

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-60786-Civ-Cooke/Bandstra

COQUINA INVESTMENTS,

Plaintiff,

vs.

SCOTT W. ROTHSTEIN and
TD BANK, N.A.,

Defendants.

JOINT PRETRIAL STIPULATION

Plaintiff Coquina Investments (“Coquina”) and Defendant TD Bank, N.A. (“TD Bank” or the “Bank”) respectfully submit this Joint Pretrial Stipulation pursuant to Local Rule 16.1, S.D. FL, and this Court’s Scheduling Order (D.E. 42). The parties state as follows:

I. A short concise statement of the case by each party (Local Rule 16.1(e)(1))

The following statements of the case were prepared separately by each party and were not agreed to by the parties.

A. Plaintiff’s Summary of the Case

Plaintiff Coquina is an investment partnership based in Texas that was one of hundreds of victims of an enormous RICO conspiracy scheme engineered by Defendant Rothstein with the pivotal participation of Defendant TD Bank, one of the largest financial institutions in North America. What appeared to be legitimate short-term opportunities to purchase structured settlements turned out to be an extensive fraudulent enterprise through which the Defendants stole or diverted millions of dollars through a pattern of racketeering, involving acts of wire fraud, money laundering, conspiracy, and more. Many TD Bank officers and employees participated in the fraud,

making false verbal and written statements to investors, providing false and misleading documents, and actively concealing the fraud. To convince investors of the legitimacy of the investment, TD Bank officers met personally with many victims, including Plaintiff, and made false representations in order to create the appearance of a legitimate enterprise and to vouch for the investments and for Rothstein, all the while knowing about and benefitting from the illegitimate scheme.

In early 2007, TD Bank solicited Rothstein's banking business, and in November 2007, Rothstein opened three accounts at TD Bank. Beginning in 2008, TD Bank became aware of Rothstein's plan to use accounts at TD Bank for the benefit of alleged structured settlement plaintiffs as well as investors who purchased the settlements and invested money into the structured settlements. Further, TD Bank knew that these investments consisted of millions of dollars that would benefit TD Bank by being deposited into RRA TD Bank accounts.

Beginning in April, 2008 and continuing through October, 2009, hundreds of millions of dollars were deposited into and transferred between RRA's TD Bank accounts and transferred to and from TD Bank and accounts at other banks. With the constant involvement of TD Bank officers and employees, Rothstein opened more than 26 operating or trust accounts over this period. TD Bank eagerly anticipated the large transactions into RRA accounts during this time period, and on a weekly and sometimes daily basis checked the RRA account balances. Although TD Bank tracked these million dollar transactions in the RRA accounts, often occurring several times per month in several RRA accounts, virtually all the transactions grossly exceeded and conflicted with the expected maximum monthly transaction amounts listed the RRA account opening documents, most of which were \$20,000 per month. TD Bank ignored numerous classic red flags of fraud.

In 2008 and continuing through October, 2009, TD Bank provided substantial assistance to Rothstein's fraudulent scheme in several ways. TD Bank provided a verification method to investors through TD Bank employees' conducting what they referred to as investor "shows" at TD

Bank branches. As described by bank employees, an investor “show” consisted the following steps: a Rothstein associate requested TD Bank to print-out various RRA account balances (even though this information was available via TD Bank’s online service), together with a signed letter from the Bank stating that the print-outs were the true balances of the specified RRA accounts; (2) Rothstein or an associate would review the documents at the bank, and instruct the TD Bank employee to put the documents in an envelope; (3) Rothstein or the associate would leave the bank with the letter and account balance print-outs, returning later to meet with an investor in a TD Bank conference room. Investors would use the TD Bank letter and account balance print-outs to verify the amount and location of their investments in a RRA TD Bank account. From at least October 2008 through October 2009, TD Bank employees conducted various “shows” for investors in Rothstein’s settlement structure scheme at TD Bank stores. Unbeknownst to the investors, the account balance information was false.

TD Bank officers and employees also provided substantial assistance to Rothstein’s fraud providing cover letters and account balances print-outs to investors without performing the “show.” In addition, TD Bank officers and employees paid considerable, often daily, attention to million-dollar transfers and deposits requests by Rothstein and his associates. Not only did the bank provide daily notice to Rothstein and his associates of the potential overdraft status of the various accounts, but TD Bank improperly allowed Rothstein to use purported trust account funds to cover overdrafts in other accounts. TD Bank also allowed Rothstein’s deposits and withdrawals to be processed or cleared for withdrawal or transfer on an expedited basis, using “exceptions” or personal guarantees by TD Bank officers. The frequency of TD Bank’s actions in this regard increased over time from 2008 through October 2009. By the time Coquina Investments purchased its first settlement agreement, TD Bank had already provided substantial assistance to Rothstein’s Ponzi scheme and conspired with Rothstein to defraud investors.

