdf(106926 bytes ) Ex N_0 Gillings Affid (NEW)_COLOR.pdf(5083441 bytes ) Ex O_2015-07-21 Ltr (Terry to Barnard) Discovery (Old Ex M).pdf(1876899 bytes ) Ex P_Email (Barnard to Terry) Svc Issues.pdf(105632 bytes ) Ex Q_Email (Terry to Barnard) Violence.pdf(140552 bytes ) Ex R_Warrant Affidavit.pdf(525342 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In Re: Application Serial No. 86/184,144  
For the Mark: ROCK SOLID INVESTMENT  
Filed: February 4, 2014  
Published in the Official Gazette: August 5, 2014

The Prudential Insurance Company of America	)	
	)	
Opposer	)	
	)	Opp. No. 91-219,616
v.	)	
	)	
Daryl Bank	)	
	)	
Applicant	)	

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**MOTION FOR SANCTIONS**  
**OR, IN THE ALTERNATIVE, MOTION TO EXTEND TIME**

Opposer The Prudential Insurance Company of America (“Opposer”) respectfully submits this Motion for Sanctions, pursuant to the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 527.03 or in the alternative, a Motion to Extend Time under §§ 509, *et seq.* On July 21, 2015, Applicant Daryl Bank (“Applicant”) pulled a gun on Opposer’s process server and chased after her while she attempted to serve a routine discovery subpoena on him and his wife. This is an outrageous act that deserves the harshest sanction in order to protect the sanctity of this process and the safety of its participants. Accordingly, Opposer strongly urges the Trademark Trial and Appeal Board (“Board”) to order sanctions in the form of judgment against Applicant and sustain this opposition.

I. INTRODUCTION

Applicant's disrespect for this Board, these proceedings, and all individuals involved knows no bounds. Applicant from the start has shown no regard for the seriousness of these proceedings by ignoring the Board's scheduling order and completely violating his discovery duties, refusing to produce documents, and even reading a newspaper *while he was being deposed*. That act was calculated to show his contempt for Opposer's legitimate right to obtain relevant information from him.

Such acts, however, were nothing compared to what Applicant is capable of—complete disregard for an innocent third-party's life. When confronted with Opposer's female process server—who is 68 years old, was wearing a badge, and clearly identified herself as serving court papers—Applicant retrieved a handgun, pointed it directly at her at close range and chased her back to her car, gun in hand. He was later arrested for aggravated assault with a deadly weapon, aggravated assault on the elderly, and resisting an officer with violence—all of which are felony charges under Florida law.

If the Board allows such acts to go unpunished or applies less than the harshest punishment, the Board will set a precedent that condones a party using threats of deadly force, in addition to other extreme litigation misconduct, to bully and harass opposing parties with no fear of proportional punishment. Such precedent cannot be allowed. For these reasons, Opposer respectfully requests and urges the Board to spare everyone in these proceedings from further violence, order judgment against Applicant and terminate these proceedings.

In the event the Board denies this Motion, Opposer requests that the Board grant Opposer additional time to conduct its remaining discovery and order appropriate measures to ensure the safety of all parties for the remainder of these proceedings.

## II. BACKGROUND

Opposer filed its initial Notice of Opposition against registration of U.S. Application Serial No. 86/184,144 for “ROCK SOLID INVESTMENT” on the basis of priority and likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. § 1502(d), and dilution under Trademark Act Section 43(c), 15 U.S.C. § 1125(c). *See* Notice of Opposition (Doc. 1).

The Trademark Trial and Appeal Board (“Board”) issued a scheduling order, setting forth, in relevant part, the following deadlines:

Discovery Opens	02/11/2015
Initial Disclosures Due	03/13/2015
Discovery Closes	08/10/2015
Plaintiff’s Pretrial Disclosures	09/24/2015
Plaintiff’s 30-day Trial Period Ends	11/08/2015
Defendant’s Pretrial Disclosures	11/23/2015
Defendant’s 30-day Trial Period Ends	01/07/2016
Plaintiff’s Rebuttal Disclosures	01/22/2016
Plaintiff’s 15-day Rebuttal Period Ends	02/21/2016

*See* Board’s Order (Doc. 2).

On February 19, 2015, Opposer served its First Sets of Interrogatories (“Interrogatories”) and Requests for the Production of Documents (“RFP”) to Applicant. *See* Exhibit A (Opposer’s First Sets of Interrogatories and Requests for the Production of Documents to Applicant).

On March 10, 2015, Opposer served a notice on Applicant to take his deposition on April 28, 2015, by Applicant's office in Florida. *See* Exhibit B (Opposer's Notice of Deposition to Applicant).

On March 13, 2015, Opposer timely served its Initial Disclosures to Applicant. *See* Exhibit C (Opposer's Initial Disclosures). After having not received Applicant's Initial Disclosures, Opposer on March 18, 2015, contacted Applicant to inquire about its late Initial Disclosures. *See* Exhibit D (email from L. Meriwether to M. Terry). On March 24, 2015, Opposer contacted Applicant to again inquire about Applicant's Initial Disclosure, as well as Applicant's late response to Opposer's Interrogatories and RFP. *See* Exhibit E (email from L. Meriwether to M. Terry).

Applicant finally served his Initial Disclosures and discovery responses to Opposer on March 24, 2015—*eleven days past the deadline set forth in the Board's scheduling order* to serve Initial Disclosures and past the required time to respond to the Interrogatories and RFP. *See* Exhibit F (Applicant's First Response to Opposer's Requests to Produce Documents and Interrogatories).

Upon reviewing Applicant's discovery responses, Opposer discovered that Applicant failed to provide a great deal of the information and documents requested. For example, Applicant produced only *two documents, totaling merely ten pages*, to Opposer's thirty-seven (37) requests for production. *See* Exhibit F. Furthermore, many of Applicant's responses to the RFP were merely objections based on either attorney-client privilege or attorney work product. However, no privilege log was produced at the time of service. *See* Exhibit F, Responses to RFP Nos. 5, 7, 11, and 24. Applicant also did not submit with his interrogatory responses a signed

verification. *See* Exhibit F. Opposer has followed up repeatedly, but Applicant still has failed to provide a privilege log.

On April 10, 2015, Opposer contacted Applicant by email regarding the deficiencies in his discovery responses. *See* Exhibit G (email D. Gonzales to M. Terry). On April 22, 2015, Opposer received *via first class mail* Applicant's response to Opposer's email.<sup>1</sup> In the letter, Applicant had neither provided a signed verification nor supplemented any of his deficiencies.

Applicant's deposition was originally scheduled for April 28, 2015. On April 27, 2015, Opposer's counsel was stranded in New Orleans due to severe weather, so Opposer contacted Applicant to reschedule the deposition. Applicant agreed. After numerous correspondences, the parties finally agreed to reschedule the deposition for June 8, 2015.

During his deposition, Applicant was the height of uncooperative. He was evasive from the start, refusing to provide even the most mundane information, such as his major and degree in college. *See* Exhibit I, 8:8-11 (Applicant stating that he "thinks" he graduated with a Bachelor of Science degree and that he does not recall his major); *see also id.*, 3:9-5:22 (Applicant refusing to provide details regarding his prior deposition). In fact, during the deposition, Applicant *began reading a newspaper*, and when asked about this, he replied, "Yes, I can multi task but you go right ahead." *Id.*, 96:20-25.

Applicant was even disrespectful to his own counsel. Seemingly not trusting his counsel to assert a timely objection, Applicant himself on numerous occasions made his own. *See, e.g., id.*, 5:16-22 (Applicant stating, "Asked and answered...I just didn't want to hear the same

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<sup>1</sup> It is of note that Applicant did not respond by the same method of communication used by Opposer because "[they] have not agreed to service by email, therefore...[they] request that all other communications are done by regular mail as well." *See* Exhibit H (letter M. Terry to D. Gonzales). After being reminded that Applicant had indeed agreed to service by email during the discovery conference on February 6, 2015, Applicant has since exchanged communications with Opposer via email.

questions again. It will make it go a lot faster if you didn't ask the same question.”); *see also id.*, 11:21-25; 49:23-25; 73:15-18; 78:19-79:2; 80:23-81:1.

Despite his lack of cooperation, however, counsel for Opposer discovered the following:

- (1) Applicant understands his mark is merely descriptive of the covered services. *See id.*, 58:14-22;
- (2) Dominion Diamonds, LLC (“Dominion Diamonds”) and Dominion Investment Group LLC (“Dominion Investment”) are using the Opposed Mark. *See id.*, 62:3-63:3; Exhibit 4 to Applicant’s deposition transcript (Applicant confirming that Dominion Diamonds brochure bearing the Opposed Mark has been distributed to customers); 68:4-69:25 (Applicant stating that employees of Dominion “collective group of companies,” which includes the Dominion Investment Group, have used the Opposed Mark to advertise Dominion Diamonds services); 151:18-22 and Exhibit 8 to Applicant’s deposition (Applicant stating that Dominion Investment’s LinkedIn page bears the Opposed Mark).
- (3) Employees of Dominion Investment, Catrina Davis (“Davis”), Doug Dunn (“Dunn”), and Elizabeth Greco (“Greco”) have knowledge regarding the scope of use and future use of the Opposed Mark. *See id.*, 64:13-17 and Exhibit 4 to Applicant’s deposition (Applicant stating that Davis is the “point person” for marketing for Dominion Diamonds and Dominion Diamonds distributes brochures, which bear the Opposed Mark); 139:10-140:7, 141:6-17 and Exhibit 4 to Applicant’s deposition (Applicant stating that Dunn heads the insurance brokerage group and has access to Dominion Diamonds brochure, which bears the Opposed Mark); 130:6-132:4 (naming Greco as

one of the primary marketing people, who may know about other Dominion Investment advertisements that uses the Opposed Mark).

On July 7, 2015, Opposer sent Applicant another letter reiterating his discovery deficiencies. Opposer proposed to extend the remaining deadlines to provide Applicant ample time to gather and produce the requested documents and information. *See* Exhibit J (email from D. Barnard to M. Terry). Opposer also notified Applicant of its intent to file a motion for leave to file an amended petition to include the additional ground of descriptiveness, as well as a motion to extend time. *See id.*

**A. Applicant's notice of Opposer's desire to serve subpoenas, refusal to voluntarily accept service, and subsequent assault on the process server with a handgun.**

Opposer informally notified Applicant in an email on July 7, 2015, that it planned 30(b)(6) depositions of Dominion Investment and Dominion Diamonds and depositions of Davis, Greco, and Dunn. In this regard, Opposer asked whether Applicant's current counsel, Mark Terry ("Terry"), would be representing these parties, and if so, whether he would accept service of the subpoenas. *See* Exhibit K (email D. Barnard to M. Terry). Attorney Terry never responded. However, he was fully aware that Opposer sought to serve subpoenas and presumably informed his client as such.

On July 16, 2015, having not received any response from Applicant or his counsel, Opposer sent courtesy copies of the issued subpoenas to Terry and again asked whether he would be representing the parties named in the subpoenas and whether he would accept service. *See* Exhibit L (email D. Barnard to M. Terry with subpoenas for Dominion Diamonds, Elizabeth Greco, and Catrina Davis). It was reasonable to think he would, given that the Applicant is the agent for service for Dominion Diamonds, is managing partner of Dominion Investments, and all

of the witnesses report to Applicant in their job duties. Applicant's own deposition testimony tied all of these entities and people to Applicant's use and marketing of the ROCK SOLID INVESTMENT mark.

As before, after having received notice of the subpoenas, Terry never responded. Accordingly, Opposer authorized personal service on the named deponents, including Davis (as a non-party fact witness) and Applicant (as registered agent for Dominion Diamonds). It is of note that Davis is Applicant's wife and business partner at Dominion Diamonds; she is also an employee of Dominion Investment.

On July 17, 2015 and July 20, 2015, Elizabeth McIntyre ("McIntyre"), a process server at Baker Street Investigations ("BSI") working in conjunction with HPS Process Service & Investigations, Inc., attempted service at the office of Dominion Diamonds. *See* Exhibit M, ¶¶ 2-4 (Declaration of Elizabeth McIntyre). Employees at Dominion Diamonds informed McIntyre on both occasions that Applicant was not in the office and could not provide any information as to when either Applicant or Davis will again be in the office. *See id.*, ¶¶ 4-5.

Believing that continued service at the Dominion Diamonds office would be futile, Marcia Gillings ("Gillings") attempted service on both Applicant and Davis, on July 21, 2015 at Applicant's home address. *See* Exhibit N, ¶¶ 5-6 (Declaration of Marcia Gillings). By way of background, Gillings is a 68 year old woman, who has owned and operated BSI since 1986. *See id.*, ¶¶ 1, 3. She is originally from England, where she attended university and served as a police sergeant in Her Majesty's Detective Service. *See id.*, ¶ 4.

On the date of the incident, Gillings arrived at Applicant's house and knocked on the door, but no one answered. *See id.*, ¶¶ 6-7. She waited in her car, which was parked on the road. *See id.*, ¶ 7. A small boy who appeared to be about eight years of age came out of the house

walking a dog. *See id.*, ¶ 8. The boy was outside by himself, so Gillings talked with the boy and asked if his parents were inside the house. *See id.*, ¶ 8. He said his mother was inside, whom he confirmed is named Catrina. *See id.* The boy went inside, came out, and said his mother was in the shower, so Gillings requested that the boy ask his mother to come outside. *See id.* The boy went inside and, after some time, came out again. *See id.*, ¶ 9. This time he told Gillings that his mother was not in the house at all. *See id.* Gillings reminded the boy that he had already told her that his mother was inside and that it was very important for Gillings to speak with her. *See id.* Gillings also stated that she was from the court and that she had documents to give to his mother. *See id.* The boy went back inside the house, left the front door standing open, and did not come back out. *See id.*, ¶ 10.

After it appeared that no one was coming outside, Gillings went back to her car and viewed the house from her vehicle with the passenger window down. *See id.*, ¶ 11. After a few minutes, a white sedan came into the driveway and pulled into the garage. *See id.*, ¶ 12. Gillings identified the driver as Applicant based on a picture on Applicant's website and because she had served papers on him regarding a different legal matter once in the past. *See id.*

When Applicant exited his vehicle, Gillings came out of her car and clearly identified herself in a loud voice as a process server. She was also wearing a badge. Attached as Exhibit N.1 is a picture of her wearing the same outfit and badge just as she did on the day she served Applicant. She told him in a loud voice that she was there to serve him legal papers. *See id.*, ¶ 13. Applicant refused to acknowledge her and closed the garage door while she stood outside. *See id.*

Gillings went to the front door, which was still open, and threw both subpoenas slightly inside the front door and informed Applicant again in a loud voice that he had been served. *See*

*id.*, ¶ 14. The papers landed approximately eight to ten inches inside the house. *See id.* As Gillings was about to leave, she saw Applicant coming toward the door. *See id.*, ¶ 15. She then picked up the papers and was about to hand them to him to explain their contents when she saw he had a handgun. *See id.* Applicant's arm was completely outstretched, and he was pointing a handgun directly at her. *See id.* While holding the gun directly at Gillings, Applicant yelled for her to get off of his property and called her a "whore." *See id.*

Applicant continued to walk toward Gillings, so she immediately turned, dropped the papers and walked back toward her car. *See id.*, ¶ 16. As she started her vehicle, she saw Applicant running toward her vehicle in a menacing manner carrying the papers she had dropped. *See id.* Applicant ran to the passenger side of the car as Gillings was starting the car and threw some of the papers into her car. *See id.* She threw them back out of the window and drove away. *See id.* At all times during the incident, Applicant appeared to be enraged and out of control. *See id.*

Gillings immediately called 911 to report the incident and was advised to go to the Port St. Lucie police station to make a full report, which she did. *See id.*, ¶ 17. A true and accurate copy of that report is attached to her Declaration at Exhibit N.2. Also attached as Exhibit N.3 is the Affidavit of Service, which reports some of these same facts.

On the same day of the incident, Applicant responded to Opposer's first July 7, 2015 correspondence regarding his discovery responses. *See* Exhibit O (letter M. Terry to D. Barnard). Applicant disagreed with all of Opposer's assertions regarding his discovery deficiencies and indicated that he would oppose any motions for leave to file an Amended Notice of Opposition and request to extend time. *See id.* There was no mention of the incident with Gillings.

On July 22, 2015, counsel for Opposer was notified of Applicant's assault on Gillings. Accordingly, Opposer's counsel contacted Applicant's counsel to express serious concerns regarding this incident and indicated that Opposer planned to file a motion for sanctions against Applicant. *See* Exhibit P (email D. Barnard to M. Terry). On July 23, 2015, Applicant's counsel indicated that "someone had unlawfully entered into the interior of [his] client's home, but at the time we had no idea who that person was, since this person did not identify himself and left no documents." *See* Exhibit Q (email M. Terry to D. Barnard) (emphasis added). Applicant's counsel further stated that Applicant called the police to file a report. *See id.* No report has been provided to Opposer to substantiate such claims.

**B. Applicant's subsequent arrest.**

After Gillings filed the police report, Officer Alan Ludmerer ("Officer Ludmerer"), of the Port St. Lucie Police Department, went to Applicant's home the evening of the incident, but was unable to meet with Applicant. *See* a true and correct copy of the Warrant Affidavit and Arrest Warrant attached as Exhibit R.

On July 22, 2015, Officer Ludmerer and his colleague met with Applicant at his residence. *See id.* Applicant claimed that he was in fear for his life and accused Gillings of trespassing and burglary. *See id.* Having said this, however, Applicant corroborated Gillings' statements. *See id.* Applicant also provided the police with several photographs which had been taken by a hidden camera inside his doorbell, including: (1) Gillings standing in the door frame with half of her foot inside the door; (2) Gillings bending down to retrieve the subpoenas; (3) Gillings turning and leaving the premises; and (4) Applicant exiting the front door with a handgun. *See id.*, pp. 2-3.

Officer Ludmerer determined: (1) that Gillings did not commit burglary or trespass; (2) Applicant resisted an officer with violence, since Gillings is employed by the 19<sup>th</sup> Judicial Circuit and was acting within her jurisdiction to execute her legal duties as ordered by the Court; (3) there was probable cause for aggravated assault and aggravated assault on an elderly. *See id.*, 3. Applicant was arrested on July 27, 2015 and is now out on bond.

### III. ARGUMENT

“Flowing from the Board’s inherent authority to manage the cases on its docket is the inherent authority to enter sanctions.” TBMP § 527.03. “The Board’s exercise of this authority is *clearly permitted* in a variety of situations *where the conduct in question does not fall within the reach of other sanctioning provisions of the rules.*” *Id.* (emphasis added).

“In determining whether to impose sanctions under their inherent authority, courts (including the United States Court of Appeals for the Federal Circuit) have considered factors including: (1) bad faith conduct;...(3) length of delay or clear pattern of delay;... and (6) effectiveness of lesser or alternative sanctions.” *See Carrini, Inc. v. Carla Carini S.r.l.*, 57 U.S.P.Q.2d 1067, 1071-72 (T.T.A.B. 2000) (internal citations omitted).

“The Board has discretion to tailor sanctions appropriate to the violations and may consider any measure designed to serve this purpose.” *NSM Res. Corp. v. Microsoft Corp.*, 113 U.S.P.Q.2d 1029, 1038 (T.T.A.B. 2014). “These principles are equally applicable when the Board employs its inherent authority to sanction bad-faith conduct.” *Id.* “The courts have held that although default judgment is a harsh remedy it *is justified where no less drastic remedy would be effective* and there is a strong showing of *willful evasion.*” *Unicut Corp. v. Unicut, Inc.*, 222 U.S.P.Q. 341, 342 (T.T.A.B. 1984) (emphasis added). A sanction in the form of

judgment is warranted when “it is clear that any sanction short of judgment would be futile and unfair to respondent and any other party...” See *NSM Res.*, 113 U.S.P.Q. at 1038.

The Board has the inherent authority to grant sanctions in order to address Applicant’s felony assault on Gillings. Applicant pointing a gun at Gillings—a clearly identified process server with a badge—while she legitimately sought to serve official papers on him is not just “bad faith conduct,” it is extreme bad faith conduct. Applicant throughout these proceedings has been contemptuous, uncooperative and hostile, affirmatively delaying and hindering Opposer’s efforts in rightfully conducting its discovery. His crescendo of misconduct was threatening process server Gillings’ life. No one participating in a trademark opposition should ever have to fear for their life just for doing their job. No lesser sanction than dismissal can appropriately address Applicant’s violence and completely unreasonable acts.

Applicant’s outrageous acts throughout these proceedings warrant sanctions in the form of default judgment. Applicant’s willful evasion is clear: He has continuously delayed Opposer from obtaining discovery it is entitled to obtain; he was completely disrespectful and uncooperative during his deposition; and he attempted to prevent service on his company and Davis by drawing a gun on, and chasing after, an elderly woman. Thus, Applicant has clearly willfully evaded his duties in these proceedings.

Any form of sanctions that is less than default judgment would be futile and unfair to Opposer, Opposer’s agents and representatives, and more importantly—the public. First, ordering sanctions that would not terminate these proceedings and require Opposer to potentially expose more people to *mortal danger* is extremely unfair for obvious reasons. Second, as demonstrated by Applicant throughout these proceedings, he will be combative, uncooperative, and even resort to violence when compelled to perform his duties. Thus, not ordering judgment

against Applicant and allowing these proceedings to continue—all the while exposing people to danger—will only provide Applicant more opportunities to make a mockery out of these proceedings and more time for him to erode Opposer’s goodwill in its marks containing “ROCK SOLID.”

For the foregoing reasons, and for the sake of everyone involved in these proceedings, Opposer respectfully requests and strongly urges the Board to order sanctions in the form of judgment against Applicant.

**IV. PROTECTIVE MEASURES MUST BE PUT IN PLACE**

Should the Board not grant Opposer’s Motion for Sanctions and require Opposer to continue with these proceedings, Opposer respectfully requests the Board order protective measures to be in place prior to continuing these proceedings. Applicant did not hesitate to draw a gun on and chase after an elderly woman wearing a dress and a badge, whom he had advance notice will be attempting service on him and his wife. If Applicant is capable of such outrageous acts, then he is certainly capable of doing much more to people he may find to be of real threat—*i.e.*, the attorneys in this case.

For these reasons, we urge the Board to order the following measures to minimize further threat to Opposer’s team:

- 1) All previously noticed witnesses be deemed served and compelled to appear for depositions during an agreed upon date and time;
- 2) All depositions be conducted at Applicant’s expense at the Sheriff’s Office or police department closest to the deponent’s residence or place of employment;
- 3) Applicant cannot be designated as 30(b)(6) witness for either Dominion Diamonds or Dominion Investment; and

- 4) Applicant not be allowed to be within 1,000 yards of any of Opposer's agents and representatives during the remainder of these proceedings.

**V. ALTERNATIVELY, EXTENSION OF DEADLINES SHOULD BE GRANTED**

Since the deadline for close of discovery will likely pass before the Board renders a decision on Opposer's Motion for Sanctions, Opposer requests the Board grant extension of the remaining deadlines should it deny Opposer's Motion for Sanctions. "[A] party that wishes to have particular deadlines or periods reset upon the determination of a particular motion should file a motion requesting such action, and specifying the deadlines or periods it wishes to have reset." TBMP § 502.04. Alternatively, a moving party "may request the resetting of deadlines or periods in its pending motion...where such pending motion is not otherwise one seeking enlargement of time. In other words, a party may incorporate a motion to extend as part of another motion." *Id.* Since a motion for sanctions is not necessarily a motion to seek enlargement of time, Opposer, pursuant to TBMP § 502.04, is allowed to incorporate its Motion to Extend Time into the instant Motion for Sanctions.

"[A] party may file a motion for an extension of the time in which an act may or must be done." TBMP § 509.01, Fed. R. Civ. P. 6(b). "If the motion is filed prior to the expiration of the period as originally set or previously extended,...the moving party need only show good cause for the requested extension." TBMP § 509.01. "[T]he Board is liberal in granting extension of time before the period to act has elapsed so long as the moving party has not been guilty of negligence or bad faith and the privilege of extension is not abused." *Nat'l Football League v. DNH Mgmt LLC*, 85 U.S.P.Q.2d 1852, 1854 (T.T.A.B. 2008) (emphasis added).

To be certain, this request to extend all remaining deadlines beginning with close of discovery is being filed prior to the close of the discovery deadline of August 10, 2015. In this

regard, this request is properly filed as a motion to extend time, rather than a motion to reopen time. *See* TBMP § 509.01. Accordingly, Opposer need only show good cause. *Id.*

While Opposer has many good causes to support its request for extension of time, the clearest is Applicant's assault on Opposer's process server. This happened while Applicant was attempting to pursue important discovery during the discovery period, and made moving forward utterly impossible without Opposer seeking means of protecting Opposer's agents from further violence by Applicant. Applicant's outrageous actions during this incident and throughout these proceedings thus far support "good cause" to extend the remaining deadlines in these proceedings.

The follow-up discovery was necessitated by Applicant identifying the witnesses in question during his own deposition. Opposer learned that entities related to Applicant—*i.e.*, Dominion Diamonds and Dominion Investment—are using the Opposed Mark in the general financial services industry. *See* Exhibit I, 62:3-63:3; 68-4-69:25; 130:6-132:4; 148-9-15; 151:18-22; and Exhibits 4 and 8 to Applicant's deposition. Previous to the deposition, he had produced only two documents showing use of the mark. However, during the deposition, he testified that he was making the sales materials incorporating the mark available to his multi-state network of over 200 sales agents. Had Applicant been more forthcoming with the information and documents it was required to produce to Opposer, Opposer would have learned of such information sooner.

For the foregoing reasons, Opposer has good cause to support its request for extension of time. Opposer has not been dilatory in seeking discovery, the additional time Opposer seeks for completion of discovery is reasonable and is not an abuse of the privilege of the extension, and a grant of the extension of time would not prejudice Applicant in any way—especially when

Applicant was the primary reason for the delay in these proceedings. Thus, Opposer's Motion to Extend Time should be granted and the remaining deadlines reset, such that the deadline for close of discovery be moved two months after the date of issuance of the decision on the Motion for Sanctions and the remaining deadlines reset accordingly.

**VI. CONCLUSION**

WHEREFORE, Opposer respectfully requests that the Board grant Opposer's Motion for Sanctions and order judgment against Applicant and sustain this opposition. Should the Board deny Opposer's Motion for Sanctions, Opposer alternatively respectfully requests the Board grant its Motion to Extend Time, reset the remaining deadlines as requested above, and order protective measures before ordering the proceedings be continued.

Date: August 4, 2015

Respectfully submitted,

LATHROP & GAGE LLP

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ATTORNEYS FOR OPPOSER

**CERTIFICATE OF SERVICE AND ONLINE SUBMISSION**

I hereby certify that a true and correct copy of this Motion for Sanctions, or in the Alternative, a Motion to Extend Time was filed online with the Trademark Trial and Appeal Board using the ESTTA this 4<sup>th</sup> day of August, 2015. Further, I hereby certify that the above document was deposited in the U.S. Mail, with sufficient first class postage prepaid, on the 4<sup>th</sup> day of August, 2015, addressed to Opposer's attorney of record:

Mr. Mark Terry  
Office of Mark Terry, Esq.  
801 Brickell Ave Ste 900  
Miami, FL 33131-2979

By: /Amy Brozenic/  
Amy Brozenic

# **EXHIBIT A**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In Re: Application Serial No. 86/184,144  
For the Mark: ROCK SOLID INVESTMENT  
Filed: February 4, 2014  
Published in the Official Gazette: August 5, 2014

The Prudential Insurance Company of America	)	
	)	
Opposer	)	
	)	
v.	)	Opp. No. 91-219,616
	)	
Daryl Bank	)	
	)	
Applicant	)	
	)	

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**OPPOSER’S FIRST SET OF INTERROGATORIES TO APPLICANT**

Pursuant to the Rule 2.120(d) of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, Opposer The Prudential Insurance Company of America (“**Opposer**”) serves its First Set of Interrogatories upon Applicant Daryl Bank (“**Applicant**”) to be answered fully in writing, and under oath. A copy of the Answer shall be served upon Opposer’s counsel within thirty (30) days after service. To the extent permitted by Rule 26(e) of the Federal Rules of Civil Procedure, these Interrogatories shall be deemed continuing and the answers hereto are to be supplemented promptly if and when Applicant obtains relevant information, in addition to, or in any way inconsistent with, Applicant’s initial answer to these Interrogatories.

**DEFINITIONS**

1. “Applicant” means the Applicant Daryl Bank, including any affiliated or related companies or entities, any successors, predecessors, divisions, subsidiaries, directors, officers, employees, agents, attorneys, and all other persons acting on, or purporting to act on the behalf of Daryl Bank.

2. “Opposer” means The Prudential Insurance Company of America and its predecessors, divisions, subsidiaries, directors, officers, employees, agents, attorneys, and all other persons acting on its behalf or under its control.

3. “Applicant’s ROCK SOLID INVESTMENT Mark” or “the ROCK SOLID INVESTMENT Mark” means the ROCK SOLID INVESTMENT mark identified in Trademark Application Serial No. 86/184,144 filed or caused to be filed by the Applicant Daryl Bank.

4. “Opposer’s ROCK FAMILY OF MARKS” means the marks identified in paragraphs 5-23 of the Notice of Opposition and Exhibit 1 attached thereto, namely, the Rock Logo (design only) (Registration Number 792,738 Registered June 13, 1965); OWN A PIECE OF THE ROCK (words and design) (Registration Number 961,764, Registered June 19, 1973); the Second Rock Logo (design only) (Registration Number 961,765, Registered June 19, 1973); the Third Rock Logo (design only) (Registration 1,121,163, Registered June 26, 1979); PIECE OF THE ROCK (Registration Number 1,108,211, Registered December 5, 1978); THE ROCK (Registration Number 1,443,528, Registered June 16, 1987); ROCK SOLID (Registration Number 1,443,527, Registered August 11, 1987); ROCK SOLID. MARKET WISE. (Registration Number 1,452,524, Registered August 11, 1987); the Fourth Rock Logo (design only) (Registration Number 1,616,000, Registered October 2, 1990); The Fifth Rock Logo (design only) (Registration Number 1,576,352, Registered January 9, 1990); ROCK SOLID IN REAL ESTATE (Registration Number 2,497,700, Registered October 16, 2001); ROCK SOLID RETIREMENT (Registration Number 3,428,504, Registered May 13, 2008); ROCK SOLID RELOCATION (Registration Number 3,568,475, Registered January 27, 2009); the Sixth Rock Logo (design only) (Registration Number 3,844,267, Registered September 7, 2010); ROCK-

SOLID ECO-SMART (Registration Number 3,904,843, Registered January 11, 2011); PRU ROCK-SOLID ECO-SMART (words and design) (Registration Number 3,908,488, Registered January 18, 2011); GET A PIECE OF THE ROCK (Registration Number 4,392,395, Registered August 27, 2013).

5. The terms “document” and “documents” shall mean all documents in the possession, custody, or control of Applicant, its agents or its attorneys. “Document” and “documents” are used in the broadest sense and mean the original, and if the original is not available, any copy of the original of writings of every kind, manner, or description, including, but not limited to, documents accessible at Applicant’s request, wherever located.

6. “Person” means, without limitation, any natural person, firm, corporation, limited liability company, proprietorship, partnership, Professional Corporation, association, group, governmental agency, or agent, and any other entity.

7. “Identify” or “identity” means:

- (i) When used in reference to a natural person, state the person’s full name, identity of his employer, title, and job description (if applicable) and the person’s residence address and business address, or, if unknown, the last known business or residence address;
- (ii) When used in reference to a corporation, partnership, or other entity, state its full name, the address of its principal office of place of business, and the address of each present business location that is relevant to the Interrogatory;
- (iii) When used in reference to a document, state sufficient information about the document so that it can be located among all the documents produced by Applicant or the Opposer, or so that Opposer may ask for it specifically, such as by stating:
  - (a) The type of document, i.e., letter, memorandum, chart, or some other means of identifying it;

- (b) The date of the document;
- (c) The identity of the author or signor thereof;
- (d) The identity of all addressees or recipients, including carbon copy addressees;
- (e) Its present location;
- (f) The identity of the person or persons having present custody thereof; and
- (g) The disposition made of it, if it is no longer in the possession or subject to the control of Applicant.

8. The singular or any word shall be interpreted to include the plural, the plural shall be interpreted to include the singular, and reference to any gender shall be interpreted to include reference to both genders.

9. "Or" means "and/or."

10. "Applicant's Goods" or "Applicant's Services" or similar terms mean and refer to the services descriptions listed in Trademark Application Serial No. 86/184,144 filed or caused to be filed by the Applicant Daryl Bank.

11. The terms "advertising," "promotion," and "marketing" mean any speech intended to influence consumers and/or retailers, including, but not limited to, advertisements, promotional materials, line review presentations, launch presentations, sales pitch materials, events, promotions, or other materials informing consumers or retailers of the ROCK SOLID INVESTMENT Mark, Applicant's Services, or any goods or services incorporating or intended to incorporate the ROCK SOLID INVESTMENT Mark.

12. As used herein, the term "relate," "relating to," or "concerning," means constituting, comprising, containing, setting forth, showing, disclosing, describing, explaining, summarizing, evidencing, or referring to, directly or indirectly.

#### INSTRUCTIONS

1. Please restate each Interrogatory in full immediately before your response.

2. In each instance where an Interrogatory is answered on information and belief, Applicant should set forth the basis for such information and belief.

