

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS**

Three Angles Broadcasting Network,  
Inc., an Illinois non-profit corporation  
and Danny Lee Shelton, individually,

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

Case No. 08-MC-16

Honorable J. Phil Gilbert

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**GRAY HUNTER STENN'S JOINDER IN AND MEMORANDUM IN SUPPORT  
OF PLAINTIFFS' MOTION TO QUASH, MODIFY OR STAY SUBPOENA  
*DUCES TECUM***

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COMES NOW Gray Hunter Stenn LLP ("Gray Hunter Stenn"), a third party, by and through its counsel, Mathis, Marifian, Richter and Grandy, and joins in and supports the Plaintiffs' motion to quash, modify or stay subpoena *duces tecum* filed on June 16, 2008, and further invokes the accountant-client privilege to the extent that such privilege applies. In support of its joinder in said motion, Gray Hunter Stenn states the following:

1. This motion is brought in the Court from which the subpoena was issued because Fed. R. Civ. P. 45 (c)(3) contemplates that motions to quash subpoenas be brought before the "issuing" court. *See also* Fed. R. Civ. P. 37(a)(2) (motion for an order to a nonparty is made in the court where discovery is or will be taken.)

2. On information and belief, the issues raised herein will also be brought by the Plaintiffs before the Court in which the case is pending, in Massachusetts, as part of a broader motion to control and curtail third party discovery activities and restrict the scope of permissible discovery to issues in the case.

3. The Defendants have requested Gray Hunter Stenn produce a voluminous amount of documents dating back to 1998. Further, many of the requested documents should be in the Plaintiffs' possession, and, as such, could be sought directly from the Plaintiffs through the course of regular discovery.

4. For this reason and others, Gray Hunter Stenn joins in the Plaintiffs' Motion to Quash, Modify or Stay the Defendants' December 28, 2007 Subpoena *Duces Tecum* and further states that the subpoena is overbroad, unduly burdensome, and seeks documents and information protected by the accountant-client privilege.

5. On November 30, 2007, Defendants faxed to Alan Lovejoy a Subpoena *Duces Tecum* that had been issued by the District Court of Massachusetts and accompanying correspondence. A copy of said facsimile transmission is attached hereto as Exhibit A and incorporated by reference. A copy of said subpoena was subsequently served on Mr. Lovejoy on or about December 3, 2007.

6. On December 14, 2007, counsel for Gray Hunter Stenn sent Defendants via certified mail a written objection to said subpoena pursuant to Fed.R.Civ.Pro. 45. A copy of said correspondence is attached hereto as Exhibit B and incorporated by reference. Said objection raised and invoked the accountant's privilege as well as other objections.

7. Illinois recognizes an accountant-client privilege under 225 ILCS 450/27 (West 2008). The privilege protects information or evidence which has been obtained by a licensed or registered certified public accountant in his confidential capacity as a licensed or certified public accountant.

8. In Illinois, the accountant-client privilege can be invoked by the accountant only. *Baylor v. Mading-Dugan Drug Co.*, 57 F.D.R. 509, 510 (N.D. Ill. 1972).

9. State laws creating privileges are substantive, and federal courts should follow them in diversity cases. *Palmer v. Fisher*, 228 F.2d 603, 608 (7th Cir. 1955).

10. Further, the law of the forum in which the district court sits accordingly will govern all substantive questions presented, such as those pertaining to the accountant-client privilege. *Western Employers Ins. Co. v. Merit Ins. Co.*, 492 F.Supp. 53, 54 (N.D. Ill. 1979). As such, this court should apply the Illinois account-client privilege.

11. Gray Hunter Stenn hereby invokes the Illinois accountant-client privilege as to any documents or information in its possession which were prepared and/or transmitted only between Plaintiffs and Gray Hunter Stenn.

12. On or about March 17, 2008, Defendants caused Mr. Alan Lovejoy and Gray Hunter Stenn to be served with the subpoena *duces tecum* that is presently at issue before the Court. A copy of said subpoena was previously attached to the Plaintiffs' Motion.

13. On April 3, 2008, counsel for Gray Hunter Stenn again served via certified mail an objection to said subpoena and invoked the accountant-client privilege. A copy of said objection is attached hereto as Exhibit C and incorporated herein by reference.

14. The subpoena at issue commands Gray Hunter Stenn to produce the following documents created after January 1, 1998:

- All contracts, agreements, work papers, engagement letters, management letters, management representation letters, or other documents arising from any auditing services rendered to 3ABN, as defined herein.
- All contracts, agreements, tax returns, invoices issued to 3ABN, records of

payments made to or received from 3ABN, whether direct or indirect, and/or any other accounting records or documents arising from any accounting or tax form preparation services rendered to 3ABN, as defined herein.

- All contracts, agreements, work papers, engagement letters, management letters, management representation letters, and/or other documents arising from any auditing services rendered to Danny Shelton, as defined herein.
- All contracts, agreements, tax returns, invoices issued to Danny Shelton, records of payments made or received, whether direct or indirect, and/or any other accounting records or documents arising from any accounting or tax form preparation services rendered to Danny Shelton, as defined herein.

The subpoena defines 3ABN as “Three Angels Broadcasting Network, Inc., Three Angels Broadcasting, Inc., Three Angles Broadcasting, Inc., Three Angel’s Broadcasting School, Inc., Broadcast Communications Service, Inc., Three Angels TV & Radio Broadcasting Network (in Russia), Tres Anjos Broadcasting Network – LTDA (in Brazil), Association Three Angels Broadcasting Network (in Peru), 3ABN Phillipines, Inc., Three Angels Enterprises, L.L.C., Crossbridge Music, Inc., 3ABN Books, 3ABN Music, 3ABN Radio, any names known or believed by you to be assumed by 3ABN, and/or any organizations, past or present, for profit or non-profit, which you believe or know that 3ABN has or has had control over.”

The subpoena also defines “Danny Shelton” as Danny Lee Shelton, D & L Publishing, DLS Publishing, and/or any other DBA’s or organizations, past or present, which you believe or know that he has or has had control over, except 3ABN as defined herein.”

15. Clearly, said subpoena as issued seeks documents and information that falls within the accountant-client privilege.

WHEREFORE, for the reasons previously stated, Grey Hunter respectfully requests that this Honorable Court enter an Order quashing the Defendants’ December

28, 2007 *Subpoena Duces Tecum* in its entirety, or in the alternative, order the response to the subpoena be deferred until the Massachusetts court in which the underlying action is pending has an opportunity to rule upon the matter.

RESPECTFULLY SUBMITTED,

MATHIS, MARIFIAN, RICHTER & GRANDY, LTD.

By: /s/ Deanna L. Litzenburg

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**Certificate Of Service**

This is to certify that a copy hereof was served upon all attorneys of record by mailing the same, postage prepaid, on this 26<sup>th</sup> day of June, 2008, to:

Mr. Robert Pickle  
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/s/ Deanna L. Litzenburg