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

CASE NO. 24-22142-CIV-GAYLES/SHAW-WILDER

FANNY B. MILLSTEIN and
MARTIN KLEINBART,

Plaintiffs,
v.

WELLS FARGO BANK, N.A.,

Defendant.
_____/

PLAINTIFF'S REPLY IN FURTHER SUPPORT OF HER DISCOVERY MEMORANDUM REGARDING
PLAINTIFF'S REQUEST FOR COMPLETE POLICY FILES

WF admits Plaintiff is entitled to discovery bearing on what it knew about the fraudulent note program (the "Scheme"). STOLIs were the foundation of that Scheme. Judges Goodman and Gayles have already held that if WF knew the Scheme Operators were dealing in STOLIs and helped them conceal that from insurers, it would establish WF's knowledge and substantial assistance. D.E. 53 at 56-59; D.E. 91. WF never disputed the relevance of the complete policy files until it saw a chance to create confusion. That misapprehension must now be corrected.

Plaintiff's theory has never changed: WF knew the policies were STOLIs from documents it received and helped the Scheme Operators conceal that fact from insurers. D.E. 3, ¶¶52-76. WF's attempt to separate its knowledge of the promissory note investments from the policies investors believed secured them is meritless. The law requires only that WF had "a general awareness that its role was part of an overall improper activity." *Otto Candies, LLC v. Citigroup Inc.*, 137 F.4th 1158, 1178 (11th Cir. 2025). Unlike WF, Plaintiff did not know "that the Centurion deals involved STOLIs." Resp. at 2. She understood only that the investment was "about life insurance companies," and "didn't really know exactly what [that] meant." F.Millstein Tr., Ex. 1 at 118:2-17. What investors could not have known is everything WF knew: the Scheme Operators were receiving "consistent grace notices" that were "not normal," D.E. 3, ¶75, and that signaled "financial distress…." D.E. 165-2 at 44:22. WF's knowledge that the Scheme Operators were dealing in STOLIs, and that the SI services it provided enabled them to conceal the true owners and beneficiaries from insurers through "book entries" on their WF accounts, *id.* at 215:20, makes the policy files directly relevant. *See* D.E. 53 at 56-57 (receipt of grace notices and concealing STOLIs from insurers is probative of WF's knowledge).

Unable to confront Judge Goodman's and Gayle's conclusions, WF now argues Plaintiff is not entitled to the policy files because, in its view, the evidence does not support her claims. But "such has never been the rule in discovery." *Manno v. Healthcare Revenue Recovery Group, LLC*, 2012 WL 4192987, at *3 (S.D. Fla. Sept. 18, 2012). WF therefore resorts to recasting Plaintiff's allegations as "recklessly pled" or "proven to be false." Resp. at 1, 4, n.3. That is not true. And it is irrelevant that the irregular trust structure Plaintiff alleged may have concerned a different trust; only WF knows the full extent of what it knew. Resp. at 4, n.3. That is why a bank's actual knowledge of fraud "is nearly universally found based upon circumstantial evidence." *Cabot E. Broward 2 LLC v. Cabot*, 2016 WL 8740484, at *4 (S.D. Fla. Dec. 2, 2016), citing *Amegy Bank Nat. Ass'n v. Deutsche Bank Alex.Brown*, 619 Fed.Appx. 923, 931 (11th Cir. 2015) ("It is difficult

to imagine what sort of evidence, other than an admission…would constitute direct evidence of…knowledge…"). What matters is that, as Judge Goodman recognized, WF knew the Scheme Operators were proposing a highly irregular trust structure. D.E. 53 at 56. WF's own employee confirmed that what the Scheme Operators were doing with the ILIT-held policies "would appear to be unusual…." C.Connell Tr., Ex. 2 at 123:14-125:25; *Perlman v. Bank of Am., N.A.*, 2011 WL 13108060, at *8 (S.D. Fla. Dec. 22, 2011) ("[A]lleging atypical transactions and transactions that lack a business justification can itself support an inference of knowledge on the part of the Bank."). WF now tries to confine Judge Goodman's reasoning to the ILITs, Resp. at 4, n.3, but his conclusion was broader: concealing that the policies were STOLIs is probative of WF's knowledge of the Scheme. And WF knows that whether it acted as Trustee or SI makes no difference. D.E. 132 at 5 ("Plaintiff[] ask[s] the Court to assume that because [WF] acted as [SI] for [the] policies…WF had knowledge of the fraudulent note program.").

WF strains to separate the STOLIs from the Scheme as it wrongly asserts Plaintiff must show WF had actual knowledge of the specific fraudulent act that caused her harm. Resp. at 5. That is not the law. Plaintiff need only show WF had "a general awareness that its role was part of an overall improper activity." *Otto Candies*, 137 F.4th at 1178. The Eleventh Circuit made clear that courts applying a higher standard, like the one WF urges, "have gotten it wrong." *Id.* at 1179.