3. In each instance where Applicant denies knowledge or information sufficient to answer the Interrogatory, Applicant should set forth the name and address of each person, if any, known to have such knowledge.

4. If Applicant objects to any Interrogatory for any reason, including objections for attorney client privilege or the applicability of the work product doctrine, all of the grounds for such objection should be stated in detail.

5. Each Interrogatory should be read, construed, and responded to separately and independently without reference to, or being limited by, any other Interrogatory.

6. Unless specifically stated, no Interrogatory is limited to any time period.

**INTERROGATORIES**

1. Identify each person who has, or who has claimed to have, an interest in the title of Applicant's ROCK SOLID INVESTMENT Mark, describe the circumstances related to each person's interest or claimed interest in the title of the ROCK SOLID INVESTMENT Mark, and describe the relationship between or among such persons.

**ANSWER:**

2. Identify any entities with which the Applicant is affiliated, partnered with, or possess an ownership interest in. For each entity identified, state the Applicant's position and provide a description of Applicant's duties.

**ANSWER:**

3. Identify each location in the United States in which Applicant and the entities or individuals identified in the previous Interrogatories operate an office or conduct business.

**ANSWER:**

4. State whether Applicant conducted or caused to be conducted a search or any other investigation to determine whether Applicant's ROCK SOLID INVESTMENT Mark was available for adoption and use in the United States. If yes, identify (a) the date(s) when each search or investigation was conducted; and (b) identify the person or persons participating in each search and/or investigation.

**ANSWER:**

5. Describe the circumstances related to the selection and decision to adopt Applicant's ROCK SOLID INVESTMENT Mark and identify all participants to that selection and adoption process.

**ANSWER:**

6. State when Applicant first acquired knowledge of any of Opposer's ROCK FAMILY OF MARKS, and identify and describe the circumstances surrounding the acquisition of such knowledge.

**ANSWER:**

7. Identify each and every service provided in connection with Applicant's ROCK SOLID INVESTMENT Mark that is either in use currently or that is intended to be used in the future in the United States.

**ANSWER:**

8. For each and every service identified in the answer to the previous Interrogatory, state: (a) the date of adoption of first use of Applicant's ROCK SOLID INVESTMENT Mark and whether such use continues today; (b) the geographical areas in which the identified service has been marketed or distributed; (c) the individuals, or other purchasers to whom the service was sold; and (d) the last date upon which said service was marketed or sold.

**ANSWER:**

9. Identify the persons with knowledge of any and all current uses or planned uses of Applicant's ROCK SOLID INVESTMENT Mark.

**ANSWER:**

10. Indicate every instance in which Applicant is aware that a person has confused or associated goods or services offered in connection with Applicant's ROCK SOLID INVESTMENT mark with the goods or services offered by Opposer, or any communications which may tend to show the possibility of such confusion or association between Applicant and Opposer. For each instance, describe the nature of each in detail and identify the time and place of the instance, the persons involved, and the persons most knowledgeable regarding each instance.

**ANSWER:**

11. If Applicant has not yet used Applicant's ROCK SOLID INVESTMENT Mark in commerce in the United States, state the date upon which Applicant anticipates or intends for such use in commerce to begin.

**ANSWER:**

12. Describe the circumstances related to Applicant's plans or actions to use Applicant's ROCK SOLID INVESTMENT Mark in the United States currently or in the future.

**ANSWER:**

13. State whether Applicant has developed or adopted any logos intended to be used in conjunction with Applicant's ROCK SOLID INVESTMENT Mark, and if so, identify and describe the logos.

**ANSWER:**

14. Identify the trade channels through which Applicant has sold, is currently selling, or intends to sell the services under Applicant's ROCK SOLID INVESTMENT Mark or any variation thereof.

**ANSWER:**

15. Describe any activities undertaken by Applicant in preparation for use of Applicant's ROCK SOLID INVESTMENT Mark in commerce.

**ANSWER:**

16. List and describe all variations of Applicant's ROCK SOLID INVESTMENT Mark that Applicant is using or intends to use in the future.

**ANSWER:**

17. State the amount of money (in U.S. Dollars) Applicant has spent developing, promoting, or advertising Applicant's services bearing or intended to bear the ROCK SOLID INVESTMENT Mark.

**ANSWER:**

18. State whether Applicant had any communication or contact, either orally or in writing, with an examining attorney or other representative from the United States Patent and Trademark Office ("USPTO") who reviewed/examined U.S. Application Serial No. 86/184,144. If so, identify the date of the communication(s) or contact(s), the nature of the communication(s) or contact(s), the subject matter of the communication(s) or contact(s), whether the Applicant and the examining attorney came to an agreement regarding the subject matter of the communication(s) or contact(s), and, if so, state the agreement between the examining attorney and the Applicant.

**ANSWER:**

19. State whether Applicant has ever granted or discussed possibly granting to any person or entity authorization or license to use Applicant's ROCK SOLID INVESTMENT Mark or any variation thereof. If so, identify to whom the authorization or license was made, the date it was granted, and the circumstances surrounding such authorization or license, including duration of permitted use, and the business, goods, or services for which authorization or license was granted.

**ANSWER:**

20. Describe Applicant's principal, target customers for each of the services described in the application for Applicant's ROCK SOLID INVESTMENT Mark.

**ANSWER:**

21. List the principal media by or in which Applicant promotes, or intends to promote, the services described in the application for Applicant's ROCK SOLID INVESTMENT Mark.

**ANSWER:**

22. Describe the methods by which Applicant distributes its promotions, promotional materials, and advertising materials for the services described in the application for Applicant's ROCK SOLID INVESTMENT Mark.

**ANSWER:**

23. State whether any third party, excluding Opposer, has ever objected to Applicant's use or registration of Applicant's ROCK SOLID INVESTMENT Mark, and if so, identify the third party, its mark(s), any related proceeding, and the outcome or resolution

thereof.

**ANSWER:**

24. Identify any documents or any studies, surveys, or other research conducted by or on behalf of Applicant regarding Applicant's affirmative defenses as listed in Applicant's Answer to Notice of Opposition dated January 12, 2015.

**ANSWER:**

25. Identify each person who participated in the preparation of Applicant's responses to the foregoing Interrogatories or furnished any information in response thereto. For each, specify the Interrogatory response for which each such person provided information.

**ANSWER:**

26. Identify all documents relating to the subject matter of the foregoing Interrogatories or any documents or information that was used or referred to in the preparation of Applicant's responses thereto.

**ANSWER:**

Date: February 19, 2015

Respectfully submitted,

LATHROP & GAGE LLP

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ATTORNEYS FOR OPPOSER

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of Opposer's First Set of Interrogatories to Applicant was served upon the Applicant's Attorney of Record by electronic mail pursuant to the agreement reached by counsel of record for both parties during the Discovery Conference conducted on February 6, 2015. A courtesy copy of the foregoing was also sent via First Class U.S. Mail to the address of Applicant's Attorney of Record on this 19th day of February, 2015.

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OFFICE OF MARK TERRY, ESQ.  
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801 Brickell Ave., Ste. 900  
Miami, FL 33131-2979

By:   
David R. Barnard

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In Re: Application Serial No. 86/184,144  
For the Mark: ROCK SOLID INVESTMENT  
Filed: February 4, 2014  
Published in the Official Gazette: August 5, 2014

The Prudential Insurance Company of America	)	
Opposer,	)	
v.	)	
Daryl Bank	)	
Applicant.	)	
	)	Opp. No. 91-219,616

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**OPPOSER’S FIRST SET OF REQUESTS FOR THE  
PRODUCTION OF DOCUMENTS TO APPLICANT**

Pursuant to the Trademark Rules of Practice and Rule 34 of the Federal Rules of Civil Procedure, Opposer The Prudential Insurance Company of America (“*Opposer*”) hereby requests that Applicant Daryl Bank (“*Applicant*”) produce, for the purpose of inspection and copying, the documents and things requested below at the office of Opposer’s counsel within thirty (30) days after service. To the extent permitted by Rule 26(e) of the Federal Rules of Civil Procedure, these Requests shall be deemed continuing and the answers hereto are to be supplemented promptly upon Applicant’s acquisition of further or additional documents or information, including documents or information inconsistent with Applicant’s initial responses to these Requests.

**DEFINITIONS**

1. “Applicant” means the Applicant Daryl Bank, including any affiliated or related companies or entities, any successors, predecessors, divisions, subsidiaries, directors, officers, employees, agents, attorneys, and all other persons acting on or purporting to act on the behalf of Daryl Bank.

2. “Opposer” means The Prudential Insurance Company of America and its predecessors, divisions, subsidiaries, directors, officers, employees, agents, attorneys, and all other persons acting on its behalf or under its control.

3. “Applicant’s ROCK SOLID INVESTMENT Mark” or “the ROCK SOLID INVESTMENT Mark” means the ROCK SOLID INVESTMENT mark identified in Trademark Application Serial No. 86/184,144 filed or caused to be filed by the Applicant Daryl Bank.

4. “Opposer’s ROCK FAMILY OF MARKS” means the marks identified and described in paragraphs 5-23 of the Notice of Opposition and Exhibit 1 attached thereto, namely, the Rock Logo (design only) (Registration Number 792,738 Registered June 13, 1965); OWN A PIECE OF THE ROCK (words and design) (Registration Number 961,764, Registered June 19, 1973); the Second Rock Logo (design only) (Registration Number 961,765, Registered June 19, 1973); the Third Rock Logo (design only) (Registration 1,121,163, Registered June 26, 1979); PIECE OF THE ROCK (Registration Number 1,108,211, Registered December 5, 1978); THE ROCK (Registration Number 1,443,528, Registered June 16, 1987); ROCK SOLID (Registration Number 1,443,527, Registered August 11, 1987); ROCK SOLID. MARKET WISE. (Registration Number 1,452,524, Registered August 11, 1987); the Fourth Rock Logo (design only) (Registration Number 1,616,000, Registered October 2, 1990); The Fifth Rock Logo (design only) (Registration Number 1,576,352, Registered January 9, 1990); ROCK SOLID IN REAL ESTATE (Registration Number 2,497,700, Registered October 16, 2001); ROCK SOLID RETIREMENT (Registration Number 3,428,504, Registered May 13, 2008); ROCK SOLID RELOCATION (Registration Number 3,568,475, Registered January 27, 2009); the Sixth Rock Logo (design only) (Registration Number 3,844,267, Registered September 7, 2010); ROCK-

SOLID ECO-SMART (Registration Number 3,904,843, Registered January 11, 2011); PRU ROCK-SOLID ECO-SMART (words and design) (Registration Number 3,908,488, Registered January 18, 2011); GET A PIECE OF THE ROCK (Registration Number 4,392,395, Registered August 27, 2013).

5. The terms “document” and “documents” shall mean all documents in the possession, custody, or control of Applicant, its agents or its attorneys. “Document” and “documents” are used in the broadest sense and mean the original, and if the original is not available, any copy of the original of every kind, manner, or description, including, but not limited to, documents accessible at Applicant’s request, wherever located.

6. “Person” means, without limitation, any natural person, firm, corporation, limited liability company, proprietorship, partnership, Professional Corporation, association, group, governmental agency, or agent, and any other entity.

7. “Identify” or “identity” means:

(i) When used in reference to a natural person, state the person’s full name, identity of his employer, title, and job description (if applicable) and the person’s residence address and business address or, if unknown, the last known business or residence address;

(ii) When used in reference to a corporation, partnership, or other entity, state its full name, the address of its principal office or place of business, and the address of each present business location that is relevant to the Request;

(iii) When used in reference to a document, state sufficient information about the document so that it can be located among all the documents produced by Applicant or the Opposer, or so that Opposer may ask for it specifically, such as by stating:

- (a) The type of document, i.e., letter, memorandum, chart, or some other means of identifying it;
- (b) The date of the document;
- (c) The identity of the author or signor thereof;
- (d) The identity of all addressees or recipients, including carbon copy

addressees;

- (e) Its present location;
- (f) The identity of the person or persons having present custody thereof; and
- (g) The disposition made of it, if it is no longer in the possession or subject to the control of Applicant.

8. The singular of any word shall be interpreted to include the plural, the plural shall be interpreted to include the singular, and reference to any gender shall be interpreted to include reference to both genders.

9. "Or" means "and/or."

10. "Applicant's Goods" or "Applicant's Services" or similar terms mean and refer to the services descriptions listed in Trademark Application Serial No. 86/184,144 filed or caused to be filed by the Applicant Daryl Bank.

11. The terms "advertising," "promotion," and "marketing" mean any speech intended to influence consumers and/or retailers, including, but not limited to, advertisements, promotional materials, line review presentations, launch presentations, sales pitch materials, events, promotions, or other materials informing consumers or retailers of the ROCK SOLID INVESTMENT Mark, Applicant's Services, or any goods or services incorporating or intended to incorporate the ROCK SOLID INVESTMENT Mark.

12. As used herein, the term "relate," "relating to," or "concerning," means constituting, comprising, containing, setting forth, showing, disclosing, describing, explaining, summarizing, evidencing, or referring to, directly or indirectly.

#### INSTRUCTIONS

- 1. Please restate each Request in full immediately before your response.
- 2. In each instance where a Request is answered on information and belief, Applicant should set forth the basis for such information and belief.

3. In each instance where Applicant denies knowledge or information sufficient to answer the Request, Applicant should set forth the name and address of each person, if any, known to have such knowledge.

4. In each instance where the existence of a document is disclosed, Applicant should attach a copy of such document to its response. If such document is not in Applicant's possession, custody, or control, Applicant should state the name and address of each person known to Applicant to have such possession, custody, or control, and identify which documents are in such person's possession, custody or control. All documents attached to the response should be segregated and identified by the Request to which they are primarily responsive.

5. If Applicant objects to any Request for any reason, including objections for attorney client privilege or the applicability of the work product doctrine, all of the grounds for such objection should be stated in detail and the following information should be provided:

- (a) For documents: (i) the type of document; (ii) general subject matter of the document; (iii) the date of the document; and (iv) such other information as is sufficient to identify the document for a subpoena *duces tecum*, including the author of the document, the addressee of the document, and the relationship of the author and addressee to each other if not apparent from the face of the document.
- (b) For other communications: (i) the name of the person making the communication and the names of persons present while the communication was made and the relationship of the persons present to the person making the communication if not apparent from the face of the document; (ii) the date and place of communication; and (iii) the general subject matter of the communication.

6. If any document requested herein was formerly in Applicant's possession, custody, or control and has been lost, destroyed, or otherwise disposed of, Applicant should submit in lieu of any such document a written statement: (i) describing in detail the nature of the document and its contents; (ii) identifying the person who prepared or authorized the document, and if applicable, the person to whom the document or a copy thereof was sent, whether

indicated thereon or by blind copies; (iii) specifying the date(s) upon which the document was prepared and transmitted; and (iv) specifying, if possible, the date on which the document was lost or destroyed and, if destroyed, the conditions and reasons for such destruction and the persons requesting and performing the destruction.

7. If any document requested herein is related in any manner to a meeting or to any other conversation, all participants in the meeting or conversation should be identified.

8. Applicant shall produce such documents either as they are kept in the usual course of business or shall organize and label them to correspond with the numbered Document Requests.

9. Unless specifically stated, no Request is limited to any time period.

#### **DOCUMENTS REQUESTED**

1. All documents relating to each person who has, or who has claimed to have, an interest in the application to register Applicant's ROCK SOLID INVESTMENT Mark.

2. With respect to each person claiming an interest in the application to register Applicant's ROCK SOLID INVESTMENT Mark named in the answer to Request No. 1, all documents referring to the interest claimed by each person, including all documents relating to the relationship between or among them.

3. A chart or other document identifying Applicant's affiliated entities and their connection to Applicant, including documents sufficient to show Applicant's position or relationship within each entity.

4. All documents referring to Applicant's selection and adoption of the ROCK SOLID INVESTMENT Mark, including, without limitation, any documentation of meetings or discussions held concerning the adoption of the ROCK SOLID INVESTMENT Mark, any documentation relating to the reasons for selecting the ROCK SOLID INVESTMENT Mark, and any documentation relating to the consideration of other marks not selected or filed.

5. All documents relating to any opinion letters, searches, investigations, or other analysis regarding the availability to Applicant or by Applicant of the ROCK SOLID

INVESTMENT Mark, including all documents concerning who requested the opinion or search, when the opinion or search was requested, who prepared the opinion, and the substance thereof.

6. All documents referring to Applicant's ROCK SOLID INVESTMENT Mark, including without limitation, all notes, correspondence, internal memoranda, searches, surveys, email, or any other electronically or digitally stored documents.

7. All documents referring to any acquired knowledge of the Applicant or any research performed by, or on behalf of, the Applicant on Opposer's ROCK FAMILY OF MARKS and all documents surrounding the acquisition of such knowledge.

8. All documents relating to the application to register Applicant's ROCK SOLID INVESTMENT Mark, Serial No. 86/184,144, including documents relating to the preparation and prosecution of such application, all filings in connection with the application, and all communications between Applicant and any other person referring or relating to said application.

9. Representative examples of any promotional materials showing the nature and content of Applicant's promotion of each of the services stated in the services description of the application for the ROCK SOLID INVESTMENT Mark and all documents identifying the locations at which Applicant or any of its affiliates promote or provide such services.

10. All documents relating to or disclosing the manner in which Applicant distributes promotional materials that advertise or promote the services stated in the services description of the application for the ROCK SOLID INVESTMENT Mark.

11. Reports of persons or entities conducting surveys, focus groups, or studies that investigated or determined whether any marks containing the terms ROCK, SOLID, and INVESTMENT created a likelihood of confusion with Opposer's ROCK FAMILY OF MARKS.

12. Reports of persons or entities conducting surveys, focus groups, or studies relating to the degree of public recognition of Opposer or Opposer's ROCK FAMILY OF MARKS.

13. All documents disclosing instances in which any person has confused or associated the services offered in connection with the Applicant's ROCK SOLID

INVESTMENT Mark with the services offered by Opposer.

14. All documents and records relating to, referring to, or documenting: (a) the date of adoption and first use of Applicant's ROCK SOLID INVESTMENT Mark; (b) the geographic areas in which Applicant's services have been offered; (c) the individuals, retail stores, or other purchasers to whom Applicant's services have been or are offered; and (d) the last date upon which Applicant's services were marketed or offered.

15. All documents and records relating to, referring to, or documenting Applicant's anticipated first use of Applicant's ROCK SOLID INVESTMENT Mark in commerce, if Applicant has not yet used the ROCK SOLID INVESTMENT Mark in commerce in the United States.

16. All documents referring to, relating to, or documenting Applicant's development of any logos or packaging bearing the ROCK SOLID INVESTMENT Mark.

17. All documents and records referring to, relating to, or documenting the activities undertaken by Applicant in preparation for use of the ROCK SOLID INVESTMENT Mark.

18. All documents concerning any and all variations of Applicant's ROCK SOLID INVESTMENT Mark that Applicant is using or intends to use in the future.

19. All documents referring to, relating to, or documenting the amount (in U.S. dollars) that Applicant has spent developing, promoting, marketing, or advertising the goods and services bearing or intended to bear Applicant's ROCK SOLID INVESTMENT Mark.

20. All documents disclosing the amount (in U.S. dollars) that Applicant has received as a result of offering services under Applicant's ROCK SOLID INVESTMENT Mark from the date of first use of the ROCK SOLID INVESTMENT Mark to the present time, if any.

21. All documents concerning or identifying the customers or potential customers to whom Applicant's services bearing the ROCK SOLID INVESTMENT Mark are promoted, or to whom Applicant intends to promote such services in the future.

22. All documents and records relating to, referring to, or documenting any communication or contact, either orally or in writing, that Applicant has had with an examining

attorney or other representative from the United States Patent and Trademark Office (“USPTO”) who reviewed/examined U.S. Application Serial No. 86/184,144, including, but not limited to: (1) the date of the communication(s) or contact(s); (2) whether the communication(s) or contact(s) were oral or in writing; (3) the reason for the contact(s); and (4) the subject matter of the communication(s) or contact(s).

23. All documents and records relating to, referring to, or documenting the policing and enforcement of Applicant’s ROCK SOLID INVESTMENT Mark.

24. All documents concerning or embodying any license, agreement, grant of permission, or assignment that involves or relates to Applicant’s ROCK SOLID INVESTMENT Mark.

25. Documents disclosing the principal media by or in which Applicant promotes, or intends to promote, the services described in the application for the ROCK SOLID INVESTMENT Mark.

26. All documents and things which may in any way relate to or evidence that the “Notice of Opposition fails to state a claim upon which relief can be granted,” as asserted by Applicant in Affirmative Defense No. 1 to the Answer.

27. All documents and things which may in any way relate to or evidence that there is “no likelihood of confusion” between Applicant’s ROCK SOLID INVESTMENT Mark and Opposer’s ROCK FAMILY OF MARKS because they are “not similar in appearance,” “not similar in sound,” or “create distinctively different commercial impressions,” as asserted by Applicant in Affirmative Defenses No. 2-4 to the Answer.

28. All documents and things which may in any way relate to or evidence that there is “no likelihood of confusion” between the goods and services offered in connection with Applicant’s ROCK SOLID INVESTMENT Mark and Opposer’s ROCK FAMILY OF MARKS because those goods/services are “dissimilar,” “travel through different channels of trade,” and “are targeted to different consumers,” as asserted by Applicant in Affirmative Defenses No. 5-7 to the Answer.

29. All documents and things which may in any way relate to or evidence that there is “no likelihood of confusion” because current and prospective customers of the goods and services offered in connection with Applicant’s ROCK SOLID INVESTMENT Mark and Opposer’s ROCK FAMILY OF MARKS “are sophisticated and make careful purchasing decisions,” as asserted by Applicant in Affirmative Defense No. 8 to the Answer.

30. All documents and things which may in any way relate to or evidence that “Opposer’s Marks are entitled to a narrow scope of protection,” as asserted by Applicant in Affirmative Defense No. 9 to the Answer.

31. All documents and things which may in any way relate to or evidence that Applicant’s ROCK SOLID INVESTMENT Mark is “not likely to cause dilution by blurring” or “not likely to cause dilution by tarnishment” to Opposer’s ROCK FAMILY OF MARKS, as asserted by Applicant in Affirmative Defenses No. 10-11 to the Answer

32. All documents and records relating to, referring to, or documenting Applicant’s prior use, current use, or intent to use the ROCK SOLID INVESTMENT Mark with financial and investment services.

33. Produce specimens of all labels, tags, decals, stickers, packaging, containers, ad slicks, price lists, displays, and/or point-of-purchase promotional materials which are, have ever been used, or will be used in the future in connection with the offering for sale or sale of products or services by Applicant bearing the ROCK SOLID INVESTMENT Mark.

34. All documents concerning or identifying the trade channels through which Applicant has sold, is currently selling, or intends to sell Applicant’s Services under the ROCK SOLID INVESTMENT Mark or any variation thereof.

35. All documents referring to, relating to, or documenting any studies, surveys, or other research conducted by or on behalf of Applicant regarding the current or potential consumers of products or services that are sold or will be sold under the ROCK SOLID INVESTMENT Mark.

36. All documents concerning any claim, complaint, objection, opposition, cancellation, administrative proceeding, legal opinion, or civil action involving Applicant's ROCK SOLID INVESTMENT Mark, including without limitation all pleadings, motions, investigative reports, responses, deposition transcripts, decisions, opinions, judgments on consent, orders, correspondence or communications, demand letters, replies, documentation regarding settlement proposals, settlement agreements and settlement letters.

37. Produce each and every document relied upon, referred to, or consulted in responding to Opposer's First Set of Interrogatories.

Date: February 19, 2015

Respectfully submitted,

LATHROP & GAGE LLP

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ATTORNEYS FOR OPPOSER

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of Opposer's First Set of Document Requests was served upon the Applicant's Attorney of Record by electronic mail pursuant to the agreement reached by counsel of record for both parties during the Discovery Conference conducted on February 6, 2015. A courtesy copy of the foregoing was also sent via First Class U.S. Mail to the address of Applicant's Attorney of Record on this 19th day of February, 2015.

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OFFICE OF MARK TERRY, ESQ.  
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801 Brickell Ave., Ste. 900  
Miami, FL 33131-2979

By: 

David R. Barnard

# **EXHIBIT B**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In Re: Application Serial No. 86/184,144  
For the Mark: ROCK SOLID INVESTMENT  
Filed: February 4, 2014  
Published in the Official Gazette: August 5, 2014

The Prudential Insurance Company of America

Opposer,

v.

Daryl Bank

Applicant.

Opp. No. 91-219,616

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**OPPOSER’S NOTICE OF DEPOSITION TO APPLICANT**

PLEASE TAKE NOTICE that, pursuant to TBMP § 404.05 and Rule 30 of the Federal Rules of Civil Procedure, Opposer The Prudential Insurance Company of America (“*Opposer*”) will take the oral deposition of Applicant Daryl Bank (“*Applicant*”).

The deposition(s) will be by oral examination before a Notary Public or other officer authorized by law to administer oaths. The deposition testimony will be under oath, will be recorded by stenographic means, and will be videotaped. Examination may continue day to day until completed. The deposition(s) will begin at 9:30 a.m. on April 28, 2015, and will take place at Atlantic Reporting, First American Centre, 201 SW Port St. Lucie Blvd., Suite 108, Port St. Lucie, Florida 34984. You are invited to attend and cross-examine.

Date: March 10, 2015

Respectfully submitted,

LATHROP & GAGE LLP

By: 

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Tel: (913) 451-5100

ATTORNEYS FOR OPPOSER

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of Opposer's Notice of Deposition to Applicant was served upon the Applicant's Attorney of Record by electronic mail on March 10, 2015 pursuant to the agreement reached by counsel of record for both parties during the Discovery Conference conducted on February 6, 2015. A courtesy copy of the foregoing was also sent via First Class U.S. Mail to the address of Applicant's Attorney of Record on the same day.

Mark Terry  
OFFICE OF MARK TERRY, ESQ.  
Email: [mark@terryfirm.com](mailto:mark@terryfirm.com)  
801 Brickell Ave., Ste. 900  
Miami, FL 33131-2979

By:   
David R. Barnard

# **EXHIBIT C**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In Re: Application Serial No. 86/184,144  
For the Mark: ROCK SOLID INVESTMENT  
Filed: February 4, 2014  
Published in the Official Gazette: August 5, 2014

<hr/>		)	
The Prudential Insurance Company of America		)	
	Opposer,	)	
		)	
	v.	)	Opp. No. 91-219,616
		)	
Daryl Bank		)	
		)	
	Applicant.	)	
<hr/>		)	

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**OPPOSER’S INITIAL DISCLOSURES**

Opposer The Prudential Insurance Company of America (“*Opposer*”), by and through its counsel of record and pursuant to Trademark Rule 2.120 and Rule 26 of the Federal Rules of Civil Procedure, submits and serves its initial disclosures upon the Applicant Daryl Bank (“*Applicant*”).

Opposer’s investigation is ongoing and these Initial Disclosures are based upon the information readily available at this time in light of Opposer’s initial investigation of the facts. Pursuant to Trademark Rule 2.120(a) and Fed. R. Civ. P. 26(e), Opposer reserves the right to modify or supplement the information provided in these Initial Disclosures based upon its continuing investigation and discovery in these proceedings.

Opposer’s Initial Disclosures are made without waiving: (1) the right to object on the grounds of competency, privilege, relevancy, materiality, hearsay, or any other proper ground, to

the use of any such information, for any purpose, in whole or in part, in any subsequent proceeding in this action or any other action; and (2) the right to object on any ground, at any time, to any other discovery request or proceeding involving or relating to the subject matter of these disclosures.

The term “*Opposer’s ROCK FAMILY OF MARKS*” means the marks identified and described in paragraphs 5-23 of the Notice of Opposition and Exhibit 1 attached thereto, namely, the Rock Logo (design only) (Registration Number 792,738 Registered June 13, 1965); OWN A PIECE OF THE ROCK (words and design) (Registration Number 961,764, Registered June 19, 1973); the Second Rock Logo (design only) (Registration Number 961,765, Registered June 19, 1973); the Third Rock Logo (design only) (Registration 1,121,163, Registered June 26, 1979); PIECE OF THE ROCK (Registration Number 1,108,211, Registered December 5, 1978); THE ROCK (Registration Number 1,443,528, Registered June 16, 1987); ROCK SOLID (Registration Number 1,443,527, Registered August 11, 1987); ROCK SOLID. MARKET WISE. (Registration Number 1,452,524, Registered August 11, 1987); the Fourth Rock Logo (design only) (Registration Number 1,616,000, Registered October 2, 1990); The Fifth Rock Logo (design only) (Registration Number 1,576,352, Registered January 9, 1990); ROCK SOLID IN REAL ESTATE (Registration Number 2,497,700, Registered October 16, 2001); ROCK SOLID RETIREMENT (Registration Number 3,428,504, Registered May 13, 2008); ROCK SOLID RELOCATION (Registration Number 3,568,475, Registered January 27, 2009); the Sixth Rock Logo (design only) (Registration Number 3,844,267, Registered September 7, 2010); ROCK-SOLID ECO-SMART (Registration Number 3,904,843, Registered January 11, 2011); PRU ROCK-SOLID ECO-SMART (words and design) (Registration Number 3,908,488, Registered January 18, 2011); GET A PIECE OF THE ROCK (Registration Number 4,392,395, Registered August 27, 2013).

The terms “*Applicant’s ROCK SOLID INVESTMENT Mark*” or “*the ROCK SOLID INVESTMENT Mark*” mean the ROCK SOLID INVESTMENT mark identified in Trademark Application Serial No. 86/184,144 filed or caused to be filed by Applicant Daryl Bank.

# **EXHIBIT A**

(CONTINUED)

**A. Witnesses Opposer May Use To Support Its Claims.**

The following individuals and entities are believed to have knowledge of the events underlying this opposition and may be called by Opposer to provide testimony. Opposer expressly reserves the right to identify additional potential witnesses as discovery progresses.

1. Colin McConnell has knowledge of, or may testify about, the history, prestige, fame, use, and value of Opposer's ROCK FAMILY OF MARKS; the marketing, advertising, promotional, and sales efforts associated with the financial services, insurance, and business offerings bearing the ROCK FAMILY OF MARKS; the degree of public recognition of the financial services, insurance, and business offerings bearing the ROCK FAMILY OF MARKS; the channels of trade used by Opposer for the financial services, insurance, and business offerings bearing the ROCK FAMILY OF MARKS; and the likelihood of confusion and dilution between Opposer's ROCK FAMILY OF MARKS and Applicant's ROCK SOLID INVESTMENT mark. Mr. McConnell may be contacted through counsel for the Opposer.

2. Other representatives of Opposer, its agents, consultants, employees, and former employees, whom may have knowledge of the facts relevant to the claims in the Notice of Opposition and will be specifically identified as discovery progress, if necessary.

3. Expert witnesses designated by Opposer, as necessary or appropriate.

4. Applicant Daryl Bank.

5. Employees and/or corporate representatives of Dominion Investment Group.

6. Employees and/or corporate representatives of any other related or affiliated companies owned, operated, or managed by Applicant Daryl Bank.

7. All persons or entities identified in the Initial Disclosures of Applicant, disclosed through discovery, or discovered during Opposer's continuing investigation of the relevant facts, evidence, and witnesses.

8. Rebuttal witnesses identified during the course of discovery in this action.

**B. Documents, Electronically Stored Information, and Tangible Things Opposer May Use To Support Its Claims.**

Opposer identifies the following documents, electronically stored information, and tangibles things that it may use to support its claims in this action as required by Trademark Rule 2.120(a) and Fed. R. Civ. P. 26(a).

1. Documents, electronically stored information, and/or tangible things demonstrating the history, prestige, fame, use, and value of Opposer's ROCK FAMILY OF MARKS.

2. Documents, electronically stored information, and/or tangible things demonstrating the nature of the financial, insurance, and business services offered by Opposer in general and under the ROCK FAMILY OF MARKS.

3. Documents, electronically stored information, and/or tangible things demonstrating the channels of trade used by Opposer when selling or offering to sell the financial, insurance, and business services under the ROCK FAMILY OF MARKS.

4. Documents, electronically stored information, and/or tangible things demonstrating the nature of the consumers or purchasers of Opposer's financial, insurance, and business services.

5. The file history of the application to register Applicant's ROCK SOLID INVESTMENT mark.

6. The file histories of registrations covering Opposer's ROCK FAMILY OF MARKS, including those registrations cited in the Notice of Opposition.

7. Documents, electronically stored information, and/or tangible things demonstrating the likelihood of confusion and dilution between Opposer's ROCK FAMILY OF MARKS and Applicant's ROCK SOLID INVESTMENT mark and the irreparable harm and damages Opposer would suffer therefrom.

8. Any documents, electronically stored information, and/or tangible things identified through Opposer's continuing investigation of relevant facts, evidence, and witnesses.

9. Documents produced or identified by Applicant.

10. Rebuttal documents, electronically stored information, and/or tangible things.

The above identified documents, electronically stored information, and/or tangible things, to the extent they exist and can be presently identified, are in Opposer's possession, custody, and control at the following address: 213 Washington Street—Mezzanine, Newark, New Jersey 07102. Other records are in the possession of the United States Patent and Trademark Office and/or the Applicant. Opposer reserves the right to add additional documents, electronically stored information, and/or tangible things as they are identified during discovery. Opposer further reserves the right to add additional documents as they are identified in Opposer's testimony period and in its Notice of Reliance.

