

June 5, 2007

VIA E-MAIL AND U.S. MAIL

Rachel C. Hughey, Esq.
Carlson, Caspers, Vandenburg & Lindquist, P.C.
225 South Sixth Street, Suite 3200
Minneapolis, MN 55402

Re: *Telluride Asset Management, LLC v. Eric Falkenstein*
Hennepin County Dist. Ct. File No. 27-CV-07-4832
Judge: The Honorable Heidi S. Schellhas

Dear Ms. Hughey:

Pursuant to the "meet and confer" requirement of Minnesota Local Rule 37.1, I write in reference to Telluride's Responses to Mr. Falkenstein's First Set of Interrogatories and Requests for Production of Documents and Things, dated May 18, 2007. As discussed below, Telluride has failed to answer adequately Mr. Falkenstein's discovery requests – and in particular, it has refused to specifically define its trade secrets and confidential information.

If Telluride does not supplement its responses and withdraw its objections to certain of these requests, Mr. Falkenstein may be forced to file a motion to compel. As you are no doubt aware, Minnesota law unequivocally requires plaintiffs claiming misappropriation of confidential information to clarify their allegations at the outset of discovery.

With this in mind, it is my sincere hope that we can resolve this dispute amicably and thereby avoid wasting our and the Court's time and expense arguing a needless motion to compel. I, therefore, request that Telluride supplement its discovery responses so as to eliminate the deficiencies and improprieties discussed below.

I. Telluride's Responses To Mr. Falkenstein's Discovery Requests Fail To Identify The Trade Secrets And Confidential Information That Telluride Believes Mr. Falkenstein Has Misappropriated

Under Minnesota law, Telluride must describe with specificity the information that it seeks to protect in this action. However, despite Mr. Falkenstein's carefully targeted requests, Telluride has not yet identified specifically any of its trade secrets or confidential information. Accordingly, Telluride must supplement its responses by way of the following.

First, with respect to all discovery requests relating to Telluride's trade secrets and confidential information, including Interrogatory Nos. 3, 4, 6, 7, 8, 9, 13, 17, 22, 23, and 24 and

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Request for Production Nos. 6, 7, 9, 10, 11, 14, 15, 16, 17, 18, and 19, please withdraw all objections based upon the assertion that responsive information is in Mr. Falkenstein's possession, custody, or control, and all representations that Telluride cannot answer the requests until Mr. Falkenstein produces discovery. Minnesota law – and basic principles of fairness – require Telluride to identify its trade secrets and confidential information at the outset of discovery and not create them post hoc using Mr. Falkenstein's discovery as a guide. Telluride must take a concrete position on what its trade secrets and confidential information actually are; it cannot build its alleged secrets around whatever information Mr. Falkenstein discloses in discovery. For that matter, Mr. Falkenstein cannot possibly know whether he possesses any of Telluride's trade secrets or confidential information, or has otherwise done anything wrong, until Telluride clarifies its position.

Second, Telluride's responses to the requests identified above are so vague as to make it impossible even to determine whether the information at issue constitutes confidential or trade secret information. Mr. Falkenstein has served clear, targeted discovery requests in an effort to identify the specific information that Telluride seeks to protect. In response, Telluride has listed generic categories and broad, undefined concepts, such as, among other things, "models," "factors," "combinations of factors," "formulas," "algorithms," "patents," "copyrights," and "designs." However, Telluride has not identified precisely what its "models," "factors," "combinations of factors," "formulas," "algorithms," "patents," "copyrights," "designs," or other things are. Telluride's responses do not allow Mr. Falkenstein to discern whether Telluride is entitled to protect the information it alleges that he misappropriated or whether he possesses or is using any of Telluride's allegedly protectable information. Please identify each alleged trade secret or item of confidential information with sufficient specificity so that it may be determined whether the information qualifies for protection under Minnesota's trade secrets statute and common law.

Third, many of Telluride's responses to the requests identified above appear to reference, incorporate, and/or consist of voluminous documents. However, Telluride has not delineated what specific information within the documents it is claiming as its confidential or trade secret information or where in the documents Mr. Falkenstein may find the responsive information. Please supplement the responses by specifically identifying and providing the location of all confidential or trade secret information contained in any documents produced in response to Mr. Falkenstein's discovery requests.

II. Telluride's Responses To Many Of Mr. Falkenstein's Specific Discovery Requests Contain Improper Objections And/Or Require Supplementary Information

Telluride has objected generally that all requests "are unduly burdensome to the extent that they do not define a relevant time period to limit the scope of the requests," and its unilateral decision to "construe a reasonable time period for which the requests will apply," grants Telluride the sole discretion to define the time period relevant to Mr. Falkenstein's discovery requests. To clarify the issue, please be advised that the relevant time period for all requests shall be from January 1, 2004, to the present, unless otherwise indicated. Please

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confirm that Telluride will provide all responsive documents within this time period. Further, Telluride's general refusal to produce documents that are publicly available is improper to the extent that it has failed to inform Mr. Falkenstein of the existence and location of any such documents. Mr. Falkenstein expects that Telluride will clearly identify such documents so that he may procure them.