Coquina learned of the structured settlement investment opportunity through an acquaintance. Coquina received via email sample sets of investment documents, which Coquina did not know were fraudulent. Coquina relied on the participation of TD Bank as Rothstein's bank, believing that because TD Bank was a very large national bank, it was obligated under federal and state law to monitor the activity in its accounts. Based on the false representations of Rothstein and TD Bank, Coquina purchased several structured settlements beginning in April 2009 and continuing through September 2009.

On August 17, 2009, because Coquina wanted additional assurances regarding the safety of its investments, Coquina received a letter signed by Rothstein and TD Bank's Regional Vice President Frank Spinosa stating that the funds relating to the settlements Coquina purchased were being maintained in a separate TD Bank account [#6861011614], that the account was irrevocably restricted, and the funds in the account could only be distributed to Coquina's account at American Bank in Corpus Christi, Texas. At the time, TD Bank knew that the restrictions described in the letter were false. In addition, on August 17, 2009, Regional VP Spinosa and Rothstein spoke on the telephone with Coquina's representatives. Spinosa confirmed that the RRA-Coquina account was restricted as described in the letter, and that this account held \$22 million. These representations were false because the account could not be restricted and the account's actual balance at the time was only \$100. Based on the August 17th letter that Spinosa signed and on the conversation with Spinosa and Rothstein, Coquina made another investment of \$15 million.

In September 2009, based on Coquina's request for further assurances, Coquina's representatives traveled to Florida and met personally with Rothstein and Spinosa at TD Bank's corporate offices. Coquina received another letter signed by Regional VP Spinosa, confirming the restrictions on the Coquina account as described in the August 17th letter. In the meeting, Spinosa discussed the restrictions on the account, informing Coquina that TD Bank had such restricted

accounts for many customers and could provide additional similar accounts for Coquina if needed. He also confirmed that there were millions of dollars in the account. That was a lie. Based on Spinosa's representations to Coquina in the meeting and those in the second letter, Coquina made additional investments totaling \$9 million. When questioned in his deposition about the lock letters and his meetings and communications with Coquina, Spinosa invoked the Fifth Amendment and refused to answer.

On or about October 27, 2009, upon direction from Rothstein TD Bank transferred \$16 million from another investor's account to an account for Rothstein's benefit in Morocco. Shortly thereafter, Rothstein fled the United States to Morocco. In late October Coquina did not receive a payment from Rothstein per the investment schedule. When Coquina was unable to contact Rothstein, Coquina contacted Spinosa on his cell phone (which he had given to Coquina's representatives during the September meeting). Spinosa told Coquina there was nothing to worry about, although Spinosa knew the Ponzi scheme was crashing.

Despite the hundreds of millions of dollars of transactions in and out of the accounts and TD Bank's officer and employee's daily knowledge of these transactions, no one at TD Bank reported any suspicious activity. On the contrary, TD Bank officers and employees were rewarded for the millions of dollars in transactions from Rothstein's accounts at their yearly reviews as the large dollar transactions benefitted the Bank and local TD Bank stores. Through TD Bank's actions and inaction as co-conspirators, TD Bank held out the legitimacy of TD Bank to affirmatively support and validate Rothstein's structured settlement Ponzi scheme defrauding numerous investors.

Coquina suffered out-of-pocket losses of approximately \$7 million. However, Coquina's damages may increase depending upon the results of ongoing settlement discussions with the RRA Trustee.

B. Defendant's Summary of the Case

Coquina's Complaint alleges four causes of action against TD Bank: (i) violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961, *et seq.* ("RICO"), §1962(c); (ii) conspiracy to violate RICO, 18 U.S.C. §1962(d); (iii) fraudulent misrepresentation; and (iv) aiding and abetting fraud. TD Bank denies the allegations in each of Coquina's claims and further denies that it is in any way liable to Coquina. TD Bank did not owe any duty to Coquina, which was never a TD Bank customer. Nor did TD Bank act as Scott W. Rothstein's ("Rothstein") co-conspirator. The Bank neither knew of, nor participated in, Rothstein's scheme. Instead, TD Bank did nothing more than act as a depository financial institution – a bank – for Rothstein's former law firm, Rothstein, Rosenfeldt and Adler ("RRA"). Rothstein and RRA – customers of the Bank and, at the time, a well-respected attorney and community leader, and a large and leading law firm in Fort Lauderdale, respectively – made deposits, withdrawals, and wire transfers, including on-line transfers, as TD Bank's customers were able to do. While the Bank provided RRA and Rothstein with typical and legitimate banking services which included giving them their account balance statements, the Bank never gave Coquina, a non-customer, any document containing RRA account information or even referencing RRA accounts.