**C. Computation of Damages.**

Opposer is not currently seeking any damages as part of this proceeding.

**D. Insurance.**

Opposer is not aware of any insurance agreement owned by it that would be relevant to any aspect of this proceeding.

Date: March 13, 2015

Respectfully submitted,

LATHROP & GAGE LLP

By:   
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David R. Barnard  
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Tel: (913) 451-5100

ATTORNEYS FOR OPPOSER

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of Opposer's Initial Disclosures to Applicant was served upon the Applicant's Attorney of Record by electronic mail on March 13, 2015 pursuant to the agreement reached by counsel of record for both parties during the Discovery Conference conducted on February 6, 2015, and a courtesy copy of the foregoing was also sent via First Class U.S. Mail to the address of Applicant's Attorney of Record on the same day.

Mark Terry  
OFFICE OF MARK TERRY, ESQ.  
Email: [mark@terryfirm.com](mailto:mark@terryfirm.com)  
801 Brickell Ave., Ste. 900  
Miami, FL 33131-2979

By:



David R. Barnard

# **EXHIBIT D**

**Mueller, Terry L.**

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**From:** Meriwether, Luke M.  
**Sent:** Wednesday, March 18, 2015 1:43 PM  
**To:** mark@terryfirm.com  
**Cc:** Barnard, David; Mueller, Terry L.  
**Subject:** RE: Prudential/Bank - Prudential's Rule 26 disclosures

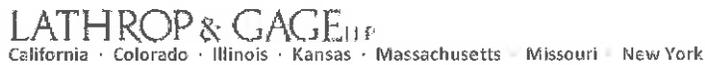
Mark –

Just wanted to follow up on this. When do you anticipate serving Mr. Bank’s Rule 26 disclosures? Per the TTAB’s Scheduling Order, they were due on March 13th.

Please let us know as we would like to plan our discovery efforts accordingly. Thanks

**LUKE M. MERIWETHER**

LATHROP & GAGE LLP | 2345 GRAND BLVD, SUITE 2200 | KANSAS CITY, MO 64108  
TEL: 816.460.5312 | FAX: 816.292.2001  
[LMERIWETHER@LATHROPGAGE.COM](mailto:LMERIWETHER@LATHROPGAGE.COM)



**From:** Meriwether, Luke M.  
**Sent:** Friday, March 13, 2015 3:33 PM  
**To:** mark@terryfirm.com  
**Cc:** Barnard, David; Mueller, Terry L.  
**Subject:** Prudential/Bank - Prudential's Rule 26 disclosures

Mark –

Attached are Prudential’s Initial Rule 26 disclosures. Please let us know when we can expect the same from Mr. Bank. Thanks

**LUKE M. MERIWETHER**

LATHROP & GAGE LLP | 2345 GRAND BLVD, SUITE 2200 | KANSAS CITY, MO 64108  
TEL: 816.460.5312 | FAX: 816.292.2001  
[LMERIWETHER@LATHROPGAGE.COM](mailto:LMERIWETHER@LATHROPGAGE.COM)



# **EXHIBIT E**

**Mueller, Terry L.**

---

**From:** Meriwether, Luke M.  
**Sent:** Tuesday, March 24, 2015 5:40 PM  
**To:** mark@terryfirm.com  
**Cc:** Barnard, David; Mueller, Terry L.  
**Subject:** Prudential/Bank - Rule 26 Disclosures and Discovery responses

Mark –

I am writing to inquire about your client’s Rule 26 disclosures (for the 3rd time) and responses to Prudential’s First Request for the Production of Documents and Interrogatories that were served on February 19, 2015. As you know, your Rule 26 disclosures were due March 13th and are now eleven days late. Further, written responses to Prudential’s discovery requests, as well as production of relevant documentation from your client, were due yesterday, March 23rd.

To date, we have not received anything you, nor been given any explanation for the delays. Please let us know when you intend to serve your Rule 26 disclosures, respond to the outstanding Requests for Production and Interrogatories, and produce the requested documentation.

Prudential reserves its right to pursue any and all relief available for your continued failure to abide by your discovery obligations and the Board’s Scheduling Order.

**LUKE M. MERIWETHER**

LATHROP & GAGE LLP | 2345 GRAND BLVD, SUITE 2200 | KANSAS CITY, MO 64108

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[LMERIWETHER@LATHROPGAGE.COM](mailto:LMERIWETHER@LATHROPGAGE.COM)

**LATHROP & GAGE** LLP

California · Colorado · Illinois · Kansas · Massachusetts · Missouri · New York

# **EXHIBIT F**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re: App. Ser. No. 86184144  
Mark: ROCK SOLID INVESTMENT  
Filed: Feb. 4, 2014

The Prudential Insurance Company of America	)	
	)	
Opposer,	)	Opposition No. 91-219,616
	)	Application Serial No. 86/184,144
	)	
v.	)	
	)	
Daryl Bank	)	
	)	
Applicant.	)	

**APPLICANT'S FIRST RESPONSE TO OPPOSER'S  
REQUESTS TO PRODUCE DOCUMENTS AND  
INTERROGATORIES**

Applicant by and through its undersigned counsel, hereby submits its objections and responses to Opposer's First Set of Requests For Production and First Interrogatories. I hereby certify that on March 24, 2015, I served these objections on all counsel of record via email and via regular mail.

/s/ Mark Terry/  
Mark Terry, B.C.S., FBN 506151  
Office of Mark Terry, Esq.  
801 Brickell Ave., Suite #900  
Miami, FL 33131  
786-443-7720 voice  
786-513-0381 fax  
mark@terryfirm.com

## RESPONSES TO REQUESTS FOR DOCUMENTS

1. All documents relating to each person who has, or who has claimed to have, an interest in the application to register Applicant's ROCK SOLID INVESTMENT Mark.

**RESPONSE TO REQUEST NO. 1:** Object to the extent the request is overbroad, unduly burdensome and seeking irrelevant information. Without waiving said objections, in a good faith effort to respond to Opposer's discovery, Applicant directs the Opposer to the prosecution history of Application Serial No. 86/184,144, which defines the current Applicant of said application, and which documents are freely available to the public via the web site of the U.S. Patent Office. Applicant also directs the Opposer to the incorporation documents for Dominion Diamonds, LLC, which documents are freely available to the public via the web site of the Florida Dept. of State.

2. With respect to each person claiming an interest in the application to register Applicant's ROCK SOLID INVESTMENT Mark named in the answer to Request No. 1, all documents referring to the interest claimed by each person, including all documents relating to the relationship between or among them.

**RESPONSE TO REQUEST NO. 2:** Applicant directs the Opposer to the prosecution history of Application Serial No. 86/184,144, which defines the current Applicant of said application, and which documents are freely available to the public via the web site of the U.S. Patent Office. Applicant also directs the Opposer to the incorporation documents for Dominion Diamonds, LLC, which documents are freely available to the public via the web site of the Florida Dept. of State.

3. A chart or other document identifying Applicant's affiliated entities and their connection to Applicant, including documents sufficient to show Applicant's position or relationship within each entity.

**RESPONSE TO REQUEST NO. 3:** Applicant directs the Opposer to the incorporation documents for Dominion Diamonds, LLC, which documents are freely available to the public via the web site of the

Florida Dept. of State.

4. All documents referring to Applicant's selection and adoption of the ROCK SOLID INVESTMENT Mark, including, without limitation, any documentation of meetings or discussions held concerning the adoption of the ROCK SOLID INVESTMENT Mark, any documentation relating to the reasons for selecting the ROCK SOLID INVESTMENT Mark, and any documentation relating to the consideration of other marks not selected or filed

**RESPONSE TO REQUEST NO. 4:** No responsive documents.

5. All documents relating to any opinion letters, searches, investigations, or other analysis regarding the availability to Applicant or by Applicant of the ROCK SOLID INVESTMENT Mark, including all documents concerning who requested the opinion or search, when the opinion or search was requested, who prepared the opinion, and the substance thereof

**RESPONSE TO REQUEST NO. 5:** Object to the extent the request seeks information that is protected under attorney client privilege and/or attorney work product. Privilege log: attorney file.

6. All documents referring to Applicant's ROCK SOLID INVESTMENT Mark, including without limitation, all notes, correspondence, internal memoranda, searches, surveys, email, or any other electronically or digitally stored documents

**RESPONSE TO REQUEST NO. 6:** Object to the extent the request is overbroad, unduly burdensome and seeking irrelevant information. Object to the extent the request seeks information that is protected under attorney client privilege and/or attorney work product. Privilege log: attorney file. Without waiving said objections, in a good faith effort to respond to Opposer's discovery, Applicant directs the Opposer to the prosecution history of Application Serial No. 86/184,144, which documents are freely available to the public via the web site of the U.S. Patent Office.

7. All documents referring to any acquired knowledge of the Applicant or any research performed by, or on behalf of, the Applicant on Opposer's ROCK FAMILY OF MARKS and all documents surrounding the acquisition of such knowledge

**RESPONSE TO REQUEST NO. 7:** Object to the extent the request seeks information that is protected under attorney client privilege and/or attorney work product. Privilege log: attorney file.

8. All documents relating to the application to register Applicant's ROCK SOLID INVESTMENT Mark, Serial No. 86/184,144, including documents relating to the preparation and prosecution of such application, all filings in connection with the application, and all communications between Applicant and any other person referring or relating to said application.

**RESPONSE TO REQUEST NO. 8:** Object to the extent the request seeks information that is protected under attorney client privilege and/or attorney work product. Privilege log: attorney file.

Without waiving said objections, in a good faith effort to respond to Opposer's discovery, Applicant directs the Opposer to the prosecution history of Application Serial No. 86/184,144, which documents are freely available to the public via the web site of the U.S. Patent Office.

9. Representative examples of any promotional materials showing the nature and content of Applicant's promotion of each of the services stated in the services description of the application for the ROCK SOLID INVESTMENT Mark and all documents identifying the locations at which Applicant or any of its affiliates promote or provide such services.

**RESPONSE TO REQUEST NO. 9:** Object to the extent the request is overbroad, unduly burdensome and seeking irrelevant information. Object to the extent the request seeks confidential and proprietary information. Without waiving said objections, in a good faith effort to respond to Opposer's discovery, Applicant provides Exhibit A, which includes samples of use of the ROCK SOLID INVESTMENT mark.

10. All documents relating to or disclosing the manner in which Applicant distributes promotional materials that advertise or promote the services stated in the services description of the application for the ROCK SOLID INVESTMENT Mark.

**RESPONSE TO REQUEST NO. 10:** Object to the extent the request is overbroad, unduly burdensome and seeking irrelevant information. Object to the extent the request seeks confidential and proprietary information.

11. Reports of persons or entities conducting surveys, focus groups, or studies that investigated or determined whether any marks containing the terms ROCK, SOLID, and INVESTMENT created a likelihood of confusion with Opposer's ROCK FAMILY OF MARKS.

**RESPONSE TO REQUEST NO. 11:** Object to the extent the request seeks information that is

protected under attorney client privilege and/or attorney work product. Privilege log: attorney file.

12. Reports of persons or entities conducting surveys, focus groups, or studies relating to the degree of public recognition of Opposer or Opposer's ROCK FAMILY OF MARKS.

**RESPONSE TO REQUEST NO. 12:** No responsive documents.

13. All documents disclosing instances in which any person has confused or associated the services offered in connection with the Applicant's ROCK SOLID INVESTMENT Mark with the services offered by Opposer.

**RESPONSE TO REQUEST NO. 13:** No responsive documents.

14. All documents and records relating to, referring to, or documenting: (a) the date of adoption and first use of Applicant's ROCK SOLID INVESTMENT Mark; (b) the geographic areas in which Applicant's services have been offered; (c) the individuals, retail stores, or other purchasers to whom Applicant's services have been or are offered; and (d) the last date upon which Applicant's services were marketed or offered.

**RESPONSE TO REQUEST NO. 14:** Object to the extent the request is overbroad, unduly burdensome and seeking irrelevant information. Object to the extent the request seeks confidential and proprietary information.

15. All documents and records relating to, referring to, or documenting Applicant's anticipated first use of Applicant's ROCK SOLID INVESTMENT Mark in commerce, if Applicant has not yet used the ROCK SOLID INVESTMENT Mark in commerce in the United States.

**RESPONSE TO REQUEST NO. 15:** No responsive documents.

16. All documents referring to, relating to, or documenting Applicant's development of any logos or packaging bearing the ROCK SOLID INVESTMENT Mark.

**RESPONSE TO REQUEST NO. 16:** No responsive documents. Applicant will supplement this response as additional data becomes available.

17. All documents and records referring to, relating to, or documenting the activities undertaken by Applicant in preparation for use of the ROCK SOLID INVESTMENT Mark.

**RESPONSE TO REQUEST NO. 17:** Object to the extent the request is overbroad, unduly burdensome and seeking irrelevant information. Object to the extent the request seeks confidential and

proprietary information.

18. All documents concerning any and all variations of Applicant's ROCK SOLID INVESTMENT Mark that Applicant is using or intends to use in the future.

**RESPONSE TO REQUEST NO. 18:** Object to the extent the request is overbroad, unduly burdensome and seeking irrelevant information. Without waiving said objections, in a good faith effort to respond to Opposer's discovery, Applicant provides Exhibit A, which includes samples of use of the ROCK SOLID INVESTMENT mark.

19. All documents referring to, relating to, or documenting the amount (in U.S. dollars) that Applicant has spent developing, promoting, marketing, or advertising the goods and services bearing or intended to bear Applicant's ROCK SOLID INVESTMENT Mark.

**RESPONSE TO REQUEST NO. 19:** Object to the extent the request is overbroad, unduly burdensome and seeking irrelevant information. Object to the extent the request seeks confidential and proprietary information.

20. All documents disclosing the amount (in U.S. dollars) that Applicant has received as a result of offering services under Applicant's ROCK SOLID INVESTMENT Mark from the date of first use of the ROCK SOLID INVESTMENT Mark to the present time, if any.

**RESPONSE TO REQUEST NO. 20:** Object to the extent the request is overbroad, unduly burdensome and seeking irrelevant information. Object to the extent the request seeks confidential and proprietary information.

21. All documents concerning or identifying the customers or potential customers to whom Applicant's services bearing the ROCK SOLID INVESTMENT Mark are promoted, or to whom Applicant intends to promote such services in the future.

**RESPONSE TO REQUEST NO. 21:** Object to the extent the request is overbroad, unduly burdensome and seeking irrelevant information. Object to the extent the request seeks confidential and

proprietary information.

22. All documents and records relating to, referring to, or documenting any communication or contact, either orally or in writing, that Applicant has had with an examining attorney or other representative from the United States Patent and Trademark Office ("USPTO") who reviewed/examined U.S. Application Serial No. 86/184,144, including, but not limited to: (1) the date of the communication(s) or contact(s); (2) whether the communication(s) or contact(s) were oral or in writing; (3) the reason for the contact(s); and (4) the subject matter of the communication(s) or contact(s).

**RESPONSE TO REQUEST NO. 22:** Applicant directs the Opposer to the prosecution history of Application Serial No. 86/184,144, which documents are freely available to the public via the web site of the U.S. Patent Office.

23. All documents and records relating to, referring to, or documenting the policing and enforcement of Applicant's ROCK SOLID INVESTMENT Mark.

**RESPONSE TO REQUEST NO. 23:** No responsive documents.

24. All documents concerning or embodying any license, agreement, grant of permission, or assignment that involves or relates to Applicant's ROCK SOLID INVESTMENT Mark.

**RESPONSE TO REQUEST NO. 24:** No responsive documents.

25. Documents disclosing the principal media by or in which Applicant promotes, or intends to promote, the services described in the application for the ROCK SOLID INVESTMENT Mark.

**RESPONSE TO REQUEST NO. 25:** Object to the extent the request is overbroad, unduly burdensome and seeking irrelevant information. Object to the extent the request seeks confidential and proprietary information.

26. All documents and things which may in any way relate to or evidence that the "Notice of Opposition fails to state a claim upon which relief can be granted," as asserted by Applicant in Affirmative Defense No. 1 to the Answer.

**RESPONSE TO REQUEST NO. 26:** No responsive documents. Applicant will supplement this

response as additional data becomes available.

27. All documents and things which may in any way relate to or evidence that there is "no likelihood of confusion" between Applicant's ROCK SOLID INVESTMENT Mark and Opposer's ROCK FAMILY OF MARKS because they are "not similar in appearance," "not similar in sound," or "create distinctively different commercial impressions," as asserted by Applicant in Affirmative Defenses No. 2-4 to the Answer.

**RESPONSE TO REQUEST NO. 27:** No responsive documents. Applicant will supplement this response as additional data becomes available.

28. All documents and things which may in any way relate to or evidence that there is "no likelihood of confusion" between the goods and services offered in connection with Applicant's ROCK SOLID INVESTMENT Mark and Opposer's ROCK FAMILY OF MARKS because those goods/services are "dissimilar," "travel through different channels of trade," and "are targeted to different consumers," as asserted by Applicant in Affirmative Defenses No. 5-7 to the Answer.

**RESPONSE TO REQUEST NO. 28:** No responsive documents. Applicant will supplement this response as additional data becomes available.

29. All documents and things which may in any way relate to or evidence that there is "no likelihood of confusion" because current and prospective customers of the goods and services offered in connection with Applicant's ROCK SOLID INVESTMENT Mark and Opposer's ROCK FAMILY OF MARKS "are sophisticated and make careful purchasing decisions," as asserted by Applicant in Affirmative Defense No. 8 to the Answer.

**RESPONSE TO REQUEST NO. 29:** No responsive documents. Applicant will supplement this response as additional data becomes available.

30. All documents and things which may in any way relate to or evidence that "Opposer's Marks are entitled to a narrow scope of protection," as asserted by Applicant in Affirmative Defense No. 9 to the Answer.

**RESPONSE TO REQUEST NO. 30:** No responsive documents. Applicant will supplement this

response as additional data becomes available.

31. All documents and things which may in any way relate to or evidence that Applicant's ROCK SOLID INVESTMENT Mark is "not likely to cause dilution by blurring" or "not likely to cause dilution by tarnishment" to Opposer's ROCK FAMILY OF MARKS, as asserted by Applicant in Affirmative Defenses No. 10-11 to the Answer.

**RESPONSE TO REQUEST NO. 31:** No responsive documents. Applicant will supplement this response as additional data becomes available.

32. All documents and records relating to, referring to, or documenting Applicant's prior use, current use, or intent to use the ROCK SOLID INVESTMENT Mark with financial and investment services.

**RESPONSE TO REQUEST NO. 32:** Object to the extent the request is overbroad, unduly burdensome and seeking irrelevant information. Object to the extent the request seeks confidential and proprietary information. Without waiving said objections, in a good faith effort to respond to Opposer's discovery, Applicant provides Exhibit A, which includes samples of use of the ROCK SOLID INVESTMENT mark.

33. Produce specimens of all labels, tags, decals, stickers, packaging, containers, ad slicks, price lists, displays, and/or point-of-purchase promotional materials which are, have ever been used, or will be used in the future in connection with the offering for sale or sale of products or services by Applicant bearing the ROCK SOLID INVESTMENT Mark.

**RESPONSE TO REQUEST NO. 33:** No responsive documents.

34. All documents concerning or identifying the trade channels through which Applicant has sold, is currently selling, or intends to sell Applicant's Services under the ROCK SOLID INVESTMENT Mark or any variation thereof.

**RESPONSE TO REQUEST NO. 34:** Object to the extent the request is overbroad, unduly burdensome and seeking irrelevant information. Object to the extent the request seeks confidential and proprietary information.

35. All documents referring to, relating to, or documenting any studies, surveys, or other research conducted by or on behalf of Applicant regarding the current or potential consumers of products or services that are sold or will be sold under the ROCK SOLID INVESTMENT Mark.

**RESPONSE TO REQUEST NO. 35:** Object to the extent the request is overbroad, unduly burdensome and seeking irrelevant information. Object to the extent the request seeks confidential and

proprietary information.

36 All documents concerning any claim, complaint, objection, opposition, cancellation, administrative proceeding, legal opinion, or civil action involving Applicant's ROCK SOLID INVESTMENT Mark, including without limitation all pleadings, motions, investigative reports, responses, deposition transcripts, decisions, opinions, judgments on consent, orders, correspondence or communications, demand letters, replies, documentation regarding settlement proposals, settlement agreements and settlement letters.

**RESPONSE TO REQUEST NO. 36:** Object to the extent the request seeks information that is protected under attorney client privilege and/or attorney work product. Privilege log: attorney file. Without waiving said objections, in a good faith effort to respond to Opposer's discovery, Applicant directs the Opposer to the prosecution history of Application Serial No. 86/184,144, and the online docket for this opposition, which documents are freely available to the public via the web site of the U.S. Patent Office.

37 Produce each and every document relied upon, referred to, or consulted in responding to Opposer's First Set of Interrogatories.

**RESPONSE TO REQUEST NO. 37:** See objections and responsive documents provided above.

## RESPONSES TO INTERROGATORIES

1. Identify each person who has, or who has claimed to have, an interest in the title of Applicant's ROCK SOLID INVESTMENT Mark, describe the circumstances related to each person's interest or claimed interest in the title of the ROCK SOLID INVESTMENT Mark, and describe the relationship between or among such persons.

**RESPONSE TO INTERROGATORY NO. 1:** Daryl Bank and Dominion Diamonds, LLC, a Florida LLC.

2. Identify any entities with which the Applicant is affiliated, partnered with, or possess an ownership interest in. For each entity identified, state the Applicant's position and provide a description of Applicant's duties.

**RESPONSE TO INTERROGATORY NO. 2:** Dominion Diamonds, LLC, a Florida LLC. Daryl Bank is a managing member of said LLC. Mr. Bank's duties including managing most aspects of said LLC's business.

3. Identify each location in the United States in which Applicant and the entities or individuals identified in the previous Interrogatories operate an office or conduct business.

**RESPONSE TO INTERROGATORY NO. 3:** Object to the extent the request is overbroad, unduly burdensome and seeking irrelevant information. Object to the extent the request seeks confidential and proprietary information. Without waiving said objections, in a good faith effort to respond to Opposer's discovery, Applicant provides the following response: Daryl Bank and Dominion Diamonds, LLC operate or conduct business in over 40 states in the U.S.

4. State whether Applicant conducted or caused to be conducted a search or any other investigation to determine whether Applicant's ROCK SOLID INVESTMENT Mark was available for adoption and use in the United States. If yes, identify (a) the date(s) when each search or investigation was conducted; and (b) identify the person or persons participating in each search and/or investigation.

**RESPONSE TO INTERROGATORY NO. 4:** No.

5. Describe the circumstances related to the selection and decision to adopt Applicant's ROCK SOLID INVESTMENT Mark and identify all participants to that selection and adoption process.

**RESPONSE TO INTERROGATORY NO. 5:** Daryl Bank conceived of the mark because it is a play on words between the product his company offers (i.e., diamonds) and the nature of the investment

in said diamonds.

6. State when Applicant first acquired knowledge of any of Opposer's ROCK FAMILY OF MARKS, and identify and describe the circumstances surrounding the acquisition of such knowledge.

**RESPONSE TO INTERROGATORY NO. 6:** Daryl Bank has vague familiarity with the ROCK family of marks but has no specific knowledge of when or how he learned of them.

7. Identify each and every service provided in connection with Applicant's ROCK SOLID INVESTMENT Mark that is either in use currently or that is intended to be used in the future in the United States.

**RESPONSE TO INTERROGATORY NO. 7:** Diamonds; Cut diamonds; Operating on-line marketplaces featuring precious stones; Compilation, analysis and provision of information relating to the trading of precious stones; Commercial and industrial management assistance, in particular by means of multimedia platforms in the field of online trading; Providing business administration assistance for others in the field trading in precious stones; Dissemination of business and commercial information in the field trading of precious stones via Internet and online forum facilities; providing an electronic marketplace for the trading of precious stones; Providing on line electronic computer databases which provide subscribers with trade information in the field of precious stones; Commodities exchange services; Financial asset management and investment services, namely trading, hedging, providing valuation, and financial research and consulting services in the field of precious stones; financial services, namely, commodity trading; financial asset management and brokerage services all relating to commodities; financial information services provided online from a computer database or a global computer network, namely, providing information on trading in the field of precious stones; Commodity trading; providing information and data in the field of financial risk management and trading; commodity trading for others, namely, trading in precious stones; Providing financial administration in the field trading in precious stones; financial services, namely, on-line real time trading of precious stones; financial analysis and research services; Industrial research and analysis in the field of trading of precious stones; providing information about computer software for use in the field of precious stones exchange trading; electronic storage and retrieval of information relating to the trading of precious stones; authentication in the field of precious stones traded via commodities exchanges

8. For each and every service identified in the answer to the previous Interrogatory, state: (a) the date of adoption of first use of Applicant's ROCK SOLID INVESTMENT Mark and whether such use continues today; (b) the geographical areas in which the identified service has been marketed or distributed; (c) the individuals, or other purchasers to whom the service was sold; and (d) the last date upon which said service was marketed or sold.

**RESPONSE TO INTERROGATORY NO. 8:** Object to the extent the request is overbroad, unduly burdensome and seeking irrelevant information. Object to the extent the request seeks confidential and proprietary information. Without waiving said objections, in a good faith effort to respond to Opposer's discovery, Applicant provides the following response: first use of services in classes 14, 35, 36 and 42 first occurred in February of 2014 and, Daryl Bank and Dominion Diamonds, LLC operate or conduct

business in over 40 states in the U.S.

9. Identify the persons with knowledge of any and all current uses or planned uses of Applicant's ROCK SOLID INVESTMENT Mark.

**RESPONSE TO INTERROGATORY NO. 9:** Daryl Bank

10. Indicate every instance in which Applicant is aware that a person has confused or associated goods or services offered in connection with Applicant's ROCK SOLID INVESTMENT mark with the goods or services offered by Opposer, or any communications which may tend to show the possibility of such confusion or association between Applicant and Opposer. For each instance, describe the nature of each in detail and identify the time and place of the instance, the persons involved, and the persons most knowledgeable regarding each instance.

**RESPONSE TO INTERROGATORY NO. 10:** None

11. If Applicant has not yet used Applicant's ROCK SOLID INVESTMENT Mark in commerce in the United States, state the date upon which Applicant anticipates or intends for such use in commerce to begin.

**RESPONSE TO INTERROGATORY NO. 11:** No response required

12. Describe the circumstances related to Applicant's plans or actions to use Applicant's ROCK SOLID INVESTMENT Mark in the United States currently or in the future.

**RESPONSE TO INTERROGATORY NO. 12:** Object to the extent the request is overbroad, unduly burdensome and seeking irrelevant information. Without waiving said objections, in a good faith effort to respond to Opposer's discovery, Applicant provides the following response: Applicant currently uses its mark in association with services in classes 14, 35, 36 and 42.

13. State whether Applicant has developed or adopted any logos intended to be used in conjunction with Applicant's ROCK SOLID INVESTMENT Mark, and if so, identify and describe the logos.

**RESPONSE TO INTERROGATORY NO. 13:** No

14. Identify the trade channels through which Applicant has sold, is currently selling, or intends to sell the services under Applicant's ROCK SOLID INVESTMENT Mark or any variation thereof.

**RESPONSE TO INTERROGATORY NO. 14:** Direct sales

15. Describe any activities undertaken by Applicant in preparation for use of Applicant's ROCK SOLID INVESTMENT Mark in commerce.

**RESPONSE TO INTERROGATORY NO. 15:** Object to the extent the request is overbroad, unduly burdensome and seeking irrelevant information. Object to the extent the request seeks confidential and proprietary information.

16. List and describe all variations of Applicant's ROCK SOLID INVESTMENT Mark that Applicant is using or intends to use in the future.

**RESPONSE TO INTERROGATORY NO. 16:** The phrase "A Rock Solid Investment" in upper and lower case characters, in parentheses and in common black font and the phrase ROCK SOLID INVESTMENT in upper case letters, in common grey font.

17. State the amount of money (in U.S. Dollars) Applicant has spent developing, promoting, or advertising Applicant's services bearing or intended to bear the ROCK SOLID INVESTMENT Mark.

**RESPONSE TO INTERROGATORY NO. 17:** Object to the extent the request is overbroad, unduly burdensome and seeking irrelevant information. Object to the extent the request seeks confidential and proprietary information.

18. State whether Applicant had any communication or contact, either orally or in writing, with an examining attorney or other representative from the United States Patent and Trademark Office ("USPTO") who reviewed/examined U.S. Application Serial No. 86/184,144. If so, identify the date of the communication(s) or contact(s), the nature of the communication(s) or contact(s), the subject matter of the communication(s) or contact(s), whether the Applicant and the examining attorney came to an agreement regarding the subject matter of the communication(s) or contact(s), and, if so, state the agreement between the examining attorney and the Applicant.

**RESPONSE TO INTERROGATORY NO. 18:** On May 9, 2014, the trademark examining attorney and attorney Mark Terry discussed amendments to the identification of goods and/or services as well as the addition of a disclaimer. Applicant directs the Opposer to the prosecution history of

Application Serial No. 86/184,144, and the online docket for this opposition, which documents are freely available to the public via the web site of the U.S. Patent Office.

19. State whether Applicant has ever granted or discussed possibly granting to any person or entity authorization or license to use Applicant's ROCK SOLID INVESTMENT Mark or any variation thereof. If so, identity to whom the authorization or license was made, the date it was granted, and the circumstances surrounding such authorization or license, including duration of permitted use, and the business, goods, or services for which authorization or license was granted.

**RESPONSE TO INTERROGATORY NO. 19:** No

20. Describe Applicant's principal, target customers for each of the services described in the application for Applicant's ROCK SOLID INVESTMENT Mark.

**RESPONSE TO INTERROGATORY NO. 20:** Investors.

21. List the principal media by or in which Applicant promotes, or intends to promote, the services described in the application for Applicant's ROCK SOLID INVESTMENT Mark.

**RESPONSE TO INTERROGATORY NO. 21:** Direct sales and via the Web.

22. Describe the methods by which Applicant distributes its promotions, promotional materials, and advertising materials for the services described in the application for Applicant's ROCK SOLID INVESTMENT Mark.

**RESPONSE TO INTERROGATORY NO. 22:** Direct sales meetings, via the Web and email.

23. State whether any third party, excluding Opposer, has ever objected to Applicant's use or registration of Applicant's ROCK SOLID INVESTMENT Mark, and if so, identify the third party, its mark(s), any related proceeding, and the outcome or resolution.

**RESPONSE TO INTERROGATORY NO. 23:** No

24. Identify any documents or any studies, surveys, or other research conducted by or on behalf of Applicant regarding Applicant's affirmative defenses as listed in Applicant's Answer to Notice of Opposition dated January 12, 2015.

**RESPONSE TO INTERROGATORY NO. 24:** Object to the extent the request seeks information that is protected under attorney client privilege and/or attorney work product. Privilege log: attorney file.

25. Identify each person who participated in the preparation of Applicant's responses to the foregoing Interrogatories or furnished any information in response thereto. For each, specify the Interrogatory response for which each such person provided information.

**RESPONSE TO INTERROGATORY NO. 25:** Daryl Bank on all Interrogatories with the assistance of counsel.

26. Identify all documents relating to the subject matter of the foregoing Interrogatories or any documents or information that was used or referred to in the preparation of Applicant's responses thereto.

**RESPONSE TO INTERROGATORY NO. 26:** See objections above, as well as document produced as per the above.

**Mark MPT Terry**

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**From:** Daryl Bank <dbank@dominv.com>  
**Sent:** Tuesday, March 17, 2015 11:19 AM  
**To:** Mark MPT Terry  
**Subject:** EXAMPLE

*Catrina Davis Bank*  
Managing Partner  
Dominion Diamonds, LLC

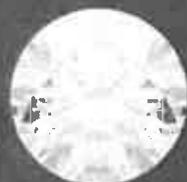
**855-351-8910** 

*"A Rock Solid Investment"*

DOMINION  

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INVESTMENT GRADE  
DIAMONDS™



A ROCK SOLID  
INVESTMENT

**D**iamonds have shown steady consistent growth throughout history. Symbolizing wealth, quality, and love for centuries, diamonds are becoming widely viewed as an excellent source of investment diversification.

There is a very simple economic justification for considering diamonds as part of your investment portfolio - demand continues to expand while supplies remain limited.

As purchasing power grows in the burgeoning economies of China and India, their citizens have gained a healthy appetite for diamond jewelry — resulting in steady upward pressure on diamond values. The economic outlook is for this global demand to continue its positive trajectory well into the future.

On the flip side of the equation, mining companies are depleting global diamond reserves and have not made sufficient discoveries to stay apace of potential demand. We believe this only further enhances the potential for long-term future appreciation of diamonds.

Dominion Investment Grade Diamonds can help you build a very high quality diamond portfolio through our patented process as described within this kit. Once you've taken time to read through the information kit, call our toll free number to start a conversation with one of our diamond consultants.

"Thanks to an escalating taste for diamonds among the middle class in China and India, diamond prices soared in 2011, increasing by 49% in the first half of the year before ending 19% up overall by the year's end."

*Deborah L. Jacobs, Forbes, February 2012*

"A balanced market over the next four years, with a growing gap between supply and demand longer-term. The rough-diamond market is expected to remain balanced from 2013 through 2017. From 2018 onward, as existing mines get depleted and no major new deposits come online, supply is expected to decline, falling behind expected demand growth that will be driven by China, India and the US. Over the next 10-year period, supply and demand are expected to grow at a compound annual rate of 2.0% and 5.1%, respectively."