In addition, Telluride's objections to Interrogatory Nos. 10, 11, 12, 15, 16, 17, 18, 20, and 21 and Request for Production Nos. 1, 3, 4, 5, 9, 12, 13, 17, 21, 26, 27, 29, 33, and 34, in whole or in part, on grounds that they are overly broad, unduly burdensome, and irrelevant as calling for the disclosure of information that is not relevant to this case, are improper. These requests are tailored to obtain information relating to, among other things: the nature, identity, and value of Telluride's alleged confidential, proprietary, and trade secret information; the measures that Telluride takes to protect that information; Mr. Falkenstein's alleged misappropriation of that information; and/or, the existence of other actual or threatened actions involving issues similar to those presented in this case. The requests are appropriate in scope under the liberal ambit of discovery. Please withdraw your blanket objections and produce all responsive documents withheld thereunder.

Finally, Telluride objects to virtually all of Mr. Falkenstein's Requests for Production as "unduly burdensome in that [they seek] 'all documents.'" The rules of discovery clearly allow Mr. Falkenstein to obtain each and every document responsive to his requests. Telluride must therefore produce all non-privileged, responsive documents.

A. Telluride's Responses To Mr. Falkenstein's Interrogatories

Many of Telluride's specific responses to Mr. Falkenstein's Interrogatories are deficient. As set forth below, we request that Telluride supplement its answers to the following discovery requests.

Interrogatory No. 7 requests that Telluride identify and describe specifically which of Mr. Falkenstein's "concepts, ideas, strategies, methodologies, and algorithms were incorporated into the Telluride Modified Model and the New Telluride Models." Telluride answers that it will produce documents sufficient to show the Telluride Modified Model and the New Telluride Models. This answer is facially unresponsive and requires supplementary information.

Interrogatory No. 8 requests that Telluride identify and describe specifically what the "modifications, revisions, additions, refinements and improvements" were to Mr. Falkenstein's Original Model to which Telluride acquired "'full' owner[ship]." Telluride answers that it will produce documents containing the Modified Model and the New Telluride Models, as well as the Original Model, for Mr. Falkenstein's review. This is not responsive. The burden is on Telluride to specifically identify the information requested in the Interrogatory. Telluride's answer essentially requires Mr. Falkenstein to guess what Telluride is alleging, without pinning Telluride to any specific answer. Please provide supplementary information responsive to the request.

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Interrogatory No. 9 requests that Telluride identify and describe specifically which aspects of Mr. Falkenstein's proposed trading strategy "appear[] to be substantially derived from the Telluride Modified Model, the New Telluride Models and Telluride's trade secrets." Telluride answers by reference to generic categories of information, with no specific identification or description. This is not responsive and requires specific supplementary information.

Interrogatory No. 10 requests that Telluride identify by name, date of hire, and job title each and every employee at Telluride who has executed various agreements designed to protect Telluride's trade secrets, confidential, or proprietary information. Telluride answers that it "requires all employees to sign confidentiality agreements containing provisions that require the protection and non-disclosure of Telluride's trade secrets and confidential business information." This is facially unresponsive and requires further supplementary information.

Interrogatory No. 11 requests that Telluride identify each and every present or former employee against whom it has threatened civil action, or who has threatened civil action against Telluride, based on contractual, statutory, or common law claims. Telluride first objects to this request on the ground that the term "threatened" is vague. The objection is improper; the term clearly refers to instances in which Telluride has communicated to a present or former employee, or a present or former employee has communicated to Telluride, the possibility of initiating litigation. Further, Telluride objects on ground that the requested information is a matter of public record. However, litigation that has been threatened, but not commenced, is obviously not within the public record. Please provide supplementary information responsive to the request.

Interrogatory No. 14 requests that Telluride describe with specificity any action that it has taken to maintain the secrecy of its alleged trade secrets. Telluride first objects to the request to the extent that the term "specificity" is vague, and "any" is overbroad. These objections are improper. The request obviously asks Telluride to identify each and every security measure that it has taken to protect its allegedly trade secret information, as such measures go to a crucial disputed issue – namely, whether Telluride's information in fact qualifies as trade secret. Further, Telluride answers by reference to unspecific and undefined categories, such as "multiple layers of security, specific user access control, and auditing." This response is inadequate. Please supplement it by identifying and describing the specific actions that Telluride has taken to maintain its alleged trade secrets. Finally, to the extent that Telluride intends to answer the request by reference to documents, please identify specifically and provide the location of any responsive information within the documents.