WF is the party that has changed course. It now claims it "has routinely taken the position that the documents are not relevant," Resp. at 2, n.1, even though for months it asserted only burden. D.E. 165-1 at 11, 45. It then selectively quotes a statement by Plaintiff, Resp. at 2, n.1, "made without the benefit of understanding FileNet and in reliance on [WF]'s [mis]representations." D.E. 165-1 at 10. Plaintiff is not advancing any "new STOLI theory." Resp. at 3, 6. Her theory has always been "[WF] knew…the policies…were STOLI[s]," Resp. at 6, from documents it received. That is why she has consistently sought *all* documents WF received about the policies—including origination materials such as the policy, application, and initial beneficiary changes that would reveal they were STOLIs—regardless of *when* WF received them. D.E. 165-1 at 10-13, 65. Because *all* the documents form the entirety of WF's knowledge.

WF repeatedly asserts that anything it learned from holding documents for other clients is irrelevant to its knowledge of Scheme. Resp. at 1, 4-6. That argument ignores both the facts and the law. The LIAP screenshots show WF received key origination documents for the Branscome policy – documents that revealed it was a STOLI – while the policy was associated with a deal that

predated Centurion. D.E. 165-8 at 5820. Legally, WF is "treated as possessing [that] collective knowledge…however [it] may have configured itself or its internal practices for transmission of information." Restatement (Third) Of Agency § 5.03 (2006). WF's reliance on its employees' self-serving testimony that it acted in a "limited capacity" and thus lacked knowledge, Resp. at 2-3, 6-7, is a defense for trial, D.E. 106 at 51, which is why Judge Gayles rejected it. D.E. 135 at 5 (unsuccessfully arguing its role as SI was "in accordance with limited contractual obligations to perform ministerial actions"). Its claim that identifying a STOLI requires "complex…legal analysis" or a "judicial determination," Resp. at 2-3, 6, borders on frivolous. WF's own employees – both attorneys – admitted knowing what STOLIs are, knowing of litigation against WF involving STOLIs including as far back as 2010, and that STOLIs and the prohibitions on them were routinely discussed at industry conferences. Ex. 2 at 11:19-22, 49:10-52:11; B.Martin Tr., Ex. 3 at 12:2-5, 77:10-79:11. The cases WF cites address only whether a STOLI is void *ab initio*, not whether a STOLI is difficult to identify. *PHL Variable Ins. Co*., 780 F.3d 865 (stating by way of background "the policy was a stranger-owned-life-insurance policy ('STOLI policy')"); *see also Malkin*, 998 F.3d at 1190 ("This appeal involves a dispute over…an illegal…STOLI…policy."). That *Couch on Insurance* offers a straightforward definition, Resp. at 6, only underscores that STOLIS are commonplace – and easily recognized, certainly by industry professionals.

Finally, there is nothing "perplexing" about the requested production. Resp. at 3. WF must either produce the documents as kept or organize and label them. Fed. R. Civ. P. 34. If it chooses the former, it must "provide a key, index or other device" that allows Plaintiff to locate responsive materials. *Henderson v. Holiday CVS, L.L.C*., 2010 WL 11505168, at *3 (S.D. Fla. Aug. 11, 2010). What WF cannot do is continue producing undifferentiated documents and "hide a needle in a haystack." *Armor Screen Corp. v. Storm Catcher, Inc*., 2009 WL 291160, at *2 (S.D. Fla. Feb. 5, 2009); *see also* D.E. 165-1 at 5, 65. Nor has WF established any burden. Its sole claim – that FileNet documents cannot be searched by content, Resp. at 7 — ignores the evidence that WF employees routinely searched FileNet for documents and even had internal procedures instructing them how to do so. D.E. 165 at 3-4. Instead, WF offers only the unsupported assertion that it would have to download "gigabytes-worth of data and manually review every document." Resp. at 7. That is insufficient. *Trinos v. Quality Staffing Services Corp*., 250 F.R.D. 696, 699 (S.D. Fla. 2008) (party asserting undue burden must present an affidavit or other evidentiary proof of the time or expense involved) (collecting cases). It is hiding the ball and this Court must end the charade.

Dated: November 24, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by CM/ECF on November 24, 2025, on all counsel or parties of record on the Service List below.

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EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 1:24-cv-22142-GAYLES/GOODMAN

FANNY B. MILLSTEIN and
MARTIN KLEINBART,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.

Defendant.
_____/

VIDEOTAPED DEPOSITION OF FANNY B. MILLSTEIN

Tuesday, June 24, 2025
10:01 - 4:09 p.m.

3010 North Military Trail
Suite 210
Boca Raton, Florida 33431

Reported By:
Rachel W. Bridge, RMR, CRR
Esquire Deposition Solutions
Job #13083639

testimony earlier, about life insurance policies?

A. Yes, about Longevity being a good investment.

Q. And can you define what your understanding of Longevity is?

A. He said it was the name of the company that they were offering and that it was a very good company.

Q. Okay. What was your understanding of the business of the company?

A. The company does have insurance policies, life insurance policies.

Q. Stop for a second. I think you said the company does have life insurance policies?

A. He said it was about life insurance companies.

Q. Okay. So it was your understanding that they were investing in life insurance companies?

A. That's, when he said that, I didn't really know exactly what he meant.

Q. Okay. Do you know what a first lien is?

A. No.

Q. Do you know what a junior lien is?

A. No.

Q. Did Mr. Lombardo ever discuss with you first liens?

A. No.

Q. Did Mr. Lombardo ever discuss with you junior

EXHIBIT 2

(To be filed under seal pursuant to the Court's Order D.E. 164)

EXHIBIT 3

(To be filed under seal pursuant to the Court's Order D.E. 164)