*Yury Spektorov, Olya Linde, Bart Cornelissen and Rostislav Khomenko*

*The Global Diamond Report 2013: Journey through the Value Chain – Bain Capital, August 27, 2013*



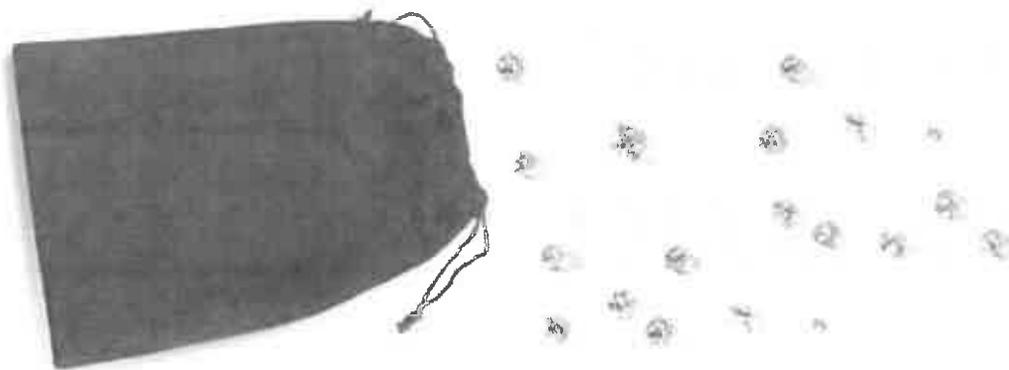
## ABOUT DOMINION

**D**ominion *Investment Grade Diamonds™* was formed to provide our clients with tangible and portable hard asset protection for their investment portfolios. Diamond investing is not just for high net worth clients, in fact many of our clients are hard-working, everyday people, who want to protect their paper investments with tangible assets. Now Dominion offers them a viable solution.

Trust is essential to this process. We intend to earn your trust by becoming your advocate and assisting you in learning everything you need to know about wisely investing in diamonds. We live, breathe and love this process and we think you will get great satisfaction from it as well.

In an article titled "Diamonds Quietly Outperform," *Diamond Investing News* stated "diamond demand is outpacing supply, prices are on the rise again after the recession, and though a commodity, diamonds remain a wise hedge against inflation."

*Fox Business News* reports "Negligible yield on fixed-income investments and volatility in the equity markets are driving the search for a relatively stable investment that can pack some punch in returns. The wealthy have been turning to hard assets they can enjoy... investing in diamonds is a natural alternative. With increasing global appetite for diamonds and a limited number of mining operations, supply and demand are working in the investor's favor and driving up prices."



## WHY INVEST IN DIAMONDS?

Our clients see diamonds as a safe haven. Diamonds are not a short-term investment and we recommend a 5 to 10 year investment period. We know of few alternatives that better protect the wealth you have accumulated from economic policy bubbles and stock market bull and bear cycles.

### **Diversification**

It's no secret that having a diversified portfolio makes a lot of sense. Having a wide array of assets may help mitigate your risk. Put simply, it's not prudent to have all your eggs in one basket. And that's why adding assets such as diamonds to your portfolio is a common sense diversification strategy.

### **Inflation Hedge**

Many people choose to own diamonds because they view it as a hedge against the weakening buying power of the dollar. In the 1920's, \$20 — either in the form of a diamond or a printed bill — bought a fine men's suit. Since then, trillions of paper dollars have been printed by the U.S. Treasury, but they can't print diamonds. That same diamond, purchased so many decades ago, held its value and will still afford you a fine men's suit today. That same \$20 bill may afford you a mediocre set of ear buds for your cell phone.

### **Tangible and Portable**

Unlike paper investments, stocks, bonds and currency, diamonds are a physical, tangible asset. They have a recognized intrinsic value. You can admire its value, you know its exact specifications and they don't change, and you can hold a great deal of wealth right in your hand. Many investors enjoy this aspect of owning diamonds.

### **Steady Growth, More Stable Than Precious Metals**

Over the past decade, diamond prices are up over 300%. While past performance cannot guarantee future results, there are some financial experts who believe diamond prices may reach new record highs. Many precious gem analysts believe that today's uncertain economic climate could contribute to a further rise in diamond prices. Demand for these assets has always existed, and unlike a publicly traded stock, a diamond's value has never dropped to zero. We also appreciate the stability of diamonds. While most tangible asset investors understand the long-term nature of their investments, many investors speculate in gold and silver, which leads to boom and bust swings. Investing in diamonds requires a bit more sophistication and homework than investing in gold, but we think that is exactly what lends to a more stable market structure. Read on to learn how our process is designed to give you the greatest opportunity for a sound long-term investment.

## WHAT ARE INVESTMENT GRADE DIAMONDS?



**A**t Dominion, we have literally trademarked the term “investment grade diamonds” for the very specific intention of creating an investment class of tangible assets whose quality and unique identity can be readily verified, which results in higher value, price transparency and better liquidity. We search the world for diamonds within a narrow cut and clarity range. We believe our focus and patented process significantly reduces the “noise” and price confusion when making such an important investment.

### **Our parameters for an Investment Grade Diamond:**

- GIA Graded, laser inscribed and sealed in tamper-proof packaging
- Round, White
- Color Grades – Colorless D through F with no treatments
- Clarity – Flawless through Very Slightly Included (FL – VS<sub>2</sub>)
- Cut – Excellent to Very Good
- Polish – Excellent to Very Good
- Symmetry – Excellent to Very Good
- Fluorescence – None or Faint
- Conflict Free



## PROCESS

The key to success in any investment strategy is to purchase your investments at a price that provides the potential for appreciation. You must be able to achieve price transparency, assurance as to the quality of your asset, low transaction costs and liquidity when it is time to sell the investment.

Our method of sourcing, valuing, securing and packaging our diamonds is unique to us and gives you assurance that you are getting the absolute best service and value. We are so confident that our investment process offers you a unique investment opportunity that we patented it.

## What you can expect

### Do Your Homework

Have fun reading our website and other internet sources relating to investing in diamonds. We also have a search feature which will enable you to peruse diamonds in our inventory to get an understanding of our investment grade diamond characteristics. By the way, we encourage you to compare our offerings to loose diamonds listed by our competitors.

### Let's Get to Know Each Other

Contact us to arrange a consultation by our GIA trained diamond consultants. We are your advocates, and want to ensure that we understand your specific objectives. We can then find the diamonds that best fit your needs.

### The Big Decision

You have a choice – either let us select a package of diamonds for you based on your desired investment amount, or build your own portfolio using our inventory search feature.

### Quality Assurance

Once you have made your selections, we send each diamond to GIA for grading, laser engraving and tamper-proof packaging. In addition, each stone will come with an impressive GIA Grading Report, which details and confirms the diamond's characteristics. This process may require up to two weeks, but we believe it is vital for providing you with assurance of the quality of the asset you've purchased.



### Delivery

After your diamonds have been graded and sealed, we place them in our beautiful hand crafted Italian jewelry box and express ship fully insured to you in discreet packaging. The entire process from start to finish typically takes about three weeks.

## FREQUENTLY ASKED QUESTIONS

### **How do I buy an investment diamond?**

Contact us by our toll free number and ask to speak with one of our diamond consultants. Our consultants are GIA trained and well qualified to help you through the investment process.

### **How do I select a diamond?**

We will visit with you about your specific investment objectives and your desired investment amount. We then will select either one or a bundle of several diamonds, based on your preference. All diamonds we select will fall within our criteria as Investment Grade Diamonds.

### **What forms of payment to you accept?**

We accept personal or cashier's checks, wire transfers, and credit card payments (we require a 3% fee for credit card purchases). Once your funds clear, we will start the process of grading your diamond.

### **How long does it take to receive my diamonds?**

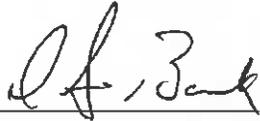
You should expect a turnaround time of about three weeks from the time you pay for your diamonds until you receive them. We would love to be able to have them to you more quickly, but the quality assurance of the GIA grading and engraving is just too important to skip for the sake of urgency. You can hold them for the next few decades and then lovingly pass them along to your heirs.

OUR GUARANTEE

DOMINION  
INVESTMENT GRADE  
DIAMONDS™

OUR GUARANTEE

We are so confident that our diamonds are the lowest priced diamonds you will find that we offer a 100% buy back guarantee. If, within thirty (30) days of your purchase of one of our investment grade diamonds, you obtain an appraisal from a GIA certified gemologist for less than what you paid, simply return the diamond in the GIA tamper-proof seal (intact) for a full money-back refund.



DARYL G. BANK  
FOUNDER AND CEO



CATRINA DAVIS  
MANAGING MEMBER



# **EXHIBIT G**

**Mueller, Terry L.**

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**From:** Gonzales, Donna P.  
**Sent:** Friday, April 10, 2015 2:17 PM  
**To:** Mark MPT Terry  
**Cc:** Barnard, David; Meriwether, Luke M.; Mueller, Terry L.  
**Subject:** RE: Prudential/Bank - Rule 26 Disclosures and Discovery responses (560658)  
**Attachments:** Bank-response-to-Discovery-Req-3-24-15.pdf; Bank-Initial Disclosures.pdf; Exhibit A.PDF

Mark:

I am working with Dave Barnard and Luke Meriwether in connection with the above-referenced matter. We have reviewed Mr. Bank's discovery responses and note the following issues:

- (1) Mr. Bank's responses to the interrogatories were not signed by Mr. Bank per TTAB 405.04(c). Accordingly, please provide us a copy of the verification, signed by your client.
- (2) Some of the discovery responses refer to a privilege log. Please provide us a copy of such log, identifying for each document the Bates range, document type, the interrogatory or RFP to which it is responsive, and the basis being asserted.
- (3) Mr. Bank's responses regarding whether he conducted a trademark clearance search is unclear. In his response to Rog. 4, he stated that he did not conduct a search or any other investigation. However, in his response to RFP 5 regarding documents relating to opinion letters, searches, etc., he objects to the RFP and refers to the privilege log. As you know, while opinions of counsel based on clearance reports are protected under attorney-client and work product privileges, the clearance reports themselves are not covered by either. *See Fisions Ltd. V. Capability Brown Ltd.*, 209 USPQ 167 (TTAB 1980). Accordingly, please clarify whether:
  - a. Mr. Bank, or anyone on his behalf, conducted either an informal or formal trademark clearance search;
  - b. Either of those searches resulted in any documentation, including but not limited to trademark reports generated by search companies, such as Corsearch, Thomson, LegalZoom; reports generated through searches on the USPTO's website; searches generated on search engines, such as Google, Bing, etc.;
  - c. If so, provide such documentation.

In light of the upcoming deposition of Mr. Bank on April 28, 2015, we would appreciate receiving by April 17, 2015 the above-referenced documents and clarification. Please advise if you are not able to provide these documents and information by that date.

Best regards,  
-Donna

**Donna Gonzales**  
**Associate**  
 950 Seventeenth Street  
 Suite 2400 | Denver, CO 80202  
 P: 720.931.3207 | F: 720.931.3201 | [DGonzales@LATHROPGAGE.COM](mailto:DGonzales@LATHROPGAGE.COM)  
[www.lathropgage.com](http://www.lathropgage.com)

*Please consider the environment before printing this email.*

**From:** Mark MPT Terry [mailto:mark@terryfirm.com]  
**Sent:** Tuesday, March 24, 2015 9:18 PM  
**To:** Meriwether, Luke M.

**Cc:** Barnard, David; Mueller, Terry L.  
**Subject:** RE: Prudential/Bank - Rule 26 Disclosures and Discovery responses

Please see attached our Rule 26 disclosures and our responses to the Requests for Production and Interrogatories.

Mark Terry

Phone: 786.443.7720 | Website: [www.terryfirm.com](http://www.terryfirm.com)

phone: 786.443.7720 | fax: 786.513.0381 | email: [mark@terryfirm.com](mailto:mark@terryfirm.com)

801 Brickell Av. Ste. 900, Miami, FL 33131

**From:** Meriwether, Luke M. (LG) [<mailto:LMeriwether@LATHROPGAGE.COM>]  
**Sent:** Tuesday, March 24, 2015 6:40 PM  
**To:** Mark MPT Terry  
**Cc:** Barnard, David (LG); Mueller, Terry L. (LG)  
**Subject:** Prudential/Bank - Rule 26 Disclosures and Discovery responses

Mark –

I am writing to inquire about your client’s Rule 26 disclosures (for the 3rd time) and responses to Prudential’s First Request for the Production of Documents and Interrogatories that were served on February 19, 2015. As you know, your Rule 26 disclosures were due March 13th and are now eleven days late. Further, written responses to Prudential’s discovery requests, as well as production of relevant documentation from your client, were due yesterday, March 23rd.

To date, we have not received anything you, nor been given any explanation for the delays. Please let us know when you intend to serve your Rule 26 disclosures, respond to the outstanding Requests for Production and Interrogatories, and produce the requested documentation.

Prudential reserves its right to pursue any and all relief available for your continued failure to abide by your discovery obligations and the Board’s Scheduling Order.

**LUKE M. MERIWETHER**  
LATHROP & GAGE LLP | 2345 GRAND BLVD, SUITE 2200 | KANSAS CITY, MO 64108  
TEL: 816.460.5312 | FAX: 816.292.2001  
[LMERIWETHER@LATHROPGAGE.COM](mailto:LMERIWETHER@LATHROPGAGE.COM)

**LATHROP & GAGE** LLP  
California · Colorado · Illinois · Kansas · Massachusetts · Missouri · New York

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# **EXHIBIT H**

801 BRICKELL AVE, STE 900  
MIAMI, FLORIDA 33131

WWW.TERRYFIRM.COM

THE OFFICES OF  
**MARK TERRY, P.A.**  
INTELLECTUAL PROPERTY

PHONE: 786-443-7720  
FAX: 786-513-0381

MARK@TERRYFIRM.COM



Donna Gonzales  
950 Seventeenth Street  
Suite 2400  
Denver, Colorado 80202  
(720) 931-3207  
[dgonzales@lathropgage.com](mailto:dgonzales@lathropgage.com)

April 17, 2015  
*Via First Class Mail*

Dear Ms. Gonzales,

Thank you for contacting me. We have not agreed to service by email, therefore, under section 113 of the TBMP, all documents for service should be served by regular mail. In keeping with this convention, we request that all other communications are done by regular mail as well.

We respond to your numbered requests as follows:

- (1) I have attached a copy of Mr. Bank's response to the interrogatories fully executed by Mr. Bank.
- (2) The requested privilege log applies to each instance where a privilege log is cited in our discovery responses. Please see below:

Document Type: Email  
Date of Document: 11/13/2013  
Author: Mark Terry  
Recipient: Daryl Bank  
Persons with access: Author and recipient  
Subject matter: Trademark  
Privilege: Attorney/Client Privilege and Attorney Work Product

- (3) We reject the premise of various statements in your item (3) of your email. For example, you state that "Mr. Bank's responses regarding whether he conducted a trademark clearance search is unclear" but there are no interrogatories that specify a trademark clearance search. In another example, you state that "Rog #4, he stated that he did not conduct a search" but interrogatory number 4 actually states "a search or any other investigation to determine whether Applicant's ROCK SOLID INVESTMENT Mark was available for adoption and use in the United States." Therefore, the premise of your email request is different than what was requested in interrogatory #4. Further, you seem to think that RFP #5 and interrogatory #4 are the same but each of them uses

- 2 -

different language and requests different items in response. Consequently, we cannot answer your email requests because we do not agree with the premise of your email requests. Also, the premise of your email requests are different from what was requested in the RFP and the interrogatories, which does not make sense. We ask that you clarify your email requests.

In order to further discovery, however, we can definitively state that there are no trademark reports generated by search companies, or the USPTO web site. We hope this is the response you were looking for.

Sincerely,



Mark Terry, Esq.  
Board Certified Specialist

# **EXHIBIT I**



DARYL BANK - 06/08/2015

<p>Page 2</p> <p>1 FOR APPLICANT:                  2 OFFICE OF MARK TERRY, ESQUIRE                  801 Brickell Avenue                  3 Suite 900                  Miami, Florida 33131-2979                  4 BY: MARK TERRY, ESQUIRE                  5                  6 I N D E X                  7                  8 PAGE                  9 Direct Examination by Mr. Barnard 3                  10 Certificate of Reporter 160                  11                  12                  13 EXHIBIT DESCRIPTION PAGE                  14 Opposer's Exhibit No. 1 Trademark application 36                  Opposer's Exhibit No. 2 Answers 37                  15 Opposer's Exhibit No. 3 Responses 40                  Opposer's Exhibit No. 4 Brochure 118                  16 Opposer's Exhibit No. 5 Web Page 136                  Opposer's Exhibit No. 6 Sunbiz printout 149                  17 Opposer's Exhibit No. 7 LinkedIn for Daryl Bank 150                  Opposer's Exhibit No. 8 LinkedIn for Dominion 151                  18 Opposer's Exhibit No. 9 Trademark application 152                  Opposer's Exhibit No. 10 Download from website 154                  19                  20                  21                  22                  23                  24                  25</p>	<p>Page 3</p> <p>1 AND THEREUPON:                  2 Daryl Bank,                  3 called as a witness on behalf of the Plaintiff herein,                  4 after having been first duly sworn, was examined and                  5 testified as follows:                  6 THE WITNESS: Yes.                  7 DIRECT EXAMINATION                  8 BY MR. BARNARD:                  9 Q. Good morning. Can you please state your name                  10 for the record?                  11 A. Daryl Bank.                  12 Q. And give your address?                  13 A. 814 Southwest St. Julien Court, Port St. Lucie,                  14 Florida.                  15 Q. Have you ever been deposed before?                  16 A. Yes.                  17 Q. Can you tell me about that?                  18 A. No.                  19 Q. Why not?                  20 A. I don't recall it.                  21 Q. You've been deposed before but you don't                  22 remember?                  23 A. Yeah, I don't remember the details.                  24 Q. Do you remember when you were deposed before                  25 that you were placed under oath?</p>
<p>Page 4</p> <p>1 A. I have been before.                  2 Q. Do you understand what that means?                  3 A. Uh-huh, yes.                  4 Q. What does that mean to you?                  5 A. It means that I'm under oath.                  6 Q. Yes, and you gave a deposition before, is that                  7 correct?                  8 A. I believe so.                  9 Q. You were in a room just like this with a court                  10 reporter?                  11 A. I guess.                  12 Q. They swore you to tell the truth?                  13 A. Yes.                  14 Q. But you don't remember a thing about that?                  15 A. You asked me the details and I don't remember                  16 the details.                  17 Q. One thing that will make the deposition go                  18 better is you should let me ask the whole question --                  19 A. Okay.                  20 Q. -- because you will want to hear the whole                  21 thing and then it will make it easier for her to type                  22 everything, so if we don't talk over each other, it will                  23 go better.                  24 So again, you were deposed before but you don't                  25 recall anything about that, is that correct?</p>	<p>Page 5</p> <p>1 A. I didn't say I didn't recall anything.                  2 Q. What do you recall?                  3 A. I don't recall.                  4 Q. You don't recall a thing about it?                  5 A. I just remember I've been deposed before. I                  6 don't remember details of when, how, where.                  7 Q. Were you being sued?                  8 A. No.                  9 Q. Were you a witness to an accident?                  10 A. I don't think so.                  11 Q. Do you remember anything about the nature of                  12 the legal dispute?                  13 A. Not right this second, I don't recall.                  14 Q. When did this happen?                  15 A. Some time in the last ten years.                  16 Q. Some time in the last ten years. Within the                  17 last ten years? The last five years?                  18 A. Asked and answered.                  19 Q. Are you giving legal objections to --                  20 A. No, I answered your question. I just didn't                  21 want to hear the same question again. It will make it go                  22 a lot faster if you didn't ask the same question.                  23 Q. I didn't ask the same question, I asked a                  24 different question. You said within the last ten years                  25 and I asked was it the last ten years or the last five</p>

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1 years.  
 2 A. I recall at least the last ten.  
 3 Q. Do you recall where that deposition occurred?  
 4 A. I don't.  
 5 Q. It was more than five years you think?  
 6 A. I don't recall right at this moment.  
 7 Q. Do you recall anything about any of the  
 8 questions that you were asked?  
 9 A. I don't right this second.  
 10 Q. Do you understand the nature of the dispute  
 11 that's going on that we're talking about here?  
 12 A. Counsel handles that.  
 13 Q. But do you understand why we're here?  
 14 A. As much as counsel has told me.  
 15 Q. Please briefly tell me what your understanding  
 16 is why we're here today.  
 17 A. That's between me and counsel.  
 18 Q. I'm not asking you for anything that you were  
 19 told by your counsel, I'm asking for your understanding  
 20 of why we're here today.  
 21 A. You found some opposition, that's what I know.  
 22 Q. Can you explain that any better?  
 23 A. That's the only thing I know outside of talking  
 24 to counsel.  
 25 Q. So the nature of the dispute that we have,

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1 A. '88.  
 2 Q. And then you said college?  
 3 A. Yes.  
 4 Q. Where is that?  
 5 A. Old Dominion University.  
 6 Q. What year did you graduate?  
 7 A. 1993.  
 8 Q. And what was your degree in?  
 9 A. I think it was a Bachelor of Science.  
 10 Q. Do you know what your major was?  
 11 A. I don't recall.  
 12 Q. Did you have any education after college?  
 13 A. Yes.  
 14 Q. What was that?  
 15 A. I have gone to graduate school.  
 16 Q. Where was that?  
 17 A. Virginia.  
 18 Q. UVA?  
 19 A. No.  
 20 Q. Where in Virginia?  
 21 A. Southeastern Virginia.  
 22 Q. And what program were you in?  
 23 A. Law, public policy and business.  
 24 Q. Did you receive a graduate degree of some  
 25 sort?

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1 there's going to be a person, probably in Washington DC,  
 2 who will look at the dispute and try to understand what's  
 3 going on here and there would be no reason for us to be  
 4 here today unless there was some kind of dispute we were  
 5 trying to work out.  
 6 Can you explain for that person who's in  
 7 Washington DC who's going to be reading this transcript  
 8 what your understanding of this dispute is?  
 9 A. That was lengthy. Was that a lecture or a  
 10 question?  
 11 Q. It's a question. I'm trying to explain to you  
 12 the purpose of what we're doing here and to find out  
 13 whether or not you would like to explain your side of the  
 14 story or your side of the dispute?  
 15 A. My job is to answer the questions.  
 16 Q. Fair enough. What is your education?  
 17 A. I've been to high school, college and graduate  
 18 school.  
 19 Q. Where did you go to high school?  
 20 A. Indian River.  
 21 Q. Is that here?  
 22 A. No.  
 23 Q. Where is that?  
 24 A. Virginia.  
 25 Q. When did you graduate?

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1 A. No.  
 2 Q. Law, possible policy and business?  
 3 A. Yes.  
 4 Q. And when did you complete your education  
 5 there?  
 6 A. 1996.  
 7 Q. What did you do after that?  
 8 A. Went to work.  
 9 Q. Where was that?  
 10 A. Dean Witter.  
 11 Q. Where did you work for Dean Witter?  
 12 A. Virginia.  
 13 Q. What city?  
 14 A. Virginia Beach.  
 15 Q. And what did you do at Dean Witter?  
 16 A. I was in training.  
 17 Q. What were you in training for?  
 18 A. I don't remember the title of the training.  
 19 Q. What type of training was it?  
 20 A. To go in their financial division.  
 21 Q. And how long were you at Dean Witter?  
 22 A. Three, four months.  
 23 Q. Did you end up working for Dean Witter?  
 24 A. No.  
 25 Q. What did you do after that?

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1 A. Went to another company.  
 2 Q. Why did you leave Dean Witter after being  
 3 there for three or four months?  
 4 A. Because I didn't finish the training program.  
 5 Q. Was there a reason you didn't finish the  
 6 training program?  
 7 A. Because I didn't finish the training program.  
 8 Q. Did you have a better opportunity?  
 9 A. I had better opportunities.  
 10 Q. What was the next place that you worked?  
 11 A. Paine Webber.  
 12 Q. When did you start working for Paine Webber?  
 13 A. I believe it was '96.  
 14 Q. And where was that?  
 15 A. Virginia.  
 16 Q. Was that in Virginia Beach?  
 17 A. Norfolk.  
 18 Q. What did you do at Paine Webber?  
 19 A. Worked as a financial person.  
 20 Q. Can you be more specific?  
 21 A. No.  
 22 Q. There are many different things involved in  
 23 being in finance. What type of job did you do?  
 24 A. I worked in their financial division.  
 25 Q. What did you do on a daily basis?

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1 Q. You understand that the purpose of this --  
 2 A. Are you lecturing me or are you here to ask  
 3 questions?  
 4 Q. You understand that the purpose of this is  
 5 somebody is going to read this and evaluate whether or  
 6 not you're trying to be helpful or not. I'm going to do  
 7 my best to help you to be helpful. Can you work with me  
 8 on that or --  
 9 A. I'm answering your questions.  
 10 Q. -- do you want to argue about all this?  
 11 A. I'm not arguing. I'm here to answer questions  
 12 not get lectured.  
 13 Q. Okay. How long were you at Paine Webber?  
 14 A. I don't recall.  
 15 Q. Were you there for a day or a month or a  
 16 year?  
 17 A. More than a day.  
 18 Q. More than a month?  
 19 A. Probably, yeah.  
 20 Q. Were you there for more than a year?  
 21 A. Several years, I don't recall exactly how  
 22 many.  
 23 Q. You were there for several years. Did you do  
 24 anything else during the several years at Paine Webber  
 25 besides talk to customers about their kids?

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1 A. I did all types of things.  
 2 Q. Give me some examples.  
 3 A. Talked to customers.  
 4 Q. What did you talk to customers about?  
 5 A. All types of things.  
 6 Q. Give me an example, please?  
 7 A. How their kids were.  
 8 Q. Were you talking to them about investing in  
 9 college or retirement? What kinds of things?  
 10 A. All types of financials. I don't know how to  
 11 define it any better for you.  
 12 Q. When you were talking to customers, were you  
 13 talking to them face to face or were you talking to them  
 14 on the phone?  
 15 A. I'm sorry, that was multiple questions.  
 16 Q. Did you meet customers face to face or did you  
 17 talk to them on the phone?  
 18 A. Yes.  
 19 Q. Is that all the above?  
 20 A. You asked two questions, it was a yes.  
 21 Q. Yes to both questions, you talked to customers  
 22 face to face and you talked to them on the phone?  
 23 A. Should we break the questions down?  
 24 Q. I'm just asking for a yes or no.  
 25 A. I answered you. Asked and answered.

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1 A. Yes.  
 2 Q. What did you do?  
 3 A. I worked in areas of finance with Paine  
 4 Webber.  
 5 Q. Did that include investments?  
 6 A. Yes.  
 7 Q. Did you do any other kind of financial work at  
 8 Paine Webber besides investments?  
 9 A. I'm not sure I understand the question.  
 10 Q. In finance you might be talking to people about  
 11 insurance, you might be talking about a variety of  
 12 things.  
 13 I'm just curious, what did you do at Paine  
 14 Webber in terms of the types of financial --  
 15 A. The variety of things you suggested.  
 16 Q. So you talked to people about insurance too?  
 17 A. Yes.  
 18 Q. What else?  
 19 A. All types of matters in finance.  
 20 Q. Did you talk to them about commodities?  
 21 A. Yes.  
 22 Q. What types of commodities?  
 23 A. I don't recall.  
 24 Q. Can you give me an example of what you might  
 25 have done during a typical day at Paine Webber when you

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1 privileged.  
 2 A. Yes.  
 3 Q. Your intent is not, what you want to do.  
 4 A. I'm sorry, I don't recall my intent at that  
 5 moment.  
 6 Q. When you first came up with the idea for Rock  
 7 Solid Investment, did you talk about it with anyone  
 8 besides William J. Seabolt?  
 9 A. I don't recall.  
 10 Q. And specifically what did you talk to William  
 11 J. Seabolt about that involved Rock Solid Investment?  
 12 MR. TERRY: Objection, that would be  
 13 privileged. You're asking Mr. Bank about his  
 14 communications with an attorney.  
 15 MR. BARNARD: There's some real questions about  
 16 what capacity Mr. Seabolt was in. Are you  
 17 instructing him not to answer?  
 18 MR. TERRY: I'm instructing Mr. Bank not to  
 19 answer any questions related to attorney-client  
 20 privilege.  
 21 MR. BARNARD: So you're instructing him not to  
 22 answer that particular question?  
 23 MR. TERRY: What question are you referring to?  
 24 MR. BARNARD: Can you read that back.  
 25 (Thereupon, the court read back the last

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1 Q. Did you do any search of your e-mails to answer  
 2 any of the questions that were asked here?  
 3 A. I did whatever was asked of me.  
 4 Q. Specifically on Exhibit 3 in terms of answering  
 5 these questions that are in Exhibit 3, do you recall  
 6 doing any searches of electronic documents?  
 7 A. I did whatever the questions asked me to do and  
 8 counsel directed me to do.  
 9 Q. I'm not asking you what instructions you think  
 10 you were following I'm asking you did you do a search?  
 11 A. If that was the instructions in there, then I  
 12 must have.  
 13 Q. You must have but you don't recall specifically  
 14 doing a search?  
 15 A. I do a lot of things every day.  
 16 Q. My question is do you have any specific  
 17 recollection of doing any searches of electronic  
 18 documents to answer any of the questions that were  
 19 posed --  
 20 A. If it was asked --  
 21 Q. You have to let me finish because she --  
 22 A. She can plug it in at the end when you get  
 23 done.  
 24 Q. I'm trying to make her job easier. The whole  
 25 purpose of this proceeding is so that somebody can read

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1 question.)  
 2 MR. TERRY: That is correct, I am instructing  
 3 Mr. Bank not to answer that question.  
 4 BY MR. BARNARD:  
 5 Q. Did you talk about when you first came up with  
 6 the idea with anybody other than Mr. William J.  
 7 Seabolt?  
 8 A. I don't recall.  
 9 Q. Do you have any documents that would reflect  
 10 when you first came up with the idea?  
 11 A. Outside of my counsel, I don't recall.  
 12 Q. Do you have any e-mails?  
 13 A. Not that I recall.  
 14 Q. Let's talk about your business. Do you have  
 15 any other business e-mail address, I think we talked  
 16 about this before, besides Dominion Investment Group that  
 17 you use for business e-mails?  
 18 A. Not that I recall.  
 19 Q. You understand the question that we asked about  
 20 documents that you had, those were directed to electronic  
 21 documents as well as paper documents, correct?  
 22 A. You're asking me what I understood?  
 23 Q. Yes.  
 24 A. I don't know. You need to ask my attorney what  
 25 he understood.

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1 what we talked about today and understand what happened.  
 2 A. Is that a question or am I being lectured  
 3 again?  
 4 Q. You're being told what the purpose of this is.  
 5 A. I don't need to be told.  
 6 Q. Okay. Why I'm here is to try to be helpful  
 7 to the person who will read this afterwards.  
 8 A. Am I being lectured again?  
 9 Maybe you should file an amendment and then you  
 10 can tell them.  
 11 Q. I'm telling you why I'm here.  
 12 A. I didn't ask you why you were here.  
 13 Q. If it is not your choice to be helpful today --  
 14 A. I'm answering your questions, that's what I'm  
 15 doing.  
 16 Q. Are you?  
 17 A. I am.  
 18 Q. So you were deposed earlier?  
 19 A. Here we go.  
 20 Q. You don't recall anything whatsoever about why  
 21 you sat --  
 22 A. At this moment I don't.  
 23 Q. You don't know the name of any of the parties  
 24 involved?  
 25 A. Asked and answered.