Interrogatory No. 15 requests that Telluride identify and describe specifically what models and trading strategies it is currently using, including how those models and trading strategies vary, if at all, from those used by Telluride from January 22, 2004, until September 1, 2006. Telluride answers by reference to documents containing the New Telluride Model and the Modified Model for Mr. Falkenstein's comparison, asserting that the burden of comparing them is the same for Mr. Falkenstein as for Telluride. However, the burden of comparing Telluride's models and strategies is not the same for Mr. Falkenstein as for Telluride; Telluride is obviously

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in a better position to explain the relationship between the various models and strategies. Moreover, Telluride has not specifically identified what models or strategies it is currently using. Further, the onus is on Telluride to clarify its allegations at the outset, yet Telluride's answer essentially requires Mr. Falkenstein to guess what it is alleging without pinning Telluride to any specific answer. Please provide supplementary information responsive to the request.

Interrogatory No. 16 requests that Telluride identify and describe specifically all factors, materials, concepts, or documents developed by Telluride that are incorporated into any models or trading strategies that Telluride has used at any time since January 22, 2004.

Interrogatory No. 17 requests that Telluride identify and describe specifically all factors, materials, concepts, services, or documents that Telluride acquired or are publicly available from any external, non-Telluride source that Telluride has used at any time since January 22, 2004. Telluride objects to this request to the extent that the phrase "external, non-Telluride source" is vague. The objection is improper; the request clearly asks Telluride to identify information that it did not develop internally, but rather acquired from some other source.

Interrogatory No. 18 requests that Telluride identify and describe specifically all factors, materials, concepts, services, or documents brought to Telluride by Mr. Falkenstein which Telluride has incorporated into any models or trading strategies ever used. Telluride objects to the request on ground that the term "brought" is vague. The objection is improper; Mr. Falkenstein is obviously asking Telluride to identify information that he provided to Telluride when he began working for it. Further, Telluride responds by reference to documents. This is not responsive and requires Mr. Falkenstein to guess what Telluride is alleging, without pinning Telluride to any specific answer. Please provide supplementary information responsive to the request.

Interrogatory No. 19 requests that Telluride describe how much, if any, discretion or control Telluride granted Mr. Falkenstein over Telluride's models or trading strategies while Mr. Falkenstein was employed at Telluride, including the role of any other Telluride employee in overseeing or directing Mr. Falkenstein's implementation of any trading strategies. Telluride objects to the request to the extent that the terms "discretion," "control," "role," "overseeing," and "directing" are vague. These objections are without merit and should be withdrawn.

Interrogatory Nos. 20 and 21 request that Telluride describe any financial growth or decline of the hedge funds over which Mr. Falkenstein had influence from January 22, 2004, through September 1, 2006, and from September 1, 2006, to the present. Telluride objects to the requests to the extent that the phrase "influence" is vague. The objection is improper; the requests obviously seek information relating to hedge funds over whose performance Mr. Falkenstein's efforts had an effect. Further, to the extent that Telluride intends to answer the request by reference to documents, please identify specifically and provide the location of any responsive information contained in the documents.

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B. Telluride's Responses To Mr. Falkenstein's Requests For Production

Like its responses to Mr. Falkenstein's Interrogatories, many of Telluride's responses to his Requests for Production contain unwarranted objections. As set forth below, Telluride must supplement its responses to the following Requests.

Request No. 2 seeks all documents identifying Telluride's policies and procedures for employees relating to the treatment of Telluride's trade secrets and confidential and proprietary information. Telluride objects to the Request to the extent that the terms "procedures" and "treatment" are vague. The objection is improper. The identity and nature of Telluride's alleged trade secrets and confidential information, and the measures that it takes to protect the secrecy of that information, are crucial issues in this case. As such, all documents evincing any of Telluride's actions with respect to its trade secret and confidential information must be produced.

Request No. 3 seeks all documents relating to Telluride's activities, experiences, practices, policies, or procedures with respect to requiring Telluride employees, customers, clients, or vendors to sign confidentiality or non-competition agreements, enforcing such agreements against Telluride's own present or former employees, customers, clients, or vendors or hiring employees with such existing agreements. Telluride objects to this request to the extent that the terms "activities," "experiences," "practices," and "procedures" are vague. The objection is improper. Consistent with the permissible limits of discovery, the Request clearly asks for all documents that in any way relate to the contractual measures that Telluride takes to protect its confidential and trade secret information by any person or entity who acquires access to it. Please withdraw the objection and produce all responsive documents.