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1 A. I think it was when your firm sent a letter to  
 2 my attorney.  
 3 Q. So you have no recollection that Prudential was  
 4 ever referred to as The Rock prior to this dispute?  
 5 A. As a recollection, I've been in the industry my  
 6 whole life so, as you spouted earlier off the record that  
 7 that's been a moniker since some ungodly date, I may have  
 8 heard it, I don't recall though. You asked if I recalled  
 9 it, I don't.  
 10 Q. Had you ever run into Prudential using Rock  
 11 Solid in its business prior to the time that you came up  
 12 with Rock Solid Investment?  
 13 A. No.  
 14 Q. Diamonds are rocks, right?  
 15 A. I believe so. I'm not a geologist but...  
 16 Q. And Dominion Diamond, LLC, is going to help  
 17 people with investments, correct?  
 18 A. Investing in diamonds.  
 19 Q. So Rock Solid Investment refers to what  
 20 Dominion Diamond does, it directly describes it,  
 21 correct?  
 22 A. It would be a play on what it is, correct.  
 23 Q. So going back to Exhibit 3, that question  
 24 number seven, this asks about all documents referring to  
 25 any acquired knowledge of the applicant or any research

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1 Q. I'm asking you. I'm telling you I'm assuming  
 2 that there are documents back and forth. Roughly how  
 3 many documents are we talking about?  
 4 A. You're asking how many documents there are  
 5 between me and my attorney?  
 6 Q. That involves the Rock Solid Investment issue.  
 7 A. Involving this issue why we're here today?  
 8 Q. Exactly.  
 9 A. I would have no idea how voluminous that may  
 10 be.  
 11 Q. Do you remember searching through that  
 12 though?  
 13 A. I recall engaging counsel to put together the  
 14 application.  
 15 Q. Let's talk about something a little more  
 16 specific. If you go to number ten, there's a request  
 17 that that asks for documents relating to or disclosing  
 18 the manner in which you distribute promotional materials  
 19 that advertise or promote the services stated in the  
 20 services description of the application for Rock Solid  
 21 Investment mark, and it says there's an objection there  
 22 that it seeks confidential and proprietary information,  
 23 do you see that?  
 24 A. I see it.  
 25 Q. Are there any confidential, promotional

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1 performed by on behalf of the applicant on opposer's  
 2 family mark. What is your understanding of that  
 3 question?  
 4 A. You're asking me if I understand the question?  
 5 Q. Yes.  
 6 A. I guess I do.  
 7 Q. What does it mean to you?  
 8 A. Just exactly what it says.  
 9 Q. It says the only documents that you have there  
 10 would be documents that you shared with your attorney.  
 11 Do you recall --  
 12 A. Is that a question?  
 13 Q. I'm asking you --  
 14 A. You made a statement.  
 15 Q. It says there's an objection here to the extent  
 16 it asks -- I'm sorry, I did misstate this. Let me ask  
 17 you a given question.  
 18 Do you recall exchanging any documents about  
 19 your attorney about this particular, it's a yes or no  
 20 question. I'm not asking you what the content was, I'm  
 21 just asking you whether or not there were any --  
 22 actually, let me ask a different question.  
 23 I'm assuming you guys have documents back and  
 24 forth and by that I mean you and your attorney.  
 25 A. Are you asking him the question or me?

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1 materials that Dominion Diamonds distributes?  
 2 A. What's confidential?  
 3 Q. Exactly.  
 4 A. I'm asking you. You asked me the question so  
 5 what do you mean by it?  
 6 Q. It's in your response so I'm asking does  
 7 Dominion Diamonds distribute any confidential advertising  
 8 materials?  
 9 A. You're asking to get into my proprietary  
 10 information, so with respect to your question, yes it  
 11 does.  
 12 Q. I didn't ask about proprietary information, I  
 13 asked about confidential.  
 14 A. It is confidential.  
 15 Q. Let's talk about both of those things.  
 16 Confidential is secret, proprietary means you own it.  
 17 A. That's your definition.  
 18 Q. Let's talk about the secret stuff. Do you have  
 19 any secret advertising materials?  
 20 A. I have confidential material that's none of  
 21 your business, does that help?  
 22 Q. Do you have advertisement materials that are  
 23 confidential?  
 24 A. Again, my definition of meaning that it's not  
 25 something that's of the Prudential's business, yes. If

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1 you mean does it have some sort of a clearance from the  
 2 U.S. government, I don't think it does.  
 3 Q. What kinds of promotional materials does  
 4 Dominion Diamonds have?  
 5 A. All kinds of materials including what we gave  
 6 to you.  
 7 Q. Does it have any other materials that describe  
 8 the scope of the business?  
 9 A. I'm not sure I understand the scope of the  
 10 business.  
 11 Q. What Dominion Diamonds does, do you have any  
 12 promotional materials besides what you provided to us  
 13 that talk about what Dominion Diamonds does for people?  
 14 A. Outside of that, I'm not aware that we have  
 15 anything outside of that.  
 16 Q. Do you consider the materials that you sent to  
 17 Prudential to be confidential?  
 18 A. You want me to define the word confidential  
 19 again?  
 20 Q. Just the advertising materials that you sent to  
 21 us to answer this particular request, do you consider  
 22 those materials to be confidential?  
 23 A. In the sense that I don't want someone to  
 24 duplicate them, yes, in the sense of protecting the  
 25 government, no.

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1 LLC?  
 2 A. There are several people.  
 3 Q. Who are they?  
 4 A. Catrina Davis. Let me try to understand. You  
 5 mean they work for Dominion Diamonds?  
 6 Q. That they do any kind of work for, it doesn't  
 7 necessarily mean that they're an employee or maybe  
 8 they're an independent contractor.  
 9 A. Somebody who's done some work?  
 10 Q. Exactly.  
 11 A. I couldn't even begin to list them, postcard  
 12 companies, mailing houses.  
 13 Q. In terms of the specific people who hire them  
 14 and get the work to those people, it sounds like Catrina  
 15 Davis does marketing for Dominion Diamonds, does anybody  
 16 else?  
 17 A. She would be the point person.  
 18 Q. In terms of the e-mail, can you give me an  
 19 example of what kind of e-mails would have information  
 20 about the services that Dominion Diamonds --  
 21 A. I think that was provided.  
 22 Q. You think copies of e-mails were provided to  
 23 us?  
 24 A. If there was one, it was provided, if not, it  
 25 would be on just that, what the company does.

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1 Q. So have you distributed any of these  
 2 advertising materials to potential customers?  
 3 A. Yes.  
 4 Q. How do you do that?  
 5 A. Via mail, e-mail, physical handing it to  
 6 them.  
 7 Q. Are they available on a website anywhere?  
 8 A. I'm not aware.  
 9 Q. Do you have a website for Dominion Diamonds,  
 10 LLC?  
 11 A. I believe they do have a website.  
 12 Q. In terms of the distribution of documents by  
 13 mail, is that to existing clients or to potential  
 14 customers too?  
 15 A. I don't know but I would assume both.  
 16 Q. Who would know the answer to that question?  
 17 A. Whoever mailed it.  
 18 Q. Who mails things for Dominion Diamonds, LLC?  
 19 A. It could be a number of people.  
 20 Q. Let's talk about, who are the employees of  
 21 Dominion Diamonds, LLC?  
 22 A. I don't know if they have an employee.  
 23 Q. Who does work for Dominion Diamonds, LLC?  
 24 A. A lot of people.  
 25 Q. Who is in marketing for Dominion Diamonds,

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1 Q. Was there any kind of a search done of all the  
 2 marketing documents that Dominion Diamonds offers to the  
 3 public that talk about its services?  
 4 A. A search, a search for what?  
 5 Q. A search for documents.  
 6 A. Whatever was requested here was absolutely  
 7 done, yes.  
 8 Q. Who did that search?  
 9 A. That would have been myself --  
 10 Q. Do you remember what you did?  
 11 A. -- and/or Raean Gibson. I did exactly what  
 12 the document asked me to do.  
 13 Q. Do you remember using search terms on your  
 14 e-mails to find out whether there are any documents that  
 15 respond to the questions in Exhibit 3?  
 16 A. I would have done whoever the document asked me  
 17 to do.  
 18 Q. And again, I'm asking you, did you do a  
 19 search -- do you have any specific recollection of  
 20 searching for, for instance, the phrase Rock Solid?  
 21 A. You're asking several questions. What's the  
 22 question?  
 23 Q. Do you have any recollection of ever searching  
 24 through your e-mails for the phrase Rock Solid to find  
 25 out what you have?

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1 A. I would have done whatever was in this document  
2 and counsel instructed me to do.  
3 Q. I understand you're saying you think that you  
4 did whatever you were instructed --  
5 A. I'm not telling you I think I did, I know I  
6 did. I'm not telling you what I thought I did, I'm  
7 telling you what it is I did.  
8 Q. Did you do a search for Rock Solid?  
9 A. I did whatever the documents told me to.  
10 Q. When did you do that?  
11 A. Before that document was turned over to you and  
12 filed.  
13 Q. Okay. We talked about advertising materials.  
14 I understand that you -- that there are advertising  
15 materials that you own, I understand the proprietary part  
16 of that.  
17 Is there anything else about the nature of  
18 Dominion Diamond's business that is confidential?  
19 Do you have a customer sign a confidentiality  
20 agreement?  
21 A. I don't know if they do have them sign one.  
22 Q. Who would know the answer to that question?  
23 A. Whoever may have handled that. It might be  
24 Catrina Davis but I'm not aware.  
25 Q. Other than the materials that you provided to

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1 A. I didn't say that they would not.  
2 Q. Or that they are not right now.  
3 A. To my knowledge, they are not.  
4 Q. Okay. Please go to number 14. Have you  
5 advertised Rock Solid Investment as a trademark  
6 anywhere?  
7 A. I believe we have.  
8 Q. Where have you advertised it?  
9 A. It's in whatever was provided to you.  
10 Q. You're saying the documents that were provided  
11 to me, that that is the sum and total of all the  
12 advertisements that have gone out that have used Rock  
13 Solid Investment?  
14 A. Probably to that point but, again, just as it  
15 says there, it's overbroad. We have people all over the  
16 country.  
17 Q. Who are the people all over the country?  
18 A. I don't recall their names. I couldn't name  
19 them if I had to.  
20 Q. You said we have people all over the country.  
21 A. Yes, that's what I said.  
22 Q. Who is the we there?  
23 A. Our collective group of companies.  
24 Q. And when you say our collective group of  
25 companies?

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1 us, are there other promotional materials for Dominion  
2 Diamonds?  
3 A. Not that I'm aware of.  
4 Q. Does Dominion Diamonds have an office, like a  
5 brick and mortar office?  
6 A. No. Would my office be considered their  
7 office? It might be, yes.  
8 Q. Where is your office?  
9 A. Down the street.  
10 Q. Does it have signage on it?  
11 A. Yes.  
12 Q. What does it say?  
13 A. It says Dominion Investment Group.  
14 Q. Roughly how many owners are there of Dominion  
15 Investment Group at this time?  
16 A. I don't know.  
17 Q. Are there more than ten?  
18 A. I don't know. I answered that earlier.  
19 Q. But you don't know whether there's more than  
20 ten owners or not?  
21 A. I haven't had a revelation since we began  
22 this.  
23 Q. And I believe it was your testimony that  
24 Dominion Investment Group is not going to be using Rock  
25 Solid Investment?

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1 A. I'm referring to Dominion in the collective  
2 sense.  
3 Q. Dominion Investment Group and Dominion Diamonds  
4 and other companies?  
5 A. Yes.  
6 Q. What are all those companies?  
7 A. I don't know them off the top of my head. You  
8 could go to our website.  
9 Q. Are all those people going to be able to use  
10 Rock Solid investment with whatever part of their  
11 business that they want to use it for?  
12 A. They all, who is they all?  
13 Q. All these people who are all over the country.  
14 A. Are we talking about representatives in the  
15 field? That's what I'm trying to understand, who they  
16 all are.  
17 Q. I'm trying to understand that too and it's not  
18 my company. You said we as all the Dominion Group of  
19 companies have people all over the country.  
20 Are all these people going to be able to use  
21 Rock Solid Investments to describe the work they're doing  
22 for the group of companies?  
23 A. They would be able to use it in reference to  
24 the investment opportunity in Dominion Diamonds  
25 currently.

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1 Q. Is this a sales force you're talking about the  
 2 people all over the country? What do these people do?  
 3 A. Sales force and others.  
 4 Q. How many people are we talking about?  
 5 A. I have no idea.  
 6 Q. Is it more than 100?  
 7 A. Yes.  
 8 Q. Is it more than 1,000?  
 9 A. Probably not.  
 10 Q. But you can't give me any more specificity  
 11 other than more than 100, less than 1,000?  
 12 A. Less than 250.  
 13 Q. And you said all over the country. Are they in  
 14 every state?  
 15 A. I don't know. I think we answered that  
 16 somewhere in here.  
 17 Q. Is your business or is the Dominion group of  
 18 companies, is the business focused in any particular  
 19 geographical area?  
 20 A. No.  
 21 Q. Do you have people in one state that work for  
 22 the Dominion group of companies that contact people in  
 23 other states?  
 24 A. I don't know.  
 25 Q. Do you know whether --

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1 What burdens were did you encounter in trying  
 2 to --  
 3 A. What do you want me to look at?  
 4 Q. It's several of these.  
 5 A. Can you narrow it down?  
 6 Q. I'm going to ask you generally first and then  
 7 we can look at specific but generally speaking there are  
 8 requests in here that said the requests are overbroad and  
 9 unduly burdensome.  
 10 What burdens did you run into in terms of  
 11 answering these questions?  
 12 A. These were generally overburdensome.  
 13 Q. How so?  
 14 A. You want me to get specific?  
 15 Q. Yes.  
 16 A. You asked me a general question so I generally  
 17 answered it. It's generally overburdensome.  
 18 Q. For example, were there any of these requests  
 19 that generated more than 1,000 documents when you tried  
 20 to go search for something?  
 21 A. Which one are you talking about?  
 22 Q. I'm asking for any of them.  
 23 A. Generally, it was overburdensome.  
 24 Q. My question was were there any of these  
 25 requests that we made where you found that there were

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1 A. I would say yes because I do.  
 2 Q. Okay. In terms of investment opportunities, is  
 3 it a regular practice, as far as you're aware, for people  
 4 to offer those to potential customers in any state that  
 5 they want to?  
 6 A. Offer what?  
 7 Q. For the Dominion group of companies.  
 8 A. Offer what across the state?  
 9 Q. In terms of the these people who are all in the  
 10 company in the sales force, are they restricted to only  
 11 selling in their state or can they sell or offer  
 12 different kinds of services or products to people in  
 13 other states?  
 14 A. Which service are you referring to?  
 15 Q. Any services.  
 16 A. That would depend on the regulatory  
 17 requirements on them.  
 18 Q. Do you know as to any of the services, are they  
 19 being offered across state lines?  
 20 A. Which services?  
 21 Q. Again, any of them.  
 22 A. It would be correct to assume they are.  
 23 Q. Now in Exhibit No. 3 there are several of these  
 24 exhibits that say the request is overbroad, unduly  
 25 burdensome.

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1 more than 1,000 documents that would respond to it?  
 2 A. I don't recall.  
 3 Q. Do you recall any specific burdens that you ran  
 4 into in terms of trying o answer these questions?  
 5 A. Is it still under the general question?  
 6 Q. Yes.  
 7 A. Then it's generally burdensome.  
 8 Q. But do you recall any specific burdens?  
 9 A. Can you get me to a specific question?  
 10 Q. We can do that but first I'm asking do you  
 11 recall any specific burden --  
 12 A. They were generally overburdensome.  
 13 Q. You have no specific information?  
 14 A. Am I not coming across well?  
 15 Q. I'm just asking you whether you want to offer  
 16 any --  
 17 A. Asked and answered, but if you want to get into  
 18 specifics, let's do it.  
 19 Q. We talked about documents relating to the first  
 20 time that you wanted to use Rock Solid Investment and it  
 21 says here that you don't want to provide documents  
 22 because the request is overbroad and unduly burdensome.  
 23 A. Which one are we on?  
 24 Q. This is number 14.  
 25 A. Oh, okay.

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1 Q. All of your corporate activities are  
 2 confidential?  
 3 A. Sure.  
 4 Q. If Prudential were willing to enter into a  
 5 protective order that would ensure that these documents  
 6 were kept confidential, are there other documents you  
 7 would send to us at that point?  
 8 A. I don't know what I would do. That would be a  
 9 question for counsel.  
 10 Q. Are there any documents that you withheld here  
 11 because you thought they were proprietary or  
 12 confidential?  
 13 A. We, again, found it overbroad, unduly  
 14 burdensome and it's answered right there.  
 15 Q. Again, do you remember whether any documents  
 16 were withheld?  
 17 A. No, but, again, we found it overbroad and  
 18 burdensome.  
 19 Q. And again, different question.  
 20 A. It's not a different question.  
 21 Q. Did you withhold any documents?  
 22 A. Asked and answered.  
 23 Q. That's your best response?  
 24 I'm asking, is that your best and most helpful  
 25 response to the question of whether you withheld

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1 A. Yes. Yeah.  
 2 Q. So in terms of 18, you're saying that it's a  
 3 burden to respond to that?  
 4 A. No. No, I responded. I gave you the response.  
 5 I didn't say it was a burden to respond.  
 6 Q. It says here that you object because the  
 7 request is unduly burdensome.  
 8 A. Don't miss words, read it correctly. It says  
 9 overbroad, unduly burdensome and seeking irrelevant  
 10 information.  
 11 Q. And again, I'm asking about the piece that says  
 12 unduly burdensome. What burden did you --  
 13 A. It's the totality. It's the totality of  
 14 sentence and I've answered it.  
 15 Q. So you can't identify any specific burden that  
 16 you encountered in terms of trying to respond to number  
 17 18?  
 18 A. It was unduly burdensome.  
 19 Q. And you can't identify --  
 20 A. I responded.  
 21 Q. I haven't asked a question.  
 22 A. I did, I just answered you.  
 23 Q. You cannot identify any specific burden that  
 24 you encountered in terms of responding to number 17, can  
 25 you?

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1 documents or not?  
 2 A. It's answered.  
 3 Q. The next on number 18 we asked for documents  
 4 concerning any variations of the Rock Solid Investment  
 5 mark that you're using and it also says that you object  
 6 to that because it was unduly burdensome.  
 7 What burden did you encounter in terms of  
 8 trying to find documents that would show the different  
 9 variations of the Rock Solid Investment mark?  
 10 A. It was overbroad.  
 11 Q. Was there any burden?  
 12 A. Yes.  
 13 Q. What was the burden?  
 14 A. This whole process.  
 15 Q. By this whole process, I'm not sure I  
 16 understand what you mean.  
 17 A. Just that.  
 18 Q. Which process?  
 19 A. This is overbroad.  
 20 Q. When you say this, you're pointing at the  
 21 document?  
 22 A. I'm referring to your question. You asked me  
 23 about the question, I answered the question.  
 24 Q. By the question, do you mean the request number  
 25 18 that's on this document?

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1 A. It was asked and answered.  
 2 Q. And you can't identify any specific burden that  
 3 you encountered in terms of trying to respond to number  
 4 14?  
 5 A. It was all unduly burdensome and seeking  
 6 irrelevant information.  
 7 Q. Number 19 it asks for documents referring to or  
 8 relating to or documenting the amount of money that you  
 9 spent developing, promoting, marketing and advertising  
 10 the goods and services that will bear this and there's an  
 11 objection there that there was a burden that you  
 12 encountered in terms of responding to that.  
 13 A. Yes.  
 14 Q. What was the burden?  
 15 A. It was overbroad and unduly burdensome.  
 16 Q. How much money did you spend advertising this  
 17 mark so far?  
 18 A. I don't recall.  
 19 Q. Was it more than \$1,000?  
 20 A. I don't recall.  
 21 Q. Do you know if it's more than a million  
 22 dollars?  
 23 A. Asked and answered.  
 24 Q. Do you know if it's more than a dollar? You  
 25 have no other answer to that question?

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1 been withheld from us that says Rock Solid Investment on  
 2 it?  
 3 A. I'm not aware.  
 4 Q. Have you done any other advertisements using  
 5 Rock Solid Investment other than what you provided to us,  
 6 the You Tube video and the radio spots?  
 7 A. We may have, I don't know.  
 8 Q. You have no specific knowledge of anything else  
 9 besides that right now?  
 10 A. I don't. We may have, we may not have.  
 11 Q. As far as the radio spot, going back to that,  
 12 did they refer to Rock Solid Investment specifically?  
 13 A. I don't recall.  
 14 Q. Do you know one way or the other whether they  
 15 actually said Rock Solid Investment during that radio  
 16 ad?  
 17 A. I don't recall the exact words used on the  
 18 radio show.  
 19 Q. What about on the You Tube video, do they ever  
 20 actually say Rock Solid Investment?  
 21 A. I don't know.  
 22 Q. Do you know if there was an image shown that  
 23 said Rock Solid Investment?  
 24 A. I don't know. I don't handle that.  
 25 Q. That would be Jessica Berford?

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1 places you had to look?  
 2 A. I don't recall a specific answer right now.  
 3 Q. Okay. There's a question on 34 that asks about  
 4 documents concerning and identifying the trade channels  
 5 that you would sell services through that use Rock Solid  
 6 investment mark.  
 7 Do you recall any burdens in terms of trying to  
 8 figure out what those trade channels are?  
 9 A. Yeah, it was overly broad, unduly burdensome  
 10 and seeking irrelevant information.  
 11 Q. What was the burden?  
 12 A. It was unduly burdensome.  
 13 Q. Is there any more specific information you have  
 14 about the burden?  
 15 A. Yes, just that it was unduly burdensome.  
 16 Q. On 35 it asks for documents that refer to study  
 17 surveys or research that you conducted in terms of  
 18 potential customers for the Rock Solid Investment.  
 19 A. Yes.  
 20 Q. Are you reading the paper right now, Mr.  
 21 Bank?  
 22 A. Yes, I can multi task but you go right ahead.  
 23 Q. I would like the record to reflect that I'm  
 24 looking at and upside down copy of Palm Beach Post and  
 25 the Wall Street Journal.

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1 A. Yeah.  
 2 Q. Or Brad?  
 3 A. Or Brad or any other person involved.  
 4 Q. Are there any specific burdens that you recall  
 5 encountering in terms of trying to locate any  
 6 advertisements that say Rock Solid Investment?  
 7 A. Are you directing me to a question?  
 8 Q. I'm asking you whether there are any burdens  
 9 that you encountered in terms of just trying to respond  
 10 to a question about your advertising of the Rock Solid.  
 11 A. Which question are you referring to?  
 12 Q. I'm asking you a question.  
 13 A. I'm asking you, you said you're referring to a  
 14 question. Which one are you referring to?  
 15 Q. I don't believe I actually said that but I'll  
 16 ask a few questions.  
 17 Do you recall encountering any burdens in terms  
 18 of trying to respond to a question about whether or not  
 19 you've advertised Rock Solid Investment?  
 20 A. If I put in here it was overly burdensome, then  
 21 it would have been.  
 22 Q. What was the burden?  
 23 A. Responding to that.  
 24 Q. Do you have any more information about the  
 25 nature of the burden? Was it the number documents or the

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1 Is there something about this process that  
 2 makes you not want to answer these questions?  
 3 A. I've been answering them. Which one did I not  
 4 answer?  
 5 Q. Was there any burden that you encountered in  
 6 terms of trying to locate any studies or surveys you did  
 7 about potential customers?  
 8 A. Is this back to 35?  
 9 Q. Yes.  
 10 A. Yes, it was unduly burdensome and overbroad.  
 11 Q. Was there any specific burden you  
 12 encountered?  
 13 A. It was overly, unduly burdensome.  
 14 Q. Do you know what a privilege log is?  
 15 A. It's a privilege log.  
 16 Q. I'm asking whether you know what that is.  
 17 A. Is there a question on here?  
 18 Q. It's referred to multiple times in this  
 19 document. I'm asking you if you know what one is.  
 20 A. Where? Could you bring me to wherever that is  
 21 you are?  
 22 Q. If you go to, for instance, number 36 and you  
 23 look at your response there, the second question says  
 24 privilege log, colon, attorney file, do you see that?  
 25 A. That would be information traded between my

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1 encompass staff.  
 2 Q. You identified some marketing people earlier.  
 3 Is there anybody else besides that list that --  
 4 A. Other than everybody has a helping hand in  
 5 everything we do.  
 6 Q. I understand, but in terms of people who have a  
 7 lot of responsibility for that or primarily  
 8 responsibility for that, I think you had Jessica  
 9 Berford -- in terms of the marketing people, Jessica, who  
 10 also works on marketing?  
 11 A. Elizabeth Greco.  
 12 Q. Who else?  
 13 A. Everybody else.  
 14 Q. But Elizabeth, Jessica, that's their primary  
 15 responsibility or is that their primary responsibility?  
 16 A. Yes.  
 17 Q. Do you know whether exhibit -- the Dominion  
 18 Investment Grade documents stock that we're looking at  
 19 here in Exhibit No. 4, do you know whether that's ever  
 20 sold in conjunction with Prudential products?  
 21 A. Sold in conjunction with?  
 22 Q. Yes. Let me back up a little bit.  
 23 Are you aware of whether or not Dominion  
 24 Investment Group is selling Prudential products?  
 25 A. I'm not aware.

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1 this production. It would not surprise me if it had  
 2 been.  
 3 Q. Who would be responsible for that?  
 4 A. Any of those people I just mentioned.  
 5 Q. And if I wanted to find out where each one of  
 6 these had gone, like the customer, potential customer who  
 7 received this document in Exhibit 4, how would I go about  
 8 doing that?  
 9 A. I guess would you request it.  
 10 Q. But other than asking each of the individual  
 11 sales representatives, is that the only way I can find  
 12 out where these landed?  
 13 A. Yes.  
 14 Q. And if I wanted to find out if there was ever a  
 15 mass mailing of this document, is there any way to find  
 16 out that other than for you to go check?  
 17 A. You would have to ask them, the individual  
 18 sales representatives.  
 19 Q. Do the sales representatives, do they -- I  
 20 think you said something about they would have to pay for  
 21 it. How does that work?  
 22 A. Just that, they would have to pay for it.  
 23 Q. So they're responsible for their own marketing  
 24 costs, is that correct?  
 25 A. Yes.

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1 Q. Would it surprise you to find out they are?  
 2 A. No.  
 3 Q. Do you know whether there are ever any  
 4 communications that Dominion Investment Group sends out  
 5 where a customer would receive this Dominion Investment  
 6 Grade Diamonds information but also receive information  
 7 about Prudential?  
 8 A. I'm not aware of any information like that.  
 9 Q. If you wanted to find that out, would you have  
 10 to go to each individual representative and ask them?  
 11 A. I would.  
 12 Q. Is there any other way to find that out?  
 13 A. No.  
 14 Q. Are there any other brochures that say Rock  
 15 Solid Investment besides this one that we're looking at  
 16 here?  
 17 A. In terms of a brochure, this is all that I'm  
 18 currently familiar with.  
 19 Q. Are there any other advertisements that you're  
 20 aware of other than the radio and the You Tube spots, any  
 21 kind of like a print or e-mail document that says Rock  
 22 Solid Investment besides that document, which says  
 23 Dominion Investment Grade Diamonds, and these e-mails  
 24 that have the tag line on there?  
 25 A. I don't know if some have been created since

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1 Q. So you can provide them marketing collateral  
 2 but it's really up to them to decide what kind of effort  
 3 or money they want to put into getting it out to the  
 4 world, is that correct?  
 5 A. Yes.  
 6 Q. Earlier I showed you a copy of your trademark  
 7 application. I think you said that you would not be in a  
 8 position to say whether or not any of the particular  
 9 documents that were filed in the trademark proceeding,  
 10 whether or not they were authentic and complete, that was  
 11 your attorney's job I think is what you said, is that  
 12 correct?  
 13 A. I don't recall what I said. She would have a  
 14 record of it (indicating).  
 15 Q. Do you have Exhibit 1 in front of you?  
 16 A. Is that it?  
 17 Q. Exactly. Do you recognize this as one of the  
 18 documents that's filed in the trademark application  
 19 proceeding?  
 20 A. I don't know. You said it was.  
 21 Q. Well, I guess the broader question I have is as  
 22 to the -- one thing that we have to do in this proceeding  
 23 is authenticate the documents, just say these are true  
 24 and accurate copies of things.  
 25 Are you in a position to do that or should we

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<p style="text-align: right;">Page 138</p> <p>1 Q. Do you know who created this web page that's</p> <p>2 Exhibit 5?</p> <p>3 A. I don't.</p> <p>4 Q. Who is in charge of the web page for Dominion</p> <p>5 Investment Group?</p> <p>6 A. I would say collectively the partners.</p> <p>7 Q. Is there a specific individual though who is</p> <p>8 your web administrator either within your company or</p> <p>9 outside the company?</p> <p>10 A. Probably two people, the two people in</p> <p>11 marketing which I mentioned before would have</p> <p>12 executed it.</p> <p>13 Q. So Jessica and Elizabeth are in charge of</p> <p>14 this?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know whether any of these companies</p> <p>17 provided permission for their logos to be used here?</p> <p>18 A. I know that we work with an FMO and the FMO</p> <p>19 gave us permission to put that on there.</p> <p>20 Q. What is FMO?</p> <p>21 A. Field Marketing Organization.</p> <p>22 Q. Who is your -- is that one FMO that you work</p> <p>23 with?</p> <p>24 A. We have several.</p> <p>25 Q. Do you know who would be able to find out</p>	<p style="text-align: right;">Page 139</p> <p>1 whether any permission was granted to use Prudential's</p> <p>2 name on here?</p> <p>3 A. I don't know about Prudential but I know our</p> <p>4 field marketing organization would have had to have given</p> <p>5 it.</p> <p>6 Q. Who are the field marketing organizations that</p> <p>7 you've worked with?</p> <p>8 A. I don't know all of them to have the top of my</p> <p>9 head.</p> <p>10 Q. Doug Dunn is identified as one of the partners</p> <p>11 on here?</p> <p>12 A. Yes.</p> <p>13 Q. Is he one of the partners in Dominion</p> <p>14 Investment Group?</p> <p>15 A. Yes.</p> <p>16 Q. What is Mr. Dunn's role?</p> <p>17 A. To oversee the insurance brokerage.</p> <p>18 Q. Does he have any ownership interest in Dominion</p> <p>19 Diamonds?</p> <p>20 A. Not that I'm aware of.</p> <p>21 Q. Does he have any involvement with Dominion</p> <p>22 Diamonds?</p> <p>23 A. In running the company?</p> <p>24 Q. Just any involvement whatsoever, selling its</p> <p>25 products, advertising it, anything.</p>
<p style="text-align: right;">Page 140</p> <p>1 A. We're all associated with each other.</p> <p>2 Q. Would he have access to that brochure we were</p> <p>3 talking about that's been marked as Exhibit 4?</p> <p>4 A. Access meaning could he physically pick one up?</p> <p>5 Q. Yes, is this provided to him, is Exhibit No. 4</p> <p>6 provided to him and his people?</p> <p>7 A. I would assume so.</p> <p>8 Q. If you go through the through Exhibit 5 there's</p> <p>9 different pages that have other partners identified.</p> <p>10 Do you see on page three there's David Pope</p> <p>11 that's identified there?</p> <p>12 A. Yes.</p> <p>13 Q. And then if you keep going, Roger Hudspeth is</p> <p>14 identified on the page that says Dominion Personal</p> <p>15 Wealth.</p> <p>16 A. Okay.</p> <p>17 Q. Dominion Personal Wealth, is that a separate</p> <p>18 company or is that a division of Dominion Investment</p> <p>19 Group?</p> <p>20 A. It would be a separate company.</p> <p>21 Q. And what is Roger Hudspeth's role in the</p> <p>22 organization?</p> <p>23 A. In which organization?</p> <p>24 Q. If Dominion Investment Group.</p> <p>25 A. He's a partner.</p>	<p style="text-align: right;">Page 141</p> <p>1 Q. Does he have any specialized role as to either</p> <p>2 the insurance business or as to the diamond part of the</p> <p>3 business?</p> <p>4 A. I don't understand what you mean by</p> <p>5 specialized.</p> <p>6 Q. I think you said earlier that Doug Dunn heads</p> <p>7 up the insurance brokerage part of the business.</p> <p>8 A. Correct.</p> <p>9 Q. Is there another person that heads up the</p> <p>10 diamond part of the business?</p> <p>11 A. Yes.</p> <p>12 Q. Who is that?</p> <p>13 A. That would be Catrina Davis.</p> <p>14 Q. Okay. And if one wanted to find out what kinds</p> <p>15 of information about Exhibit No. 4 were provided to Doug</p> <p>16 Dunn and his group, how would I go about doing that?</p> <p>17 A. Ask Doug Dunn.</p> <p>18 Q. Do you know what source of advertisement the</p> <p>19 insurance brokerage group has, what types of</p> <p>20 advertisement do they use?</p> <p>21 A. What do you mean what type?</p> <p>22 Q. Does the insurance brokerage side of the</p> <p>23 business, is their marketing different than what we were</p> <p>24 talking about earlier in terms of direct marketing and</p> <p>25 mail and just the different types of avenues?</p>

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1 Q. Do you see anything there that you know is  
2 wrong?  
3 A. I don't see anything that I know is wrong.  
4 Q. I'll show you what I'm marking as Exhibit 7.  
5 (Marked for identification as Opposer's  
6 Exhibit No. 7.)  
7 BY MR. BARNARD:  
8 Q. Is that your LinkedIn page?  
9 A. I guess it is.  
10 Q. Do you recognize that document or do you  
11 recognize the information that's shown on that  
12 document?  
13 A. I'm assuming it's my LinkedIn page.  
14 Q. Do you maintain your own LinkedIn page or is  
15 that done by your marketing group?  
16 A. That was two questions, no.  
17 Q. No to both of them?  
18 A. It's no to the first one.  
19 Q. Does your marketing group -- did your marketing  
20 group set up that LinkedIn page?  
21 A. They did set it up.  
22 Q. And do they maintain that?  
23 A. Yes.  
24 Q. Do you make posts on there on a regular  
25 basis?

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1 A. Uh-huh.  
2 Q. Do you know who posted that?  
3 A. No.  
4 Q. The Dominion Investment Group LinkedIn pages,  
5 is that also maintained by Jessica?  
6 A. Yes, and Elizabeth and anyone else who is  
7 involved.  
8 Q. Do you recall applying for a trademark for  
9 Investment Grade Diamond?  
10 A. We applied for something. I don't remember  
11 exactly what it was.  
12 Q. Let me show you Exhibit 9 and ask if you can  
13 identify that.  
14 (Marked for identification as Opposer's  
15 Exhibit No. 9.)  
16 BY MR. BARNARD:  
17 Q. Does that refresh your recollection about  
18 applying for Investment Grade Diamond?  
19 A. It would be a question for my attorney because  
20 his name is all over it.  
21 Q. Do you have any recollection of thinking about  
22 using Investment Grade Diamond at one point?  
23 A. It seems to me we did something like that.  
24 Q. Are you still using that, the name Investment  
25 Grade Diamond?

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1 A. No.  
2 Q. If there are posts there, who does make  
3 those?  
4 A. Marketing people.  
5 Q. And marketing people, would that be either  
6 Jessica or Elizabeth?  
7 A. Yes.  
8 Q. Does one of them have particular duties as  
9 to the LinkedIn pages?  
10 A. What do you mean by duties?  
11 Q. Do they both work on the LinkedIn pages or is  
12 it just one of them?  
13 A. I think predominantly it's Jessica on mine but  
14 they both do.  
15 (Marked for identification as Opposer's  
16 Exhibit No. 8.)  
17 BY MR. BARNARD:  
18 Q. Do you recognize Exhibit 8?  
19 A. It appears to be a LinkedIn page.  
20 Q. Is that the LinkedIn page for Dominion  
21 Investment Group?  
22 A. It appears to be.  
23 Q. Can you go to the third page there and do you  
24 see where there's a little box around and an arrow  
25 pointing to where it says Rock Solid investment?

Page 153

1 A. Yes.  
2 Q. Where do you use that?  
3 A. Wherever we need to use it in the company.  
4 Q. Do you use it as a trademark?  
5 A. No.  
6 Q. Do you use it in marketing?  
7 A. Yes.  
8 Q. Does it appear in any sorts of brochures?  
9 A. It appears on that brochure that you already  
10 handed me.  
11 Q. Can you find that for me?  
12 A. It's right there (indicating).  
13 Q. Okay, got it.  
14 A. It's probably all throughout it too.  
15 Q. Is Investment Grade Diamond ever used as a  
16 company name or is that just to identify a product?  
17 A. I don't know. I believe at times they'll use  
18 Dominion Investment Grade Diamonds. I don't know. It's  
19 right there.  
20 Q. Got it. I'm sure you're aware of some  
21 companies like Microsoft, that's a trademark but it's  
22 also the name of the company.  
23 I guess the question I'm asking, did you ever  
24 use Investment Grade Diamond has a trade name or is it  
25 just a trademark you use for a particular product?

DARYL BANK - 06/08/2015

Page 158

1 A. To report to me or anybody in management if  
 2 there's been any confusion of which there has been  
 3 none.  
 4 Q. Was there any e-mail or any kind of a written  
 5 communication that was sent out regarding this issue?  
 6 A. I don't recall anything being written.  
 7 Q. You don't remember writing any kind of an  
 8 instruction to anybody or question to any of the people  
 9 in --  
 10 A. No, I try to communicate verbally as much as I  
 11 can with my people.  
 12 Q. You said that it would be -- is there any kind  
 13 of a policy in terms of if somebody was going to be  
 14 encountering that kind of an issue in the field about  
 15 reporting it up to management?  
 16 A. I don't understand the question.  
 17 Q. Are there any sorts of, let's say that you have  
 18 consumers who are confused between two products that are  
 19 being offered, how would that normally be dealt with?  
 20 A. Depending on what the confusion was, it would  
 21 typically be reported up the chain.  
 22 Q. Is there any kind of a written policy that  
 23 addresses that situation?  
 24 A. No.  
 25 MR. BARNARD: I'm going to adjourn the

Page 159

1 deposition right now. There are some of these  
 2 questions that I didn't get a lot of information on  
 3 but I'm hopeful that we will be able to get that by  
 4 working together to get through some of them.  
 5 Obviously I can't anticipate every question I'm  
 6 going to ask but I'm just going to adjourn this for  
 7 now unless you have any questions.  
 8 MR. TERRY: No.  
 9 MR. BARNARD: I'll order.  
 10 THE COURT REPORTER: Would you like a copy?  
 11 MR. TERRY: Yes, definitely, PDF.  
 12 (Thereupon, the deposition concluded  
 13 at 12:55 p.m.)  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

Page 160

1 CERTIFICATE OF OATH  
 2  
 3 STATE OF FLORIDA  
 4 COUNTY OF ST. LUCIE )  
 5  
 6 I, ROBIN J.P. RILEY, a Notary Public of the  
 7 State of Florida at Large, authorized to administer  
 8 oaths, certify that Daryl Bank appeared before me and was  
 9 duly sworn on June 8, 2015.  
 10 WITNESS my hand and official seal this  
 11 16th day of June, 2015.  
 12  
 13  
 14  
 15 ROBIN J.P. RILEY, CP  
 16 My Commission Expires:  
 17 May 9th, 2016  
 18 (Notary Seal) (This signature is valid only  
 19 if signed in blue ink.)  
 20  
 21 Personally Known \_\_\_\_\_  
 22 Or Produced Identification  X   
 23 Type of Identification Produced - driver's  
 24 license  
 25

Page 161

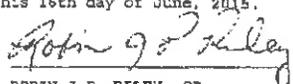
1 STATE OF FLORIDA )  
 2 COUNTY OF ST. LUCIE )  
 3  
 4 CERTIFICATE  
 5 I, ROBIN J.P. RILEY, a Shorthand Reporter and  
 6 Notary Public of the State of Florida at Large, certify  
 7 that the foregoing deposition of Daryl Bank was  
 8 stenographically reported by me and is a true and  
 9 accurate transcription of said deposition of Daryl Bank.  
 10 I certify further I am neither attorney nor  
 11 counsel for, nor related to, nor employed by any of the  
 12 parties to the action in which the deposition is taken  
 13 and, further, that I am not a relative or an employee of  
 14 any attorney or counsel employed in this case, nor am I  
 15 financially interested in the outcome of this action.  
 16 DATED this 16th day of June, 2015.  
 17  
 18   
 19 ROBIN J.P. RILEY, CP  
 20  
 21  
 22  
 23  
 24  
 25

EXHIBIT  
Opposer  
4/6/15  
-PK

**DOMINION**  
INVESTMENT GRADE  
**DIAMONDS™**



A ROCK SOLID  
INVESTMENT

**D**iamonds have shown steady consistent growth throughout history. Symbolizing wealth, quality, and love for centuries, diamonds are becoming widely viewed as an excellent source of investment diversification.

There is a very simple economic justification for considering diamonds as part of your investment portfolio - demand continues to expand while supplies remain limited.

As purchasing power grows in the burgeoning economies of China and India, their citizens have gained a healthy appetite for diamond jewelry — resulting in steady upward pressure on diamond values. The economic outlook is for this global demand to continue its positive trajectory well into the future.

On the flip side of the equation, mining companies are depleting global diamond reserves and have not made sufficient discoveries to stay apace of potential demand. We believe this only further enhances the potential for long-term future appreciation of diamonds.

Dominion Investment Grade Diamonds can help you build a very high quality diamond portfolio through our patented process as described within this kit. Once you've taken time to read through the information kit, call our toll free number to start a conversation with one of our diamond consultants.

"Thanks to an escalating taste for diamonds among the middle class in China and India, diamond prices soared in 2011, increasing by 49% in the first half of the year before ending 19% up overall by the year's end."

*Deborah L. Jacobs, Forbes, February 2012*

"A balanced market over the next four years, with a growing gap between supply and demand longer term. The rough-diamond market is expected to remain balanced from 2013 through 2017. From 2018 onward, as existing mines get depleted and no major new deposits come online, supply is expected to decline, falling behind expected demand growth that will be driven by China, India and the US. Over the next 10 year period, supply and demand are expected to grow at a compound annual rate of 2.0% and 5.1%, respectively."

*Yury Spoktorov, Olya Lindo, Bart Cornelissen and Rostislav Khomenko  
The Global Diamond Report 2013: Journey through the Value Chain - Bain Capital,  
August 27, 2013*



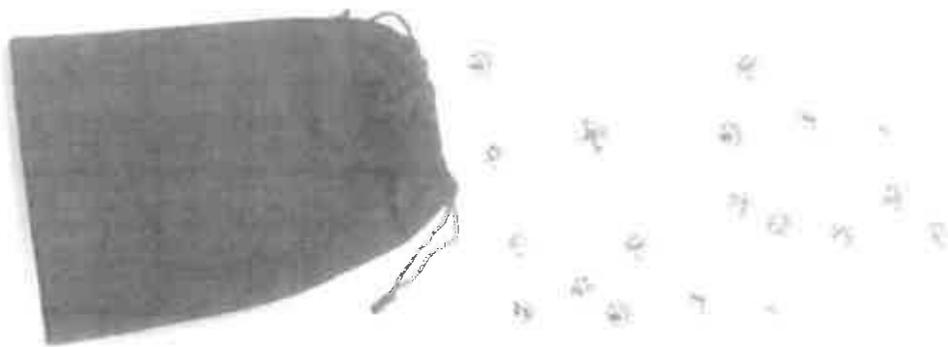
## ABOUT DOMINION

**D**ominion *Investment Grade Diamonds™* was formed to provide our clients with tangible and portable hard asset protection for their investment portfolios. Diamond investing is not just for high net worth clients, in fact many of our clients are hard working, everyday people, who want to protect their paper investments with tangible assets. Now Dominion offers them a viable solution.

Trust is essential to this process. We intend to earn your trust by becoming your advocate and assisting you in learning everything you need to know about wisely investing in diamonds. We live, breathe and love this process and we think you will get great satisfaction from it as well.

In an article titled "Diamonds Quietly Outperform," *Diamond Investing News* stated "diamond demand is outpacing supply, prices are on the rise again after the recession, and though a commodity, diamonds remain a wise hedge against inflation."

*Fox Business News* reports "Negligible yield on fixed income investments and volatility in the equity markets are driving the search for a relatively stable investment that can pack some punch in returns. The wealthy have been turning to hard assets they can enjoy – investing in diamonds is a natural alternative. With increasing global appetite for diamonds and a limited number of mining operations, supply and demand are working in the investor's favor and driving up prices."



## WHY INVEST IN DIAMONDS?

Our clients see diamonds as a safe haven. Diamonds are not a short-term investment and we recommend a 5 to 10 year investment period. We know of few alternatives that better protect the wealth you have accumulated from economic policy bubbles and stock market bull and bear cycles.

### **Diversification**

It's no secret that having a diversified portfolio makes a lot of sense. Having a wide array of assets may help mitigate your risk. Put simply, it's not prudent to have all your eggs in one basket. And that's why adding assets such as diamonds to your portfolio is a common sense diversification strategy.

### **Inflation Hedge**

Many people choose to own diamonds because they view it as a hedge against the weakening buying power of the dollar. In the 1920's, \$20 – either in the form of a diamond or a printed bill – bought a fine men's suit. Since then, trillions of paper dollars have been printed by the U.S. Treasury, but they can't print diamonds. That same diamond, purchased so many decades ago, held its value and will still afford you a fine men's suit today. That same \$20 bill may afford you a mediocre set of ear buds for your cell phone.

### **Tangible and Portable**

Unlike paper investments, stocks, bonds and currency, diamonds are a physical, tangible asset. They have a recognized intrinsic value. You can admire its value, you know its exact specifications and they don't change, and you can hold a great deal of wealth right in your hand. Many investors enjoy this aspect of owning diamonds.

### **Steady Growth, More Stable Than Precious Metals**

Over the past decade, diamond prices are up over 300%. While past performance cannot guarantee future results, there are some financial experts who believe diamond prices may reach new record highs. Many precious gem analysts believe that today's uncertain economic climate could contribute to a further rise in diamond prices. Demand for these assets has always existed, and unlike a publicly traded stock, a diamond's value has never dropped to zero. We also appreciate the stability of diamonds. While most tangible asset investors understand the long-term nature of their investments, many investors speculate in gold and silver, which leads to boom and bust swings. Investing in diamonds requires a bit more sophistication and homework than investing in gold, but we think that is exactly what lends to a more stable market structure. Read on to learn how our process is designed to give you the greatest opportunity for a sound long-term investment.

## WHAT ARE INVESTMENT GRADE DIAMONDS?

**A**t Dominion, we have literally trademarked the term "investment grade diamonds" for the very specific intention of creating an investment class of tangible assets whose quality and unique identity can be readily verified, which results in higher value, price transparency and better liquidity. We search the world for diamonds within a narrow cut and clarity range. We believe our focus and patented process significantly reduces the "noise" and price confusion when making such an important investment.

### **Our parameters for an Investment Grade Diamond:**

- GIA Graded, laser inscribed and sealed in tamper proof packaging
- Round, White
- Color Grades – Colorless D through F with no treatments
- Clarity – Flawless through Very Slightly Included (FL – VS<sub>1</sub>)
- Cut – Excellent to Very Good
- Polish – Excellent to Very Good
- Symmetry – Excellent to Very Good
- Fluorescence – None or Faint
- Conflict Free



## PROCESS



The key to success in any investment strategy is to purchase your investments at a price that provides the potential for appreciation. You must be able to achieve price transparency, assurance as to the quality of your asset, low transaction costs and liquidity when it is time to sell the investment.

Our method of sourcing, valuing, securing and packaging our diamonds is unique to us and gives you assurance that you are getting the absolute best service and value. We are so confident that our investment process offers you a unique investment opportunity that we patented it.

### What you can expect

#### Do Your Homework

Have fun reading our website and other internet sources relating to investing in diamonds. We also have a search feature which will enable you to peruse diamonds in our inventory to get an understanding of our investment grade diamond characteristics. By the way, we encourage you to compare our offerings to loose diamonds listed by our competitors.

#### Let's Get to Know Each Other

Contact us to arrange a consultation by our GIA trained diamond consultants. We are your advocates, and want to ensure that we understand your specific objectives. We can then find the diamonds that best fit your needs.

#### The Big Decision

You have a choice – either let us select a package of diamonds for you based on your desired investment amount, or build your own portfolio using our inventory search feature.

#### Quality Assurance

Once you have made your selections, we send each diamond to GIA for grading, laser engraving and tamper proof packaging. In addition, each stone will come with an impressive GIA Grading Report, which details and confirms the diamond's characteristics. This process may require up to two weeks, but we believe it is vital for providing you with assurance of the quality of the asset you've purchased.



#### Delivery

After your diamonds have been graded and sealed, we place them in our beautiful hand-crafted Italian jewelry box and express ship fully insured to you in discreet packaging. The entire process from start to finish typically takes about three weeks.

## FREQUENTLY ASKED QUESTIONS

### **How do I buy an investment diamond?**

Contact us by our toll free number and ask to speak with one of our diamond consultants. Our consultants are GIA trained and well qualified to help you through the investment process.

### **How do I select a diamond?**

We will visit with you about your specific investment objectives and your desired investment amount. We then will select either one or a bundle of several diamonds, based on your preference. All diamonds we select will fall within our criteria as Investment Grade Diamonds.

### **What forms of payment to you accept?**

We accept personal or cashier's checks, wire transfers, and credit card payments (we require a 3% fee for credit card purchases). Once your funds clear, we will start the process of grading your diamond.

### **How long does it take to receive my diamonds?**

You should expect a turnaround time of about three weeks from the time you pay for your diamonds until you receive them. We would love to be able to have them to you more quickly, but the quality assurance of the GIA grading and engraving is just too important to skip for the sake of urgency. You can hold them for the next few decades and then lovingly pass them along to your heirs.

OUR GUARANTEE

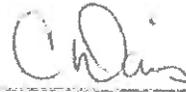
DOMINION  
INVESTMENT GRADE  
DIAMONDS™

OUR GUARANTEE

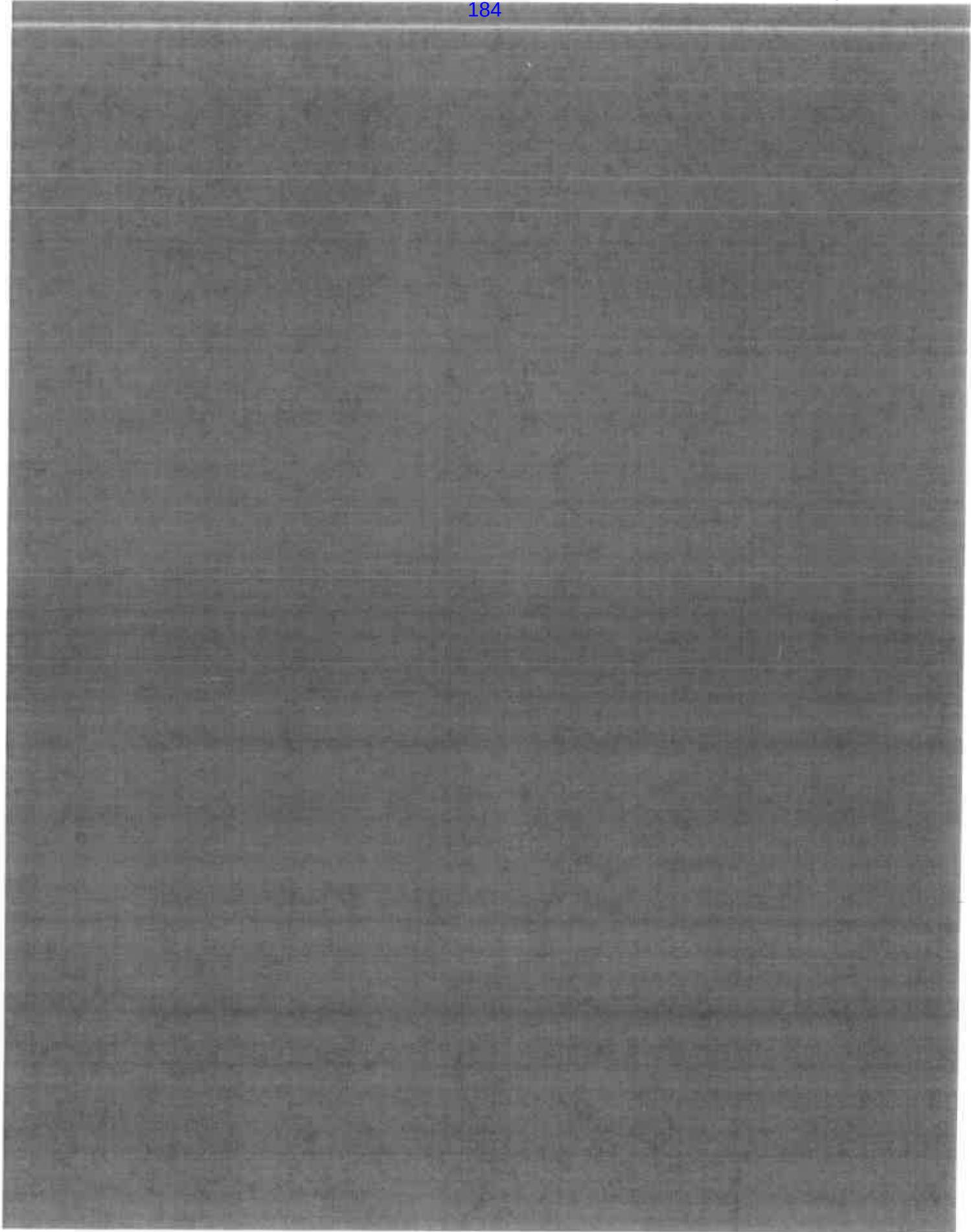
We are so confident that our diamonds are the lowest priced diamonds you will find that we offer a 100% buy back guarantee. If, within thirty (30) days of your purchase of one of our investment grade diamonds, you obtain an appraisal from a GIA certified gemologist for less than what you paid, simply return the diamond in the GIA tamper proof seal (intact) for a full money-back refund.



DARRYL G. BANK  
President and CEO



CATRINA DAVIS  
Marketing Manager



**Mark MPT Terry**

---

**From:** Daryl Bank <dbank@dominv.com>  
**Sent:** Tuesday, March 17, 2015 11:19 AM  
**To:** Mark MPT Terry  
**Subject:** EXAMPLE

*Catrina Davis Bank*  
Managing Partner  
Dominion Diamonds, LLC

855-351-8910



*"A Rock Solid Investment"*



4/22/2015

Dominion Investment Group | LinkedIn

Dominion Investment Group We are honored to be a Diamond Sponsor of the 2015 Veteran Team Challenge Golf Tournament hosted by the UDT SEAL Association! For more information about the event, visit [www.udtseal.org](#)



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Dominion Investment Group Take a look below at this week's radio show discussing financial managers with Daryl and the BULL!

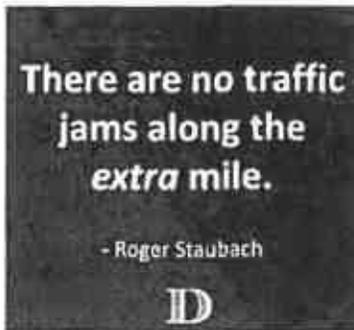


Dominion Investment Group w/ Daryl Bank - Financial Manager

youtube.com Daryl and the Bull go wire to wire with Tips, Tools and Strategies on how to find the RIGHT Financial Manager for your needs

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Dominion Investment Group Dare to go the distance?



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Dominion Investment Group Just a friendly reminder. There's less than 30 days to file! Call us now to request your appointment, Port Saint Lucie/Stuart Area (772) 237-3302 Virginia Beach/Norfolk Area (757) 962-4672

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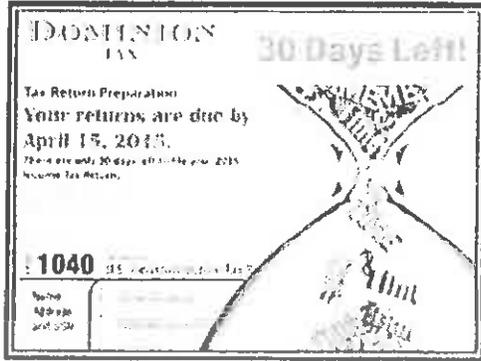
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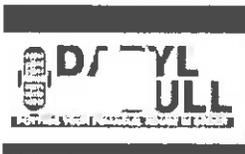
4/7/2015

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Like Comment Share 16 days ago

Dominion Investment Group Listen below for this week's radio show discussing the details of Identity Theft w/ Daryl and the Bull!



**Dominion Investment Group w/ Daryl Bank - Identity Theft**

youtube.com This week on Daryl and the Bull, the boys talk Identity Theft. What to look for, how to avoid it and how to fix it.

Like Comment Share 21 days ago

Dominion Investment Group Which would you prefer in your portfolio? Diamond are the only investment up 48 out of the past 50 years! A Rock Solid Investment if you ask us! Gold however is susceptible to market pressures and risk. Check out the charts below to draw your own conclusions.



Like Comment Share 26 days ago

Dominion Investment Group Listen below for this week's radio show discussing small business tips and Indian River State College's "Shark Tank" style pitch panel event with Daryl and the Bull!



**Dominion Investment Group w/ Daryl Bank - Tom Kindred IRSC**

youtube.com This week on Daryl & the Bull, guest Tom Kindred from IRSC talks about Small Business and their Shark Tank program.

Like Comment Share 27 days ago

Dominion Investment Group We are headed to Sin City in September! Will you be joining us for this year's educational conference? Come learn the industry trends with like-minded peers! Details below.



**Dominion Investment Group**  
dominoinvestmentgroup.com It Takes Two to Succeed in the world of professional financial services and at Dominion Private Client Group we value our partnership with our pro

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4/27/2015

Dominion Investment Group | LinkedIn

Dominion Investment Group Have you caught the fever yet? Not Spring Fever, we're talking about March Madness! You know, March Madness is a lot like planning for your retirement. We've created a special report entitled Battle of the Brackets: Retirement Edition. Download [more](#)



**Battle of the Brackets: Retirement Edition**

[dominioninvestmentgroup.com](http://dominioninvestmentgroup.com) Please fill out the form below to download your special complimentary report. Your report will begin downloading immediately.

Like (1) Comment Share 1 month ago

Daryl Bank

Add a comment

Dominion Investment Group Did you hear? Daryl G. Bank and Ed Carr's new book, Get in The Game hit SEVEN Best-Sellers lists, INCLUDING a total of three #1 spots! Here are the rankings and categories: #1 Direct Marketing #1 Marketing for Small Business #1 Business Marketing #1 [more](#)



**Get in The Game**

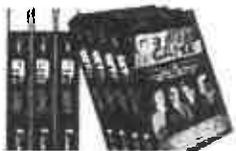
[google.com](http://google.com) Get in The Game [Kevin Harrington, Loral Langemeier, Daryl Bank] on Amazon.com. \*FREE\* shipping on qualifying offers. The everyday expression Get in the game! is frequently used as an invitation to join an ongoing activity. Used in this book.

Like (1) Comment Share 1 month ago

Daryl Bank

Add a comment

Dominion Investment Group Today's the day! Daryl G. Bank and Ed Carr's new book is available on Amazon! Get your copy below!



**Get in The Game**

[amazon.com](http://amazon.com) Get in The Game [Kevin Harrington, Loral Langemeier, Daryl Bank] on Amazon.com. \*FREE\* shipping on qualifying offers. The everyday expression Get in the game! is frequently used as an invitation to join an ongoing activity. Used in this book.

Like (1) Comment Share 1 month ago

Edward Carr

Add a comment

Dominion Investment Group We are looking forward to tonight's pitches! Come watch as LOCAL ENTREPRENEURS present their business plans and products to the IRSC Business Incubation Pitch Panel. Featured panelists include our Managing Partner, Daryl Bank and Chief Investment, [more](#)

**Dan K. Richardson - Entrepreneurship Development Institute @ IRSC**

[cdtrisc.com](http://cdtrisc.com) [cdtrisc.com](http://cdtrisc.com)

Like Comment Share 1 month ago

Dominion Investment Group Get ready to GAIN KNOWLEDGE, CREATE CONNECTIONS UNCOVER OPPORTUNITIES at Two Succeed 2015! [www.TwoSucceed.com](http://www.TwoSucceed.com)

**Register today and SAVE!**

[linkedin.com](http://linkedin.com) GAIN KNOWLEDGE Benefit from exceptional education, world-class speakers and powerful networking. CREATE CONNECTIONS Build a community of support with like-minded colleagues. Get the tools you need to solve problems and discover new.

4/2/2015

Dominion Investment Group (LinkedIn)



Like Comment Share 1 month ago

Dominion Investment Group Take a look below at this week's radio show discussing tips, tools and strategies to help keep one of your biggest investments safe and secure with Daryl and the BULL!



**Dominion Investment Group w/ Daryl Bank - Yacht Watchman**

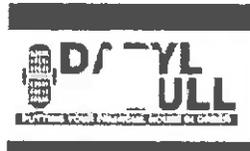
youtube.com This week's show of Daryl & the Bull is about tips, tools and strategies to help keep one of your biggest investments safe and secure! Special guest: CEO and Founder of Yacht Watchman - Jim Kneska

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Share your comments and reactions to this post

Add a comment

Dominion Investment Group Take a look below at this week's radio show discussing college planning with Daryl and the BULL!



**Dominion Investment Group w/ Daryl Bank - College Planning**

youtube.com Show for this weekend is on College Planning and Financing. Special guest is Dave Cattie of Dominion College Planning

Like (1) Comment Share 1 month ago

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Dominion Investment Group Ready to do it your way? Join us for this year's It Takes Two to Succeed Sales Conference at the Trump International Hotel Las Vegas!



**Dominion Investment Group**

dominioninvestmentgroup.com It Takes Two to Succeed in the world of professional financial services and at Dominion Private Client Group we value our partnership with our pro...

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**Dominion Investment Group**

dominioninvestmentgroup.com Tax Services Income Tax Preparations At Dominion Investment Group, we bring decades of experience to every area of tax planning and preparation. Our experts

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Dominion Investment Group Excited to announce the next IRSC "Shark Tank" style event is February 25th at IRSC! Get the details below

4/27/15

Dominion Investment Group | LinkedIn



### Dominion Investment Group

dominioninvestmentgroup.com This past n. The quarterly Share-Talk pitch panel event is scheduled for February 25th. Presented by Indian River State College, the Share-Talk title is:

Like (1) Comment Share 3 months ago

Add a comment

As soon as you think about making the call, you should make it. That's right - and go for it! Stop second-guessing yourself! For many salespeople talk themselves out of making the calls that really could boost profit and sales. [Read more](#)



Like (1) Comment Share 1 month ago

Add a comment

We are excited to announce that with the addition of three new stations, Dayt & the Bull is now on 36 stations in the United States. New stations include KHNC-AM in Denver, Colorado, WRRN-LP 99.5 in Myrtle Beach, Florida and WQSO-AM 990 in New York.



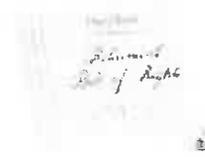
### Dominion Media Group LLC, Of Dominion Investment Group Adds New Radio Markets

prlog.org Dominion Media Group LLC, Of Dominion Investment Group Adds New Radio Markets Dominion Media Group LLC, of Dominion Investment Group, has announced with the addition of three new stations, taking Dayt & the Bull to new 36 stations in the

Like Comment (1) Share 1 month ago

Add a comment

In honor of President's Day which is right around the corner, we've created a special report that breaks down what we consider to be the rights you've earned with a lifetime of work. Get your copy now below.



### Your Retirement Bill of Rights

dominioninvestorgroup.com Please fill out the form below to download your special complimentary report. Your report will begin downloading immediately.



# **EXHIBIT J**

# LATHROP & GAGE<sub>LLP</sub>

DAVID R. BARNARD  
DIRECT LINE: 816.460.5869  
EMAIL: DBARNARD@LATHROPGAGE.COM  
WWW.LATHROPGAGE.COM

2345 GRAND BOULEVARD, SUITE 2200  
KANSAS CITY, MISSOURI 64108-2618  
PHONE: 816.292.2000  
FAX: 816.292.2001

July 7, 2015

## VIA EMAIL

Mark Terry  
Office of Mark Terry, Esq.  
801 Brickell Avenue  
Suite 900  
Miami, FL 33131

Re: Opposition No. 91219616 - U.S. Application Serial No. 86/184,144 for  
ROCK SOLID INVESTMENT  
Matter No. 560658

Dear Mark:

This letter follows up on the deposition of Mr. Bank. As you are aware, he produced only two documents in advance of the deposition. He produced no emails or other communications regarding his use of the ROCK SOLID INVESTMENT mark in terms of where, how and how broadly he has been using the mark. At the deposition itself, Mr. Bank was the least cooperative witness I have seen in 19 years of taking depositions. He did, however, admit to using the mark and providing access to sales information incorporating the mark to the 200+ sales agents for Dominion Investment Group, LLC (DIG) and Dominion Diamonds, LLC (collectively "Dominion"). Despite this fact, he has failed to provide a great deal of information and documents Prudential specifically requested that relates to his use of ROCK SOLID INVESTMENT. This letter details his specific failures to provide information responsive to discovery requests prior to the deposition. We expect and demand that these failures be remedied as soon as possible.

At a basic level, there was no indication from the deposition that Bank ever actually searched any of his electronic document systems for documents relating to his development and use of ROCK SOLID INVESTMENT. He said he "did whatever was requested" by Prudential's document requests and yet was unable to provide any details regarding when or where any search was actually performed. The failure to produce documents confirms that he has ignored his obligations. We want confirmation from you pursuant to FRCP 26 that a proper search was done. This includes details regarding when

Mark Terry  
July 7, 2015  
Page 2

the search was done, what electronic record systems were searched and what search terms were used.

As to specific interrogatories and documents requests, Mr. Bank's discovery deficiencies include the following:

Interrogatory No. 2: Identify any entities with which the Applicant is affiliated, partnered with, or possess an ownership interest in. For each entity identified, state the Applicant's position and provide a description of Applicant's duties.

Mr. Bank failed to identify DIG despite disseminating ROCK SOLID INVESTMENT sales materials to DIG's sales staff. Prudential is entitled to know what other entities Mr. Bank is affiliated with.

Mr. Bank indicated that he consulted with Raeann Gibson to obtain documents responsive to our discovery requests. Communications to and from Ms. Gibson and other documents generated by Ms. Gibson regarding the ROCK SOLID INVESTMENT mark are responsive to at least the following:

Interrogatory No. 5: Describe the circumstances related to the selection and decision to adopt Applicant's ROCK SOLID INVESTMENT Mark and identify all participants to that selection and adoption process.

RFP 4: All documents referring to Applicant's selection and adoption of the ROCK SOLID INVESTMENT Mark, including, without limitation, any documentation of meetings or discussions held concerning the adoption of the ROCK SOLID INVESTMENT Mark, any documentation relating to the reasons for selecting the ROCK SOLID INVESTMENT Mark, and any documentation relating to the consideration of other marks not selected or filed.

RFP 5: All documents relating to any opinion letters, searches, investigations, or other analysis regarding the availability to Applicant or by Applicant of the ROCK SOLID INVESTMENT Mark, including all documents concerning who requested the opinion or search, when the opinion or search was requested, who prepared the opinion, and the substance thereof.

RFP 6: All documents referring to Applicant's ROCK SOLID INVESTMENT Mark, including without limitation, all notes, correspondence, internal memoranda, searches, surveys, email, or any other electronically or digitally stored documents.

Mark Terry  
July 7, 2015  
Page 3

All of these communications should be produced.

Mr. Bank also indicated that at least Brad Sperling, Jessica Burford, Elizabeth Greco, and Catrina Davis were responsible for the marketing and/or sales of the products and services under the ROCK SOLID INVESTMENT mark. Communications either sent or received by these individuals, as well as other documents generated by them pertaining to the use and marketing of the ROCK SOLID INVESTMENT mark, are responsive to at least the following:

RFP 5: All documents relating to any opinion letters, searches, investigations, or other analysis regarding the availability to Applicant or by Applicant of the ROCK SOLID INVESTMENT Mark, including all documents concerning who requested the opinion or search, when the opinion or search was requested, who prepared the opinion, and the substance thereof.