Request No. 5 seeks all documents relating to lawsuits filed against Telluride, or which Telluride has filed, threatened to file, or attempted to file against any persons relating in any way to the confidential, trade secret, or proprietary information that Telluride provided to Mr. Falkenstein. Telluride objects to this request to the extent that it seeks publicly available documents. As noted above, Telluride must apprise Mr. Falkenstein of the existence and location of any such documents. Further, the objection is improper insofar as non-privileged documents relating to litigation that have not been filed with a court and thus are not publicly available.

Request No. 6 seeks all documents identifying the "confidential, proprietary and trade secret information" that Telluride alleges Falkenstein has misappropriated or will misappropriate. Telluride objects to the Request(capped or not capped?) on ground that the phrase "will misappropriate" is vague. The objection is improper. The Request obviously asks for all documents relating to alleged misappropriation that Telluride believes is ongoing or may occur in the future. Please withdraw the objection and produce all responsive documents.

Request No. 8 seeks all documents related to the methods or procedures utilized or incorporated by Telluride to protect its trade secrets, confidential, or proprietary information.

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Telluride objects to this request to the extent that the terms “methods,” “procedures,” and “incorporated” are vague. For the same reasons that Telluride’s similar objection to Request No. 3 is improper, so to is this objection.

Request No. 13 seeks all documents related to any factors, materials, concepts, services, or documents that Telluride has used within its models or trading strategies to actively make investments from January 22, 2004, to the present. Telluride objects to this Request “to the extent that the terms ‘materials’ and ‘services’ are vague.” As with Telluride’s other vagueness objections, this objection is also improper. The Request clearly asks for documents related to anything that has assisted Telluride or that Telluride has used in making investments, and the terms of the Request should be construed to that effect. Please withdraw the objection and produce all responsive documents.

Request No. 17 seeks all documents related to any modifications, revisions, additions, refinements, or improvements made to the Original Model (including all its factors) made after September 1, 2006, regardless of whether these models or strategies actually were implemented in practice. Telluride objects to this request to the extent that it calls “for the disclosure of information about models that were considered or implemented after Falkenstein left Telluride.” This information is likely to lead to the discovery of admissible evidence and should be produced.

Request No. 18 seeks all documents related to Telluride’s allegation that Mr. Falkenstein “failed to return Telluride’s property including the Telluride Modified Model and the New Telluride Models.” With no further explanation, Telluride objects “to the extent that the request is vague.” In fact, the Request could not be more clear: it plainly asks for all documents related to Telluride’s assertion that Mr. Falkenstein has somehow failed to turn over Telluride’s property. Please withdraw the objection and produce all responsive documents.

Request Nos. 20 and 21 seek all documents related to any interactions or communications between Mr. Falkenstein and Peter Hajas, and between Mr. Falkenstein and any employee, officer, or agent of Telluride and Irv Kessler, since January 1, 2007. Telluride objects to these Requests “to the extent that the term ‘interaction’ is vague.” This objection should be withdrawn.

Request No. 22 seeks all documents related to the revenue Telluride derived from any hedge funds over which Mr. Falkenstein had any influence. Telluride objects to this Request to the extent that the terms “influence” and “revenue” are vague. As with Telluride’s objections to Interrogatory Nos. 20 and 21, the objection is improper.

Request No. 25 seeks all documents relating to any competitive or other business relationship between Telluride and Mr. Falkenstein since September 1, 2006. Telluride objects to the Request to the extent that the phrase “competitive or other business relationship” is vague. The objection is improper. The Request plainly seeks documents relating to any

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business relationship that Mr. Falkenstein has had with Telluride since September 1, 2006. Please produce all responsive documents.

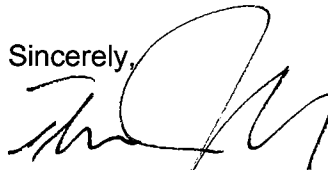
Request No. 28 seeks all documents related to alleged party admissions. Telluride objects to this request to the extent that the phrase "alleged admissions" is vague. The objection is improper. Consistent with the rules of discovery, the phrase "alleged admissions" should be interpreted in accordance with Federal Rule of Evidence 1007, governing admissions by a party to an action.

Request No. 29 seeks all written statements in Telluride's possession, custody, or control rendered by persons who have knowledge of any facts pertaining to this litigation. Telluride objects to this Request to the extent that the phrase "written statements" is vague. The objection is improper.

Request No. 34 seeks all documents relating to, either directly or indirectly, any of the allegations or defenses raised in this litigation. Telluride objects to this Request to the extent that the phrase "directly or indirectly" is vague. This objection is improper.

I hope that we can resolve this dispute without the need for motion practice. I look forward to your prompt response.

Sincerely,



Thomas Jancik

TMJ:DLL/cdb

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bcc: Mr. Eric Falkenstein (via e-mail)