RFP 10: All documents relating to or disclosing the manner in which Applicant distributes promotional materials that advertise or promote the services stated in the services description of the application for the ROCK SOLID INVESTMENT Mark.

RFP 14: All documents and records relating to, referring to, or documenting: (a) the date of adoption and first use of Applicant's ROCK SOLID INVESTMENT Mark; (b) the geographic areas in which Applicant's services have been offered; (c) the individuals, retail stores, or other purchasers to whom Applicant's services have been or are offered; and (d) the last date upon which Applicant's services were marketed or offered.

RFP 15: All documents and records relating to, referring to, or documenting Applicant's anticipated first use of Applicant's ROCK SOLID INVESTMENT mark in commerce, if Applicant has not yet used the ROCK SOLID INVESTMENT Mark in commerce in the United States.

RFP 16: All documents referring to, relating to, or documenting Applicant's development of any logos or packaging bearing the ROCK SOLID INVESTMENT Mark.

RFP 17: All documents and records referring to, relating to, or documenting the activities undertaken by Applicant in preparation for use of the ROCK SOLID INVESTMENT Mark.

Mark Terry  
July 7, 2015  
Page 4

RFP 18: All documents concerning any and all variations of Applicant's ROCK SOLID INVESTMENT Mark that Applicant is using or intends to use in the future.

RFP 19: All documents referring to, relating to, or documenting the amount (in U.S. dollars) that Applicant has spent developing, promoting, marketing, or advertising the goods and services bearing or intended to bear Applicant's ROCK SOLID INVESTMENT Mark.

RFP 20: All documents disclosing the amount (in U.S. dollars) that Applicant has received as a result of offering services under Applicant's ROCK SOLID INVESTMENT Mark from the date of first use of the ROCK SOLID INVESTMENT Mark to the present time, if any.

RFP 21: All documents concerning or identifying the customers or potential customers to whom Applicant's services bearing the ROCK SOLID INVESTMENT Mark are promoted, or to whom Applicant intends to promote such services in the future.

RFP 24: All documents concerning or embodying any license, agreement, grant of permission, or assignment that involves or relates to Applicant's ROCK SOLID INVESTMENT Mark.

RFP 25: Documents disclosing the principal media by or in which Applicant promotes, or intends to promote, the services described in the application for the ROCK SOLID INVESTMENT Mark.

RFP 32: All documents and records relating to, referring to, or documenting Applicant's prior use, current use, or intent to use the ROCK SOLID INVESTMENT Mark with financial and investment services.

RFP 33: Produce specimens of all labels, tags, decals, stickers, packaging, containers, ad slicks, price lists, displays, and/or point-of-purchase promotional materials which are, have ever been used, or will be used in the future in connection with the offering for sale or sale of products or services by Applicant bearing the ROCK SOLID INVESTMENT Mark.

RFP 34: All document concerning or identifying the trade channels through which Applicant has sold, is currently selling, or intends to sell Applicant's Services under the ROCK SOLID INVESTMENT Mark or any variation thereof.

Mark Terry  
July 7, 2015  
Page 5

RFP 35: All documents referring to, relating to, or documenting any studies, surveys, or other research conducted by or on behalf of Applicant regarding the current or potential consumers of products or services that are sold or will be sold under the ROCK SOLID INVESTMENT Mark.

Mr. Bank indicated that there are agents working for DIG and other companies under the Dominion group who have access to marketing brochures and have permission to use marks of the related companies. Agreements entered into by these agents and/or policies provided to them with regard to the ability to use any and all of the Dominion trademarks and/or service marks are responsive to at least the following:

Interrogatory No. 19: State whether Applicant has ever granted or discussed possibly granting to any person or entity authorization or license to use Applicant's ROCK SOLID INVESTMENT Mark or any variation thereof. If so, identify to whom the authorization or license was made, the date it was granted, and the circumstances surrounding such authorization or license, including duration of permitted use, and the business, goods, or services for which authorization or license was granted.

RFP 24: All documents concerning or embodying any license, agreement, grant of permission, or assignment that involves or relates to Applicant's ROCK SOLID INVESTMENT Mark.

For many of the requests above, Mr. Bank objected that the requests were unduly burdensome. At the deposition, however, he was unable to identify any specific burden associated with producing these documents. Accordingly, the objection is meritless.

For the reasons set forth above, we request all information and documents responsive to at least the discovery requests identified above be produced to us no later than July 21, 2015.

In his interrogatory responses and during his deposition, Mr. Bank admitted that ROCK SOLID INVESTMENT is merely descriptive of the precious stones aspect of his business. Accordingly, Prudential plans to file a motion for leave to file an amended petition asserting this additional ground challenging the application. Please let us know if you consent to the motion.

In order to provide Mr. Bank with sufficient time to remedy these failures, gather and produce the above-requested documents and information, for Prudential to do follow-up discovery and to permit time for the Board to rule on the amended petition motion, we request your consent to extend the deadline for close of discovery from August 10, 2015

Mark Terry  
July 7, 2015  
Page 6

to October 10, 2015. If you are amenable to the extension, we would also request the Board to move the remaining deadlines as follows:

Event	Old Deadline	New Deadline
Plaintiff's Pretrial Disclosures	09/24/2015	11/24/2015
Plaintiff's 30-Day Trial Period Ends	11/08/2015	1/08/2016
Defendant's Pretrial Disclosures	11/23/2015	1/23/2016
Defendant's 30-Day Trial Period Ends	01/07/2016	3/07/2016
Plaintiff's Rebuttal Disclosures	01/22/2016	3/22/2016
Plaintiff's 15-Day Rebuttal Period Ends	02/21/2016	4/21/2016

We will file the request to amend the scheduling order once we receive your approval of the above. Please let us know if you have any questions or would like to discuss. We look forward to receiving your response to the proposals in this letter as soon as possible.

Very truly yours,

LATHROP & GAGE LLP

By:



David R. Barnard

DRB/DPG

# **EXHIBIT K**

**Mueller, Terry L.**

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**From:** Barnard, David  
**Sent:** Tuesday, July 07, 2015 3:17 PM  
**To:** Mark Terry (mark@terryfirm.com)  
**Cc:** Meriwether, Luke M.; Gonzales, Donna P.; Mueller, Terry L.  
**Subject:** Prudential/Rock Solid Investment

Mark, we are in the process of getting subpoenas ready for 30(b)(6) depositions of Dominion Investment Group and Dominion Diamonds, as well as subpoenas for Catrina Davis, Elizabeth Greco and Doug Dunn. We are looking at the week of August 3 for the document productions and depositions. Please confirm that you will be serving as the attorney for these entities and individuals and that the witnesses are available that week. We will be sending you the formal notices soon.

Dave

**LATHROP  
& GAGE LLP**

**David Barnard**  
**Chairman, Intellectual Property Litigation Teams**  
2345 Grand Blvd., Suite 2200 | Kansas City, MO 64108-2618  
P: 816.460.5869 | F: 816.292.2001 | [DBarnard@LATHROPGAGE.COM](mailto:DBarnard@LATHROPGAGE.COM)  
bio: [www.lathropgage.com/dbarnard](http://www.lathropgage.com/dbarnard) | [www.lathropgage.com](http://www.lathropgage.com)

# **EXHIBIT L**

**Mueller, Terry L.**

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**From:** Barnard, David  
**Sent:** Thursday, July 16, 2015 10:33 AM  
**To:** Mark Terry (mark@terryfirm.com)  
**Cc:** Mueller, Terry L.; Meriwether, Luke M.; Gonzales, Donna P.  
**Subject:** Prudential/Rock Solid Investment opposition - subpoenas of Greco, Davis and Dominion Diamonds, LLC 30(b)(6)  
**Attachments:** 2015-07-14 Prudential Subpoena\_Davis (Official).pdf; 2015-07-14 Prudential Subpoena\_Dominion Diamond (Official).pdf; 2015-07-14 Prudential Subpoena\_Greco (Official).pdf

Mark, this follows up on my 7/7 email re scheduling depositions. Attached are subpoenas for Dominion Diamonds, Elizabeth Greco and Catrina Davis. Please let me know if you are representing them and if you will accept service.

Dave

**LATHROP  
& GAGE**

**David Barnard**  
**Chairman, Intellectual Property Litigation Teams**  
2345 Grand Blvd., Suite 2200 | Kansas City, MO 64108-2618  
P: 816.460.5869 | F: 816.292.2001 | [DBarnard@LATHROPGAGE.COM](mailto:DBarnard@LATHROPGAGE.COM)  
bio: [www.lathropgage.com/dbarnard](http://www.lathropgage.com/dbarnard) | [www.lathropgage.com](http://www.lathropgage.com)

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the Southern District of Florida

The Prudential Insurance Company of America )
Plaintiff )
v. ) Civil Action No. Opp No. 91219616 (Trademark
Daryl Bank ) Trial and Appeal Board
Defendant )

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Elizabeth Greco, 2710 SW Port St. Lucie Blvd., Port St. Lucie, FL 34953

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action.

Table with 2 columns: Place (First Choice Court Reporting, 500 S. Australian Ave, Suite 600, West Palm Beach, FL 33401) and Date and Time (08/03/2015 1:00 pm)

The deposition will be recorded by this method: Stenographic

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: See Exhibit A

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: JUL 14 2015

Signature of Steven M. Larimore, Clerk of Court

OR

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) The Prudential Insurance Company of America, who issues or requests this subpoena, are:

David R. Barnard (dbarnard@lathropgags.com), Luke M. Meriwether (lmeriwether@lathropgagage.com), Donna P. Gonzales (dgonzales@lathropgagage.com), Lathrop & Gage LLP, 2345 Grand Blvd., Ste 2200, Kansas City, MO 64108; 816-292-2000

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. Opp No. 91219616 (Trademark

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_

I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_ *Server's signature*

\_\_\_\_\_ *Printed name and title*

\_\_\_\_\_ *Server's address*

Additional information regarding attempted service, etc.:

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 3)

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

The Prudential Insurance Company of America

Plaintiff

v.

Daryl Bank

Defendant

Civil Action No. Opp No. 91219616 (Trademark Trial and Appeal Board

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Dominion Diamonds LLC, c/o Daryl G. Bank, 2710 SW Port St. Lucie Blvd., Port St. Lucie, FL 34953

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment: See Exhibit A

Table with 2 columns: Place (First Choice Court Reporting, 500 S. Australian Ave, Suite 600, West Palm Beach, FL 33401) and Date and Time (08/04/2015 9:00 am)

The deposition will be recorded by this method: Stenographic

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: See Exhibit A

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: JUL 14 2015

Signature of Steven M. Larimore

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

The Prudential Insurance Company of America, who issues or requests this subpoena, are:

David R. Barnard (dbarnard@lathropgage.com), Luke M. Meriwether (lmeriwether@lathropgage.com), Donna P. Gonzales (dgonzales@lathropgage.com), Lathrop & Gage LLP, 2345 Grand Blvd., Ste 2200, Kansas City, MO 64108; 816-292-2000

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. Opp No. 91219616 (Trademark

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_

I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_ *Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

The Prudential Insurance Company of America

Plaintiff

v.

Daryl Bank

Defendant

Civil Action No. Opp No. 91219616 (Trademark Trial and Appeal Board

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Catrinia Davis, 2710 SW Port St. Lucie Blvd., Port St. Lucie, FL 34953

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place (First Choice Court Reporting, 500 S. Australian Ave, Suite 600, West Palm Beach, FL 33401) and Date and Time (08/03/2015 9:00 am)

The deposition will be recorded by this method: Stenographic

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: See Exhibit A

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: JUL 14 2015

Signature of Steven M. Larimore, Clerk of Court

OR

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) The Prudential Insurance Company of America, who issues or requests this subpoena, are:

David R. Barnard (dbarnard@lathropgag.com), Luke M. Meriwether (lmeriwether@lathropgag.com), Donna P. Gonzales (dgonzales@lathropgag.com), Lathrop & Gage LLP, 2345 Grand Blvd., Ste 2200, Kansas City, MO 64108; 816-292-2000

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. Opp No. 91219616 (Trademark

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**

**(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

# **EXHIBIT M**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In Re: Application Serial No. 86/184,144  
For the Mark: ROCK SOLID INVESTMENT  
Filed: February 4, 2014  
Published in the Official Gazette: August 5, 2014

The Prudential Insurance Company of America

Opposer

v.

Daryl Bank

Applicant

Opp. No. 91-219,616

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

DECLARATION OF ELIZABETH MCINTYRE

I, Elizabeth McIntyre, do hereby give the following declaration:

1. I am 38 years of age and have personal knowledge of the matters set forth in this Declaration and testify hereto under penalty of perjury.

2. I was hired by Opposer, The Prudential Insurance Company of America, to serve subpoenas in this case.

3. I am employed as Process Server by Baker Street Investigations Inc, but work with HPS Process Service and Investigations, Inc.

4. On July 17, 2015, HPS Process Service received a subpoena to be served upon Dominion Diamonds, LLC ("Dominion Diamonds"), c/o Daryl G. Bank at the Dominion Diamonds office at 2710 S.W. Port St. Lucie Boulevard, Port St. Lucie, Florida 34953.

4. On July 17, 2015 at 2:30 p.m., I attempted service at Dominion Diamonds' business address. I was met by a young lady, while I was in the waiting room. I told her I had documents for Daryl Bank, Catrina Davis, and Elizabeth Greco. She said they were all out of the office. She further explained that most of the employees are out, since it was a Friday afternoon, and suggested I come back on Monday.

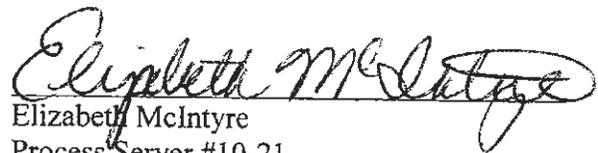
5. On July 20, 2015 at 9:55 a.m., I again attempted service at Dominion Diamonds' office. Another lady in her 50's was at the front desk. As I approached the desk, she started shaking her head. I asked whether Mr. Bank, Ms. Davis, or Ms. Greco were there. She told me that they were not in. She also said that Mr. Bank and Ms. Davis were never there, because "they travel a lot." She said she did not know when they will be in the office again, then turned around and left.

6. After attempting service twice, it became apparent to me that we needed to serve Mr. Bank and Ms. Davis at their residence. I asked my supervisor, Marcia Gillings, to attempt service the following day.

I swear that the foregoing is the truth under penalty of perjury.

Date: \_\_\_\_\_

7/30/15



Elizabeth McIntyre  
Process Server #10-21  
Baker Street Investigations

STATE OF FLORIDA )  
 )SS  
COUNTY OF Martin )

On this 30<sup>th</sup> day of July 2015, before me personally appeared Elizabeth McIntyre, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.



[Signature]  
Notary Public

My Commission Expires:  
\_\_\_\_\_

# **EXHIBIT N**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In Re: Application Serial No. 86/184,144  
For the Mark: ROCK SOLID INVESTMENT  
Filed: February 4, 2014  
Published in the Official Gazette: August 5, 2014

The Prudential Insurance Company of America	)	
	)	
Opposer	)	
	)	
v.	)	Opp. No. 91-219,616
	)	
Daryl Bank	)	
	)	
Applicant	)	
	)	

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**DECLARATION OF MARCIA GILLINGS**

I, Marcia Gillings, do hereby give the following declaration:

1. I am 68 years of age and have personal knowledge of the matters set forth in this Declaration and testify hereto under penalty of perjury.

2. I was hired by Opposer, The Prudential Insurance Company of America, to serve subpoenas in this case.

3. I am the owner and operator of Baker Street Investigations, a fully-licensed private investigation and process service firm in Stuart, Florida. I opened this business in 1986 and since that time have been a full-time private investigator and process server.

4. I am originally from England. I attended university at Kettering College. I then served as a "Bobbie" in the British police, including Her Majesty's Detective Service. Specifically, I served as a police sergeant in Warwickshire, England from 1967-1976.

5. I work with HPS Process Service and Investigations, Inc. On July 17, 2015, HPS Process Service received a subpoena to be served upon Dominion Diamonds, LLC, c/o Daryl G. Bank at the Dominion Diamonds office at 2710 S.W. Port St. Lucie Boulevard, Port St. Lucie, Florida 34953. Another process server from my office, Elizabeth "Beth" McIntyre (PS #10-21) attempted service at the business address, but was unable to complete service on Mr. Bank as he was not in the office. She believed that they were unhelpful and were not being truthful.

6. I then went to serve the subpoena on Mr. Bank at his home, 814 Saint Julien Court, Port St. Lucie, Florida 34986. I was wearing a dress and my badge identifying me as a process server. Attached to as Exhibit 1 is an image of me wearing the same outfit and badge that I wore on the day I served Mr. Bank.

7. I knocked on the door. No one answered. I then waited in my vehicle, which was parked on the road. During this time, I called Beth McIntyre from my mobile phone.

8. A small boy about 8 years of age came out of the house walking a dog. I talked with the boy. I asked if his parents were inside. He said his mother was. He also confirmed that her name was Catrina. I was aware that Mr. Bank's wife was Catrina Davis. The boy went inside, came out and said his mother was in the shower. I asked the boy to have his mother come to the door.

9. The boy went back inside and after some time, came out and said his mother was not home. I explained to the boy that I was from the court, that I had documents for his

mother, and that it was important to tell her to come outside. The boy went back inside the home and did not come back out.

10. The boy left the front door open. I could see him and a younger girl walking back and forth inside. I did not see any adults inside. I assumed that either the children had been left alone or, more likely, that Ms. Davis was inside and was refusing to come to the door to accept the subpoenas.

11. As no one came out, I went back to my car and viewed the home from my vehicle with the passenger window down.

12. After a few minutes, a white sedan came into the driveway and pulled into the garage. Mr. Daryl Bank was driving the car. I was able to identify him based on a picture on his website. I was also familiar with Mr. Bank, as I had served process on him for a different action before.

13. As Mr. Bank exited his vehicle, I went toward Mr. Bank and shouted to him letting him know that I was a process server and was there to serve him legal papers. He then closed the garage door while I was standing about six feet away from him, still on the driveway.

14. I then went to the front door which was still open and threw both subpoenas inside the front door and informed Mr. Bank in a loud voice that he had been served. The papers landed approximately 8 to 10 inches inside the house. I did not step inside the house.

15. As I was about to leave, I saw Mr. Bank coming toward the door. I picked up the papers and was about to hand them to him and explain their contents when I saw he had a gun pointed at me. Specifically, it was a handgun. He had his arm completely outstretched and was pointing it right at me. Mr. Bank held the gun on me and was yelling at me to get off of his property and that I was trespassing. Mr. Bank also called me a "whore."

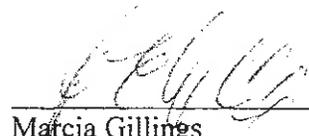
16. Mr. Bank continued to walk forward. I immediately turned, dropped the papers, and walked back toward my car. As I started my vehicle, I saw Mr. Bank running toward my vehicle in a menacing manner carrying the papers I had dropped. I did not know whether he still had the gun. Mr. Bank ran to the passenger side window as I was starting the car and threw some of the papers into my car. I threw them back out of the window and drove away. At all times during the incident, Mr. Bank appeared to be enraged and out of control.

17. I immediately called 911 to report the incident and was advised to go to Port St. Lucie police station to make a full report. I did so. A true and accurate copy of that report is attached to this Declaration as Exhibit 2. Also attached as Exhibit 3 is the Affidavit of Service, which reports some of these same facts.

I swear that the foregoing is the truth under penalty of perjury.

Date: \_\_\_\_\_

8/3/15

  
\_\_\_\_\_  
Marcia Gillings  
Owner, Operator  
Baker Street Investigations

STATE OF FLORIDA )  
 )SS  
COUNTY OF St. Lucia )

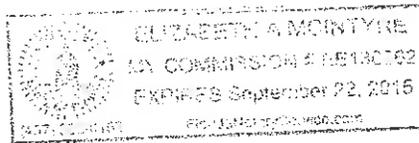
On this 3<sup>rd</sup> day of August 2015 before me personally appeared Marsha Gillings, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

  
Notary Public

My Commission Expires:

9/22/15



**DECLARATION OF MARCIA GILLINGS**  
**EXHIBIT N.1**



DECLARATION OF MARCIA GILLINGS  
EXHIBIT N.2

814 SW. St Julien Ct

# PORT ST. LUCIE POLICE DEPARTMENT STATEMENT FORM

15388

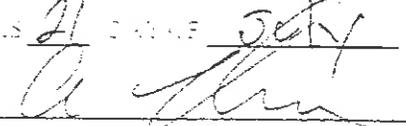
VICTIM       WITNESS       SUSPECT       OTHER 2015-380

CASE NUMBER: \_\_\_\_\_ SUSPECT: DARYL BANK  
NAME: MARCIA GIBBINGS (FDOL G 452545468800) DOB: 10/20/46  
ADDRESS: P.O. Box 564 STUART FL 34995  
HOME PHONE: \_\_\_\_\_ WORK PHONE: 772 878 7399 CELL PHONE: 772 201 1271  
DATE AND TIME: 7/21/15 LOCATION: 814 SW St Julien Ct, PSL 34995

NARRATIVE: I was wearing my court Certified Process badge # 8923  
I am a certified Process Server through the 19th Circuit Court  
On 7/21/15 I was ask to serve 2 Subpoenas (Federal) re  
The Prudential Insurance Co. vs. DARYL Bank  
concerning a deposition. on 8/3/15 together with witness  
Jess Jay 9653 to DARYL BANK and his wife  
CATRINIA DAVIS (husband & wife). They had previously  
been attempted at their place of work - Dominion Diamonds  
NLC 2710 Port St Lucie Blvd PSL. The info was  
given to personnel that these were trying to be served.  
It became apparent that we were being lied to as to  
their home and availability.  
At approx 5pm I went to the home and knocked on the door  
at 814 St Julien Ct. There was no bell. No one came to answer.  
I returned to my vehicle and parked outside. A young boy about  
8 yrs old came out with a small white bull dog. I walked  
up to him and asked him the dogs name. Told him it was cute

As a Victim of SEXUAL BATTERY, AGGRAVATED CHILD ABUSE, AGGRAVATED STALKING, HARRASSMENT, AGGRAVATED BATTERY, I hereby request that my name and home address and telephone number, and my personal, social, or business information be withheld from Public Record Disclosure pursuant to F.S. 119.07, as amended, and 38.42, as amended, and the statute, title of criminal justice, passed by the Senate five years after the receipt of this request.

I swear that the above statement is true and correct to the best of my knowledge.  


SIGNED BY AND SUBSCRIBED BEFORE ME THE UNDERSIGNED AUTHORITY:  
THIS 21 DAY OF July 2015  
 PSL/PO

I got important from my mother and I will not improve my name and I will not improve my name and I will not improve my name

and he said it was called 'Ace'. I asked him if he could get his mum. He said I confirmed her name was Patricia. He went into a car yard and went inside glass doors. He got the dog and came out and told me that his mother was in the shower. I told him I was important and I was from the Post. At this time I had called my office and thought that I had ended the call but realized that my parole was private to the whole conversation with the boy. This is recorded on my cell.

I explained to the boy that I needed to see her and could he let her know. He went back inside and I stood in the driveway outside of the car yard believing that his mother would appear. There was a yarded female child running back & forth. As the one came, I went to my vehicle and waited as the client had requested WAIT TIME.

A few minutes later a white sedan pulled into the driveway and parked in the garage. The door was immediately closed. I shouted to him but it was ignored. I therefore threw the 2 suppressors inside the car yard approx. 8-10 ins on the floor. I was about to leave when Bank came out and as I actually thought he was here to accept service I picked them up to give them to him in a professional manner. At that time I saw he was pointing a gun at me and was screaming for me to get off his property. I immediately turned and walked away. He said something about being a whore or something to that extent. I was about to drive away when he ran at full speed <sup>in a straight line</sup> towards my passenger side window and threw the papers at me. I threw the one back into the road drive away.

I swear that the above statement is true and correct to the best of my knowledge.

SWORN TO AND SUBSCRIBED BEFORE ME THE UNDERSIGNED AUTHORITY Called a 11.

THIS 21 DAY OF JULY 2015  
A. Y. [Signature] 544 p[er]p

[Signature]

DECLARATION OF MARCIA GILLINGS  
EXHIBIT N.3

**AFFIDAVIT OF SERVICE**

UNITED STATES DISTRICT COURT  
District of Florida

Case Number: 91219616

Plaintiff:

**THE PRUDENTIAL INSURANCE COMPANY OF AMERICA**

vs.

Defendant:

**DARYL BANK**

For:

David Barnard

LATHROP & GAGE, LLP

Received by HPS PROCESS SERVICE & INVESTIGATIONS, INC. on the 17th day of July, 2015 at 1:48 pm to be served on **Dominion Diamonds, LLC c/o Daryl G. Bank, 2710 SW Port St. Lucie Blvd., Port St. Lucie, FL 34953.**

I, Marcia Gillings-CPS# 89-23, being duly sworn, depose and say that on the **21st day of July, 2015 at 5:23 pm, I:**

served a **CORPORATION** by delivering a true copy of the **Subpoena to testify at a Deposition in a Civil Action, Exhibit "A", Opposer's Notice of Deposition of Dominion Diamonds, LLC and Witness Fee check for \$96.53** with the date and hour of service endorsed thereon by me, to: **Daryl G. Bank as Registered Agent for Dominion Diamonds, LLC**, at the alternate address of: **814 SW Saint Julien Court, Port St. Lucie, FL 34986**, and informed said person of the contents therein, in compliance with state statutes.

**Military Status:** Based upon inquiry of party served, Defendant is not in the military service of the United States of America.

**Marital Status:** Based upon inquiry of party served, Defendant is married.

**Additional Information pertaining to this Service:**

Elizabeth McIntyre PS#10-21 attempted service at the business address at 2710 SW Port St Lucie Blvd, FL 34953 on July17, 2015 at 2:30 pm and again on July 20, 2015 at 9:55 am and was informed by the employees that Mr. Bank was not in the office and they were unhelpful as to when he could be served. It became apparent that they were not being truthful and any further attempts would be futile. A home address was obtained of 814 Saint Julien Court, Port St. Lucie, FL 34986 and on the above time and date, Process server, Marcia Gillings went to the home. After knocking on the door, no one answered so Gillings waited in her vehicle parked on the road. A small boy about 8 yrs. of age came out of the house walking a dog. He was asked if his mother was inside and he said she was. He was asked to tell the mother that she was waiting at the door after confirming that her name was Catrina.

The home has a large courtyard with a door to the outside leading into the driveway. The door to the main living area was at the far end of the courtyard. The boy left the outside doors open at this time. He came out and stated that his mother was in the shower and at this time, it was explained to him that the server had documents from the court and that this was important to go and tell her to come outside. He then stated that she was not at home. Again it was explained to him that the server needed to see her. He went back inside the home and did not come back out. Gillings waited on the doorstep and could see the boy and a younger girl walking back and forth. No adult was seen so it was assumed that either the children were alone or that the mother was refusing to come to the door to accept the subpoenas.

As no one did come out, Gillings went to her car and viewed the home from her vehicle with the passenger window down. It should be noted that the outside door remained open.

After a few minutes, a white sedan came into the driveway and pulled into the garage. Gillings walked towards the garage and shouted who she was and at that time, Mr. Banks exited his vehicle and closed the garage doors. From a photograph on the website, he was identified as Mr. Bank.

Gillings went immediately to the front door which was still open and threw both subpoenas into the court yard informed Bank in a loud voice that he had been served. They landed about 8 – 10 inches into the room. At no time did Gillings step inside the room.

As Gillings was about to leave, she saw Bank coming into the court yard and believed that he was coming to collect the

**VERIFIED RETURN OF SERVICE For 91219616**

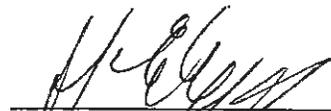
subpoenas. Gillings picked up the papers and was about to explain their contents, when she saw Bank walking towards her with a gun pointed at her body at arm's length. He was yelling to get off his property and that she was trespassing and calling her a whore. He continued to walk forward and immediately Gillings turned and walked back to her car. As she was starting her vehicle to leave, Bank was seen running towards her vehicle in a menacing manner. Gillings was trying to drive away and Bank came to the passenger side window and threw the paper into the car. Gillings was able to throw it out onto the street and leave the area. At this time it was believed that Bank may still have the gun and she was in fear of what could take place considering that Bank appeared to be in a rage and out of control. 911 was called immediately to report the incident and she was advised to go to the Port St Lucie Police station to make a full report. This is attached to this affidavit

**Description of Person Served:** Age: 50+, Sex: M, Race/Skin Color: White, Height: 5'10, Weight: 185, Hair: Black, Glasses: Y

Under penalties of perjury, I declare that I have read the foregoing and the facts stated in it are true. I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the county in which service was effected in accordance with State Statutes

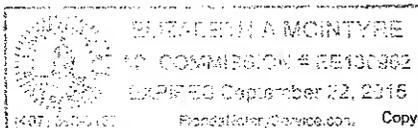
Subscribed and Sworn to before me on the 24th day of July, 2015 by the affiant who is personally known to me.

  
NOTARY PUBLIC

  
\_\_\_\_\_  
Marcja Gillings-CPS# 89-23  
PROCESS SERVER

**HPS PROCESS SERVICE &  
INVESTIGATIONS, INC.**  
1669 Jefferson Street  
Kansas City, MD 64108  
(800) 796-9559

Our Job Serial Number: BAK-2015001692



# **EXHIBIT O**

801 BRICKELL AVE, STE 900  
MIAMI, FLORIDA 33131

WWW.TERRYFIRM.COM

THE OFFICES OF  
**MARK TERRY, P.A.**  
INTELLECTUAL PROPERTY

PHONE: 786-443-7720  
FAX: 786-513-0381

MARK@TERRYFIRM.COM



David R. Barnard  
Lathrop & Gage LLP  
2345 Grand Boulevard, Suite 2200  
Kansas City, Missouri

July 21, 2015  
*Via Regular Mail*

**RE: Opposition No. 91219616 – U.S. Application Serial No. 86/184,144 for  
ROCK SOLID INVESTMENT**

Dear David,

This letter is in response to your July 7, 2015 letter, wherein you request that we respond to you by July 21, 2015. First, we summarily reject the assertion that Mr. Bank did not meet his discovery obligations in responding to your discovery requests and in the deposition of June 2015. Mr. Bank provided the legally appropriate objections to your discovery requests in a timely manner, answered all of the discovery requests in a timely manner, to the extent the requests were answerable, and Mr. Bank answered each and every question you asked during the June 2015 deposition over the course of more than 3 hours.

Getting to the substance of your July letter, you stated on page 1 of the letter that Mr. Bank did not perform a search for documents in response to your discovery requests. In fact, Mr. Bank did perform a search for the documents you requested and the result of said search manifested itself in the documents that were produced to you in response to the discovery requests and also in the responses to the interrogatories, which included information that was garnered only as a result of searching for, and finding information that was requested in said interrogatories. The fact that Mr. Bank could not recall the exact search terms that were used during said search, does not prove that said search did not occur.

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In the remainder of your letter (specifically, on pages 2 and 4), you go on to state that there were discovery deficiencies because Mr. Bank did not produce certain data or documents you requested. Nowhere in your letter, however, do you make any mention about the multitude of legally appropriate objections that we submitted in response to the numerous unduly burdensome and oppressive discovery requests you made. Good examples of such burdensome requests are Requests for Production #6 and #32, wherein you request:

“All documents referring to the Applicant’s ROCK SOLID INVESTMENT Mark, including, without limitation, all notes, correspondences, internal memoranda, searches, surveys, email, or any other electronically or digitally stored documents.” and

“All documents and records relating to, referring to, or document Applicant’s prior use, current use, or intent to use the ROCK SOLID INVESTMENT Mark with financial and investment services.”

These discovery requests are so broad and unlimited as to time and scope as to be unwarranted annoyances, and are oppressive. To comply with these requests would be an undue burden and expense on Mr. Bank. You are well aware that the ROCK SOLID INVESTMENT Mark is used as an email template (since we produced this template to you in our discovery requests). Therefore, any email, dating back to the beginning of time, that uses this template is technically responsive to Requests for Production #6 and #32. Given the typical number of emails that are sent in a typical American office each day, and in light of the fact that Mr. Bank and his diamond business has multiple employees, any emails (dating back to the beginning of time up to the present) using this template will easily number in the tens of thousands of emails, and possible more than that. This is quite simply burdensome to produce. Still, we responded to these onerous

- 3 -

requests and provided documents in response to what we believe is a more appropriate scope of said discovery requests.

The above notwithstanding, if you would like to narrow the scope, time, and subject matter of the documents you asked Mr. Bank to produce, Mr. Bank would be more than happy to reassess your discovery requests and provide discovery responses. We want to make it clear that we are more than willing to work with you, if you are willing to work with us to narrow your discovery requests to a more appropriate scope. It is unfortunate that since we submitted our objections to your discovery requests more than 100 days ago, neither you nor anyone in your large law firm have contacted us to discuss how you could modify your discovery requests to a form that would not be burdensome on Mr. Bank. Instead, you waited until a few weeks before the end of the 6-month discovery period to claim that our discovery responses were deficient, while ignoring our objections from almost 4 months ago. Still, there is more than enough time to work on this issue before the end of discovery, if you are interested in working with us.

Returning to your July letter, you state on page 2 that Mr. Bank was also in his discovery requests by not responding to your Interrogatory #2 wherein you request:

“Identify any entities with which the Applicant is affiliated, partnered with or possess any interest in.”

Again, this discovery request is so broad and unlimited as to time and scope as to be oppressive, as it seeks information that is confidential and proprietary, as well as irrelevant to this case. You are well aware from the deposition that Mr. Bank is a long time entrepreneur that is, and has been, involved in many entities over the years, many of which have nothing to do with his diamond related business (i.e., the “unrelated businesses”). Thus, many of the unrelated businesses that Mr. Bank is affiliated with, are completely irrelevant to the opposition of the ROCK SOLID

- 4 -

INVESTMENT mark, in addition to the fact that Mr. Bank's involvement with said unrelated businesses is confidential and proprietary information that cannot be made public without causing harm to Mr. Bank. Furthermore, the discovery request above is so broadly worded that if Mr. Bank owned one share of a publicly traded company, the ownership of said share would technically be responsive to this discovery request. Again, it is quite simply burdensome to respond to such a broadly worded request. Still, we responded to this request. Once more, if you would like to narrow the scope, time, and subject matter of the documents you asked Mr. Bank to produce in this request, and if you are willing to enter into a confidentiality agreement with regard to any discovery responses that may be proprietary or trade secret data, Mr. Bank would be more than happy to reassess your discovery request and provide discovery responses. The Board's Standard Protective Order does not automatically protect a party's confidential information.

Further on page 2 of the July letter, you stated that any documents generated by Mrs. Gibson in response to your discovery requests, would be responsive to Interrogatory 5 and Requests for Production of Documents 4-6. We fully responded, however, to Interrogatory 5 and Requests for Production of Documents 4-6, and, our objections notwithstanding, we have produced all documents that were responsive to said requests, if any. Note that Requests for Production of Documents 5 & 6 request data that is attorney client privileged. In response to said requests, we objected based on the attorney client privilege and have produced a privilege log with respect to any of said data that was not produced in response to said request, objections notwithstanding.

Further on page 3 of the July letter, you stated that any documents generated by various individuals pertaining to the use and marketing of the ROCK SOLID INVESTMENT mark, would be responsive to Requests for Production of Documents 5, 10, 14-21, 24-25, 32-35. We fully responded, however, to these Requests for Production of Documents, our objections

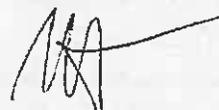
- 5 -

notwithstanding. Also note that a request for all documents generated by various individuals pertaining to the use and marketing of the ROCK SOLID INVESTMENT mark is an overly broad discovery request that would encompass any email that includes the ROCK SOLID INVESTMENT mark used in the footer. Again, given the typical number of emails that are sent in a typical American office each day, any emails (dating back to the beginning of time up to the present) using this email footer will easily number in the tens of thousands of emails, and possible more than that. This is quite simply burdensome to produce.

Further on page 5 of the July letter, you stated that Mr. Bank admitted in the June deposition that ROCK SOLID INVESTMENT was merely descriptive. We have reviewed the deposition transcript and have found no such statement by Mr. Bank. Consequently, we disagree with the premise of your assertion and we cannot consent to an amended petition for an additional ground for opposition. In fact, we will oppose such a motion, especially the late stage at which you are asserting said motion.

Lastly, on page 5 of the July letter you request for our consent to extend discovery. Since we submitted our objections to your discovery requests more than 100 days ago, and since neither you nor anyone in your large law firm have contacted us to discuss our objections, we cannot consent to this request. Further, there is still more than enough time to work on these issues before the end of discovery, and we are disposed to act forthwith to produce any relevant documents that you require, if you are interested in working with us.

Sincerely,



Mark Terry, Esq.  
Board Certified Specialist



# **EXHIBIT P**

**Mueller, Terry L.**

---

**From:** Barnard, David  
**Sent:** Thursday, July 23, 2015 2:11 PM  
**To:** Krissy Fassbinder; Meriwether, Luke M.; Brozenic, Amy M.; Gonzales, Donna P.  
**Cc:** Mark MPT Terry  
**Subject:** Opposition No. 91219616 - U.S. Application Serial No. 86/184,144 for ROCK SOLID INVESTMENT - URGENT; THREATS OF VIOLENCE

Dear Mark:

My understanding is that your client assaulted our process server while she was attempting to serve Mrs. Davis. Specifically, our process server said that Mr. Bank pointed a gun at her. I have not personally talked with her, but will be interviewing her shortly. It is my understanding that a police report has been filed.

Assuming we confirm these facts, Prudential will be moving the Board to dismiss the case as a sanction under Rule 37. Prudential does not plan to move forward with discovery until the Board has a chance to either dismiss the case or put serious protective measures in place to ensure the safety of our team. It is outrageous to think that anyone would threaten anyone else's life over a routine trademark dispute. If that is what has happened, we will do everything legally possible to protect our people from threats of violence.

Please talk with your client and then let's discuss what happens next.

Dave

**LATHROP & GAGE LLP**  
**David Barnard**  
**Chairman, Intellectual Property Litigation Teams**  
2345 Grand Blvd., Suite 2200 | Kansas City, MO 64108-2618  
P: 816.460.5869 | F: 816.292.2001 | [DBarnard@LATHROPGAGE.COM](mailto:DBarnard@LATHROPGAGE.COM)  
bio: [www.lathropgage.com/dbarnard](http://www.lathropgage.com/dbarnard) | [www.lathropgage.com](http://www.lathropgage.com)

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**From:** Krissy Fassbinder [<mailto:krissy@terryfirm.com>]  
**Sent:** Tuesday, July 21, 2015 5:15 PM  
**To:** Barnard, David; Meriwether, Luke M.; Brozenic, Amy M.; Gonzales, Donna P.; Adams, Debbie A.  
**Cc:** Mark MPT Terry  
**Subject:** Opposition No. 91219616 - U.S. Application Serial No. 86/184,144 for ROCK SOLID INVESTMENT

Dear David,

Attached please find a courtesy copy of the correspondence sent on behalf of Mark Terry. Thank you.

Best Regards,

Krissy Fassbinder

Intellectual Property Practice | Website: [www.terryfirm.com](http://www.terryfirm.com)

phone: 786.485.3169 | fax: 786.513.0381 | email: [krissy@terryfirm.com](mailto:krissy@terryfirm.com)

801 Brickell Av. Ste. 900, Miami, FL 33131

# **EXHIBIT Q**

**Mueller, Terry L.**

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**From:** Mark MPT Terry <mark@terryfirm.com>  
**Sent:** Thursday, July 23, 2015 8:40 PM  
**To:** Barnard, David  
**Subject:** RE: Opposition No. 91219616 - U.S. Application Serial No. 86/184,144 for ROCK SOLID INVESTMENT - URGENT; THREATS OF VIOLENCE

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

David,

Someone had unlawfully entered into the interior of my client's home, but at the time we had no idea who that person was, since this person did not identify himself and left no documents. My client was understandably upset and called the police to file a report.

Now that you have confirmed that this person was sent by you, my client is even more upset and will be filing a Bar complaint describing this bullying tactic. We will further be moving to dismiss this opposition as a sanction. Since you stated in your email that "Prudential will be moving the Board to dismiss the case," it seems that we are on the same page with regard to dismissing this opposition, and we will state as much in the motion. I agree that we should discuss this situation.

Sincerely,

MARK TERRY, ESQ.  
*Board Certified Specialist*  
Registered Patent Attorney

786-443-7720 (w)  
786-513-0381 (f)  
[mark@terryfirm.com](mailto:mark@terryfirm.com)

<http://www.terryfirm.com/>

**From:** Barnard, David (LG) [<mailto:DBarnard@LATHROPGAGE.COM>]  
**Sent:** Thursday, July 23, 2015 3:11 PM  
**To:** Krissy Fassbinder; Meriwether, Luke M. (LG); Brozenic, Amy M. (LG); Gonzales, Donna P. (LG)  
**Cc:** Mark MPT Terry  
**Subject:** Opposition No. 91219616 - U.S. Application Serial No. 86/184,144 for ROCK SOLID INVESTMENT - URGENT; THREATS OF VIOLENCE

Dear Mark:

My understanding is that your client assaulted our process server while she was attempting to serve Mrs. Davis. Specifically, our process server said that Mr. Bank pointed a gun at her. I have not personally talked with her, but will be interviewing her shortly. It is my understanding that a police report has been filed.

Assuming we confirm these facts, Prudential will be moving the Board to dismiss the case as a sanction under Rule 37. Prudential does not plan to move forward with discovery until the Board has a chance to either dismiss the case or put serious protective measures in place to ensure the safety of our team. It is outrageous to think that anyone would threaten anyone else's life over a routine trademark dispute. If that is what has happened, we will do everything legally possible to protect our people from threats of violence.

Please talk with your client and then let's discuss what happens next.

Dave



**David Barnard**  
**Chairman, Intellectual Property Litigation Teams**  
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P: 816.460.5869 | F: 816.292.2001 | [DBarnard@LATHROPGAGE.COM](mailto:DBarnard@LATHROPGAGE.COM)  
bio: [www.lathropgaga.com/dbarnard](http://www.lathropgaga.com/dbarnard) | [www.lathropgaga.com](http://www.lathropgaga.com)

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**From:** Krissy Fassbinder [<mailto:krissy@terryfirm.com>]  
**Sent:** Tuesday, July 21, 2015 5:15 PM  
**To:** Barnard, David; Meriwether, Luke M.; Brozenic, Amy M.; Gonzales, Donna P.; Adams, Debbie A.  
**Cc:** Mark MPT Terry  
**Subject:** Opposition No. 91219616 - U.S. Application Serial No. 86/184,144 for ROCK SOLID INVESTMENT

Dear David,

Attached please find a courtesy copy of the correspondence sent on behalf of Mark Terry. Thank you.

Best Regards,

Krissy Fassbinder

Intellectual Property Paralegal | Website: [www.terryfirm.com](http://www.terryfirm.com)

phone: 786.485.3169 | fax: 786.513.0381 | email: [krissy@terryfirm.com](mailto:krissy@terryfirm.com)

801 Brickell Av. Ste. 900, Miami, FL 33131

# **EXHIBIT R**

Agency Case # 201515380

AN 7/28/15

**Warrant Affidavit**

Use separate forms for each defendant and for multiple offenses occurring at different time, date or location  
 Court Case # Copy To: Clerk of Court / State Attorney / Jail / Arresting Agency / Defendants  Juvenile  Warrant

56 2015CF001913A

Bank Last Name	Daryl First Name	Gene Middle Name		(757) 651-1587 Phone Number	04/11/1970 Date of Birth	45 Age	225848304 SSN	Male Gender
814 Sw Saint Julien Ct Permanent Address		Port St Lucie City	FL State	34986 Zip	B520167701310 Drivers License #	FL State		
White Race			5'08 Height					

201515380 Agency Case #	Ludmerer, Alan Officer	2912 Officer ID #	Port St. Lucie Police Department Agency	FL0560200 Agency ORI #	No Domestic Related	
07/21/2015 Offense Date	1700 Offense Time	814 Sw St Julien Ct Offense Street Address		Port St Lucie Offense City	FL 34986 State Zip	Felony Warrant Charge Status
			No Alcohol Influence		No Drug Influence	No Weapon(s) Seized

Statute #	Statute Subsection & Definition	Counts	Type	Activity
784.021 (1A)   FT2558	Aggrav Asslt - Weapon-w Deadly Weapon Without Intent To Kill	1	Felony	Committed
784.08 (2B)   FS2581	Assault-on Person 65 Years Of Age Or Older	1	Felony	Committed
843.01   FT3142	Resist Officer-with Violence	1	Felony	Committed

Party Type	Name	Address	City	State	Zip	Phone

On July 21 2015, I was dispatched to the Port St Lucie Police Station, 121 Port St Lucie Blvd, in reference to an Aggravated Assault. When I arrived at the station, I met with the victim, Ms. Maricia Gillings.

Ms. Gillings explained that she was a Process Server for the 19th Judicial Circuit. She was wearing a Lanyard with a picture identification, Badge # 8923. She made the following statements:

Ms. Gillings said that she was working in a official capacity to serve 2 subpoena's for a civil action at 814 SW St. Julien Court in the Vineyards community in St. Lucie West. The Civil paperwork was for Prudential Insurance Company Vs, Mr. Daryl Bank and his wife Ms. Catrina Davis. Both Mr. Bank and his wife live at this residence. Ms. Gillings said she tried to serve them at their place of business, Dominion Diamonds and was unsuccessful. Once she arrived at Mr. Bank's residence, she approached the front door and rang the bell but no one answered. She said that she waited in her parked vehicle per the instructions of her employer.

Ms. Gillings said that she observed a small child, that was approximately 8 years old, walk out of the residence with a small white dog. She said that she thought a small child would have an adult with them and walked to the outside front of the home. Ms. Gillings said that the child appeared to be outside by himself so she asked the child to go inside the residence and get his parent. The child obeyed and went back inside the home. Ms. Gillings said that the front door of the home was open at this time. The door was opened by the child and remained open (the front doors lead to a courtyard and pool area and do not enter the interior of the residence). The child returned and said his mother, Catrina, was currently taking a shower. Ms. Gillings asked the child to tell his mother that she was from "the courts", she had some important information to give to his mother and she would be waiting outside. Ms. Gillings said that she returned to her vehicle and Ms. Davis never came out.

A few minutes later, Ms. Gillings observed a white sedan pull into the driveway of he residence. The garage door opened and the vehicle entered the garage. She said she shouted to the driver (Mr. Bank) who she was and identified herself as a Process Server. She said she was ignored by Mr Bank. Ms. Gillings said she was outside the home at this point and the front door was still open. She then threw the 2 subpoena's approximately 8-10" into the front door area and they landed on the ground of the courtyard. Ms. Gillings said she was turning to leave and she saw Mr. Bank coming towards her from inside the home. She said she thought he was going to accept service of the subpoenas so she bent down and picked up the two pieces of

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563015CF001913AA 7/23/15

paperwork in order to hand it to Mr. Banks in a professional manner.

At this time Ms. Gillings observed Mr. Bank pointing a black handgun directly at her. His arm was out reached and the muzzle of the weapon was pointed in her direction. She said he was enraged and ordered her to leave the property. She said he called her a "whore" and was cursing at her. Ms. Gillings said she turned and ran to her vehicle. Mr. Bank then ran after her verbally abusing her. Ms. Gillings said she got into her car and was starting the engine when Mr. Bank threw the paperwork she left on scene back at her. One of the pieces of paper landed back inside her car and the other she is not sure where it landed. Mr. Gillings is unsure if Mr. Bank was still carrying the weapon when he chased her. She said that after she witnessed the gun pointed at her, she was afraid for her life at that point. Ms. Gillings claimed she turned and just ran to her vehicle and left as quickly as she could.

Ms Gillings said she immediately called 911 at this time. She was told by the 911 dispatcher to go to the police station at 121 SW Port St. Lucie Blvd. to file a report. I was notified of the incident and responded to the police station.

Mr. Bank did not call 911 dispatch after the incident. I later went to the residence at 814 SW St. Julien Court and Sgt. C. Lumpkin #321 was also on scene with me and was briefed on the incident prior to our arrival.

I was unsuccessful in making any contact with Mr. Bank and left my business card with instructions for him to call me in reference the earlier incident. Mr. Bank later called the PSA at approximately 21:00 hrs. He refused to leave a call back number. The PSA then directed the call to Sgt. Lumpkin and he was able to have Mr. Bank call me back at the Police station at 2300 hours. Mr. Banks refused to meet me in person.

I received the call from Mr. Bank at approximately 2300 hours at the station.

Mr. Bank stated he was not at home and left shortly after the incident occurred. He made the following statements on a recorded line in the police station's report writing room:

Mr. Bank said that he never saw Ms. Gillings before. When he saw her standing in the doorway of the courtyard, once he was inside his residence, he was afraid for his life and the safety of his family. He accused Ms. Gillings of "breaking and entering" and he wanted a report stating it via instructions from his lawyer. I explained to Mr. Gillings the criteria for a forced entry (Burglary). I asked if I could come to his home and examine the crime scene and he refused. He stated several times that his lawyer had instructed him to do everything through him. Mr. Bank said that he did follow Ms. Gillings to her vehicle saying he wanted to make sure "the threat" was gone.

Mr. Bank stated he had photographic evidence of Ms. Gillings illegally entering her home and he wanted her arrested for Burglary. I stated I would need to see the evidence he spoke about and he refused to let me come to his home. He asked for my City E-mail and stated that his lawyer would digitally send them to me.

The conversation lasted approximately 30 minutes and a copy of the conversation was downloaded to a CD for the investigation. A copy was placed into evidence for future reference.

Today, on 7/22/15, Mr. Bank made contact with me through the city E-mail address I gave him. He was much more cooperative than he was the day before and had me meet him at his residence at 1900 hours. My Supervisor, Sgt. C. Lumpkin 321, was also on scene with me.

Mr. Bank made the following statements:

He arrived home and he did not see Ms. Gillings sitting in her car out front but he did notice her vehicle. He parked his vehicle inside his garage and closed the door. He removed his 9MM Glock, that he carries in his vehicle glove box, and walked with it from the garage into the home. Mr. Bank states he was going to place the handgun in his vault inside the home. As he walked past his front interior door, he saw his front courtyard door was opened and a woman standing at the threshold.

It needs to be explained that the front door of the home opens into a large open space that contains a swimming pool in a court yard. Mr. Banks claimed the unknown woman was throwing something into his home and he stated in a loud voice, "Are you breaking into my house? Your breaking in and trespassing!". The female then leans into the open door and throws the papers and stated, " You have been served!". Mr. Bank said he was in fear for his life and pointed his firearm at Ms. Gillings and told her to leave. Ms. Gillings turned and left. He walked outside with the firearm to make sure Ms. Gillings was leaving and the threat was gone. Mr. Bank then walked back inside and stopped and inspected the paperwork that was left by Ms. Gillings. He discovered the paperwork was not for him. Mr. Bank then placed the firearm on a table in the courtyard and walked out to where Ms. Gillings was parked. He then claims he handed her the paperwork back through the vehicle window.

Mr. Bank did not call 911 dispatch for help despite being in fear for his life. Mr. Bank supplied me 18 picture stills from a snap shot camera installed inside his doorbell. He said that he did not have the video available and it was erased by the time we had our meeting.

562015CP001913A

AW 7/23/15

- Pictures 1-4 shows Ms. Gillings at the front entrance of the home.
- Picture 5 shows Ms. Gillings standing in the door frame with half of her foot inside the door.
- Pictures 6-7 shows Ms. Gillings bending down to retrieve the Subpoenas and pick them up.
- Pictures 8-9 shows Ms. Gillings turning and leaving the premises.
- Pictures 10-12 shows Mr. Bank exiting the front door with a firearm in his right hand.
- Pictures 13-18 shows Mr. Bank returning back into the home with the weapon in his right hand.

Sgt. Lumpkin was on scene and had Mr. Bank number the pictures as they occurred. These are listed in the order in which Mr. Bank claims they occurred.

After looking at the evidence and listening to both Mr. Bank and Ms. Gillings I was able to determine the following:

Ms. Gillings did not commit a Burglary or a Trespass. She never entered the home and did not have any intention to commit a crime. The front door was opened by Mr. Bank's 10 year old son. Ms. Gillings was acting in an official capacity and was legally authorized to execute process in the lawful execution of her legal duty. Ms. Gillings was wearing a badge around her neck that identified her as an employee of the 19th Judicial Circuit. As soon as she was told to leave by Mr. Bank she turned away and complied.

I was also able to determine that Mr. Bank was in violation of Florida S.S. 843.01 Resisting Officer with Violence to his or her Person. Ms. Gillings is employed by the 19th Judicial Circuit and was acting within her jurisdiction trying to execute her legal duties as ordered by the Courts.

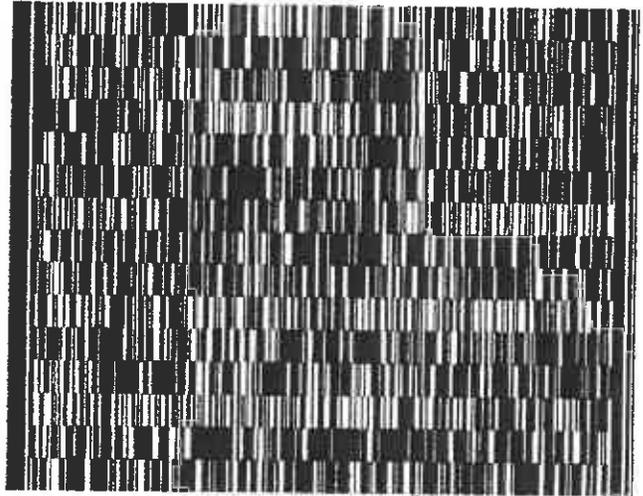
I also found probable cause for Florida S.S 784.021 Aggravated Assault. He stated to me that he was aware he was being sued for a civil matter by Prudential for a copy right infringement. His 10 year old son was outside unsupervised with his dog and left the front door open. Mr. Bank claims he saw Ms. Gillings was at the courtyard door and not acting in a stealthy manner or trying to enter the home. The picture stills show Ms Gillings standing in the door frame trying to complete her job. She was not acting in a threatening or menacing way. Mr Bank pointed the gun at Ms Gillings while he was in the home. In the picture stills provided you can see him leave the home with the weapon and follow her to the edge of his walkway and disappear. Ms Gillings said he chased her to her car and Mr Bank admits going to her vehicle and handing her papers , after admitting he was scared for his life and pointed a weapon at her only seconds before. Additionally Ms Gillings is a 69 year old elderly female. She meets the criteria for the enhanced penalty Florida S.S 784.08 (b) assault or battery on persons 65 or older.

I respectfully request a warrant for the above violations for Mr Daryl Bank.

Mr Bank did not have any criminal history.

AN 7/23/15

56 2015CF001913A



The preceding is true to the best of my present knowledge or belief.  
\* Sequence number taken from finger print card containing this OBTS # for this arrest.

[Handwritten Signature] 594  
Signature

Sworn & Subscribed before me this 23 Day of July, 2015  
Notary / ASA [Handwritten Signature] 573  
My Commission Expires LEO 1/3  
Agency PORT ST LUCIE P.D. 1/20



CCIS USER Logout

Summary History

SUMMARY

Judge: BELANGER, ROBERT E Case Type: CRIMINAL FELONY Status: OPEN  
 Case Number: 2015CF001913 A Uniform Case Number: 562015CF001913A00000  
 Clerk File Date: 7/23/2015 Status Date: 7/23/2015 Total Fees Due: 0.00 Booking #: 237012  
 Agency: PORT ST. LUCIE POLICE DEPARTMENT Agency Report #: 201515380 Custody Location: SURETY BOND

PARTIES

DEFENDANT DARYL GENE BANKS  
 PLAINTIFF STATE OF FLORIDA

CHARGES

LINE	DESCRIPTION	LEWD	INCLD	RECD	CONTRIBUT	CONTRIBUTOR
1	AGGRAVATED ASSAULT-DEADLY WEAPON (784.021.1A)	F	T			
2	ASSAULT ON PERSON 65 YOA (784.08.2D)	M	F			

EVENTS

No Events on Case

OUTSTANDING AMOUNT

No Fees on Case

RECEIPTS

No Receipts on Case

CASE DOCKETS

DATE	DESCRIPTION
0 7/28/2015	SURETY BOND IS6K806531 POSTED \$5,000.00
0 7/28/2015	SURETY BOND IS15K335829 POSTED \$15,000.00
0 7/28/2015	ARREST WARRANT STATUS CHANGED TO SERVED
0 7/28/2015	CASE UNSECURED
0 7/28/2015	BOND RECEIVED
0 7/28/2015	NOTICE ON DEMAND
0 7/28/2015	WARRANT RETURNED SERVED
0 7/28/2015	ARREST REPORT - INITIATING CASE
0 7/28/2015	DEFENSE ATTORNEY: DECKARD, JOSHUA WESLEY ASSIGNED
0 7/28/2015	NOTICE OF INTENT TO PARTICIPATE IN DISCOVERY
0 7/28/2015	WAIVER OF ARRAIGNMENT AND WRITTEN PLEA OF NOT GUILTY
0 7/28/2015	NOTICE OF APPEARANCE
0 7/23/2015	COMPLAINT FILED
0 7/23/2015	WARRANT FILED-- NO CONTACT WITH VICTIM: UNTIL FURTHER ORDER OF THE COURT OR THE CHARGE IS DISMISSED BY THE STATE, THE DEFENDANT SHALL NOT DIRECTLY OR INDIRECTLY CONTACT THE VICTIM IN PERSON, BY MAIL, E-MAIL, FAX, TELEPHONE, THROUGH ANOTHER PERSON, OR IN ANY OTHER MANNER. DEFENDANT MAY NOT KNOWINGLY COME CLOSER THAN 50 FEET TO THE VICTIM AT ANY PUBLIC PLACE, EXCEPT FOR COURT PROCEEDINGS, OR WITHIN 500 FEET OF THE VICTIM'S RESIDENCE OR PLACE OF EMPLOYMENT, OR 100 FEET OF ANY VEHICLE REGULARLY DRIVEN BY THE VICTIM.
0 7/23/2015	ARREST WARRANT ISSUED: WARRANT OF ARREST
0 7/23/2015	ARREST WARRANT BOND AMOUNT SET TO \$20000.00

7/29/2015

2015CF001913 A - STATE OF FLORIDA vs. BANKS, DARYL GENE

- 0 7/23/2015 WARRANT NUMBER: 201515380
- 0 7/23/2015 ARREST WARRANT STATUS CHANGED TO SENT TO SHERIFF
- 0 7/23/2015 CASE SECURED FOR ACTIVE PROCESS
- 0 7/23/2015 CIRCUIT JUDGE BELANGER, ROBERT E: ASSIGNED
- 0 7/23/2015 CASE FILED 07/23/2015 CASE NUMBER 2015CF001913 A

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**Benchmark**

ARREST WARRANT

St. Lucie County, FLORIDA

Clerk Case No: 562015CF001913A

STATE OF FLORIDA

Agency: Port St. Lucie Police Dept.

-vs-

Agency#: 2015-15380

Daryl Gene Banks

Lead Officer: Alan Ludmerer

Defendant

ASA: Anastasia M. Norman

ASA Approve Initials&Date: AN 7/28/15

DOMESTIC VIOLENCE

2015 JUL 28 PM 2:46  
ST. LUCIE CO. SHERIFF'S OFFICE  
WARRANT SECTION

In the name of the State of Florida -

To all and Singular Sheriffs of the State of Florida and to Any State Attorney Investigator - Greetings:

Whereas upon the sworn affidavit, complaint or other sworn testimony of Alan Ludmerer of the Port St. Lucie Police Dept. the undersigned Judge, has found that there exists probable cause to believe that one Daryl Gene Banks, in St. Lucie County, Florida did commit the below listed offense(s), contrary to the provisions of Florida Statutes.

You are HEREBY COMMANDED to arrest DARYL GENE BANKS of 814 Sw Saint Julien Ct., Port Saint Lucie, FL 34986; DOB: 04/11/1970; Race/Sex: W/M; Ht/Wt: 5'08"/; Eye/Hair: /; SSN: 225-84-8304; DL#: B520-167-70-131-0; FDLE: ; FBI: ; Alias: . These Are Therefore to Command you to forthwith arrest and bring the above named defendant before me to be dealt with according to law.

- 1 Aggravated Assault-Deadly Weapon (F 3) Bond \$ 15,000
- 2 Assault On Elderly Person (M 1) Bond \$ 5,000

COUNT 1: On or about July 21, 2015 Daryl Gene Banks did intentionally and unlawfully threaten by word or act to do violence to the person of Marcia Gillings, having the apparent ability to do so, and did an act which created a well-founded fear in Marcia Gillings that such violence was about to take place, and in the process thereof used a deadly weapon, to-wit: firearm, in violation of Florida Statute 784.021(1)(a);

COUNT 2: On or about July 21, 2015 Daryl Gene Banks did intentionally and unlawfully threaten by word or act to do violence to the person of Marcia Gillings, a person 65 years of age or older, having the apparent ability to do so, and did an act which created a well-founded fear in Marcia Gillings that such violence was about to take place, in violation of Florida Statutes 784.011 and 784.08;

Given under my hand and seal this 23 day of July, 2015, A.D.

Condition of Bond Release/Release on Recognizance: For Count(s): 1 & 2  
No Contact with Victim: Until further order of the Court or the charge is dismissed by the State, the Defendant shall not directly or indirectly contact the victim Marcia Gillings person, by mail, e-mail, fax, telephone, through another person, or in any other manner. This restriction shall include the following condition(s), if marked:

Defendant may not knowingly come closer than 50 feet to the victim at any public place, except for court proceedings, or within 500 feet of the victim's residence or place of employment, or 100 feet of any

SA WF,WM,WJ Case#: 56-2015-WF-002904-A // Daryl Gene Banks  
SA Case ID: 540367

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vehicle regularly driven by the victim;

- Defendant may go to victim's residence one time with a law enforcement officer to get Defendant's clothing and personal effects;
- Defendant may speak to victim on the telephone *only* to discuss sharing parental responsibility for their minor child(ren).
- If marked, Defendant shall be held without bond until the First Appearance Hearing.

W. Rob (SEAL)  
JUDGE

This Warrant/Deputy came to hand this 27 day  
of July A.D. 2015  
and same was returned to St. Lucie County, Florida  
by arresting the within named defendant.  
KEN J. MASCARA  
Sheriff, St. Lucie County, Florida  
By Det. Goldstein PSE

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 2:16-mc-14021-MARTINEZ/LYNCH

THE PRUDENTIAL INSURANCE COMPANY  
OF AMERICA,

Plaintiff,

v.

DARYL BANK,

Defendant.

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**DECLARATION OF DAVID R. BARNARD**

I, David R. Barnard, do hereby testify and declare as follows:

1. I have personal knowledge of the facts stated in this declaration and if called to testify, could and would testify to these facts.

2. Attached as Exhibit 1 is a true and accurate copy of the order, issued by the United States Trademark Trial and Appeal Board (“Board”) on December 22, 2015 in connection with Opposition No. 91219616.

3. Attached as Exhibit 2 is a true and accurate copy of excerpts of the transcript of Defendant Daryl Bank’s deposition on June 8, 2015.

4. Attached as Exhibit 3 is a true and accurate copy of my email to Mr. Bank’s counsel, Mark Terry, dated July 7, 2015.

5. Attached as Exhibit 4 are true and accurate copies of the subpoenas to Catrina Davis and Dominion Diamonds LLC, issued by this Court on July 14, 2015.

6. Attached as Exhibit 5 is a true and accurate copy of my email to Mr. Terry, dated July 16, 2015.

7. Attached as Exhibit 8 is a true and accurate copy of the Warrant Affidavit and Arrest Warrant, authored by Officer Alan Ludmerer and dated July 23, 2015.

8. Attached as Exhibit 9 is a true and accurate copy of Prudential's Motion for Sanctions, filed with the Board on August 4, 2015.

I declare under penalty of perjury under the laws of the State of Florida that the foregoing is true and correct.

Executed this 4<sup>th</sup> day of February, 2016.

/s DAVID R. BARNARD  
DAVID R. BARNARD

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 2:16-mc-14021-MARTINEZ/LYNCH

THE PRUDENTIAL INSURANCE COMPANY  
OF AMERICA,

Plaintiff,

v.

DARYL BANK,

Defendant.

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**ORDER**

Before the Court is Plaintiff, The Prudential Insurance Company of America's ("Prudential") Motion to Enforce Subpoena (Doc. \_\_\_\_). Prudential seeks sanctions in the form of judgment against Mr. Bank and that his application for ROCK SOLID INVESTMENT be deemed abandoned, and award of attorneys' fees and costs related to the enforcement of the subpoena. Alternatively, Prudential seeks protective measures, as outlined in its Memorandum in support of its Motion. The Court has reviewed and considered the parties' submissions.

It is hereby:

ORDERED that Prudential's Motion to Enforce Subpoena and for Sanctions (Doc. \_\_\_\_)  
is granted;

ORDERED that judgment be entered against Defendant Daryl Bank in the Opposition  
No. 91219616 before the United States Trademark Trial and Appeal Board ("Board");

ORDERED that the Board deem Mr. Bank's U.S. Application Serial No. 86/184,144 for  
ROCK SOLID INVESTMENT abandoned;

ORDERED that attorneys' fees and costs arising from the enforcement of the subpoena be awarded to Prudential. Prudential is hereby ordered to submit within fifteen (15) days to the Court an accounting of all fees and costs related to such enforcement.

[Alternatively]

ORDERED that:

- 1) All previously noticed witnesses be deemed served and compelled to appear for depositions during an agreed upon date and time;
- 2) All depositions be conducted at Bank's expense at the Sheriff's Office or police department closest to the deponent's residence or place of employment;
- 3) Bank cannot be designated as 30(b)(6) witness for either Dominion or its related company, Dominion Investment; and
- 4) Bank not be allowed within 1,000 yards of any of Prudential's agents and representatives during the remainder of these proceedings.

Dated on this \_\_\_\_ day of \_\_\_\_\_.

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United States District Judge Jose E. Martinez