Because TD Bank had no knowledge of, and did not participate in, his scheme, Rothstein himself forged and directed his employees to forge TD Bank documents whenever he needed such documents. Rothstein and his employees created fake TD Bank account balance statements and wire confirmations, forged phony TD Bank letters and signatures, and Rothstein even directed RRA employees to create a fake TD Bank website that Rothstein used to fool investors into believing that funds from the fake settlements were safely deposited in RRA accounts. Numerous former RRA employees have pleaded guilty to federal crimes related to Rothstein's scheme, including forgery of RRA financial information including Bank account statements and Bank wire confirmations, and

a fake TD Bank website with fake on-line RRA account information. In addition, a former Rothstein colleague has admitted to impersonating a TD Bank employee on more than one occasion. None of this would have been necessary – or possible – if TD Bank knew of, or participated in, Rothstein's fraud.

Coquina did not rely on TD Bank regarding the alleged investments. Coquina invested on the recommendation of, and continued encouragement from a Coquina's investor's longtime friend. Coquina alleges that it then purchased fictitious settlements for millions for over *six months* before it claims it had any contact with TD Bank. Throughout this period, and the entire time period that Coquina alleges its made investments with Rothstein, Coquina used and paid a "verifier" named Michael Szafranski – whom an investor through Coquina admitted was Coquina's agent – to identify potential deals and terms, verify settlement funding and confirm fund wirings, review settlement documentation, prepare investment agreements and other paperwork, and to work with Rothstein to complete the alleged investments. Any alleged investments claimed in the Complaint were based on information from Szafranski and Rothstein, not TD Bank.

Coquina also ignored tell-tale signs of Rothstein's scheme including, among other things, including enormous quick gains Rothstein offered, substantive mistakes in fake settlement documents it alleges it received from Szafranski and Rothstein, and Rothstein's attempts to entice investments through reduced fee offers and "kick-backs." For six months before any alleged communication between an investor through or with Coquina and anyone at TD Bank, Coquina alleges that it received lists of phony settlements from Rothstein and snatched up the most profitable of them with terms that often offered more than 100% returns in the span of a few months. TD Bank was not present, let alone participating, in a single one of these deals. By August 2009, Coquina alleges that it had already invested more than ten million dollars with Rothstein before it claims it met anyone at TD Bank. While Coquina claims that TD Bank should have been aware of "red flags"

indicating Rothstein's scheme, it was investors through or with Coquina, who were in a position to detect Rothstein's scheme – Coquina investors dined with Rothstein, visited his law firm and home, invited him to their homes, and on multiple occasions questioned Rothstein and Szafranski over glaring incongruities in his deals and errors in his phony settlement agreements. Instead, Coquina failed to conduct adequate due diligence, looked the other way in order to collect to-good-to-be-true, unrealistic profits from Rothstein's phony investment scheme as it was obvious to them, or they should have known, that Rothstein's deals were a scheme.

Coquina claims that on a single occasion – *six months after* it alleges it decided to and made investments in Rothstein deals – Rothstein introduced Mr. Frank Spinosa, a TD employee, to them and that Mr. Spinosa impliedly or otherwise made a misrepresentation about the amount of funds in an RRA account, and that on two other occasions Mr. Spinosa counter-signed a letter written *by Rothstein to Mr. Spinosa* and signed another letter *from Mr. Spinosa to Rothstein* which Coquina acknowledges were provided to it by Rothstein, not TD Bank. Mr. Spinosa did not make any misrepresentations to Coquina. Moreover, an investor witness produced by Coquina in this case admitted that statements made in one of the letters is not false. Moreover, Coquina does not allege that TD Bank ever provided it with any document regarding the RRA account information, much less false information. Indeed, the Bank did not do so. In fact, Rothstein was the only person to ever provide them with any document regarding RRA account information. These alleged misrepresentations are the entirety of Coquina's allegations that TD Bank had knowledge of, participated in and substantially assisted Rothstein in his scheme.

Each of Coquina's claims require that it establish TD Bank either knowingly made misrepresentations to Coquina and agreed to participate in Mr. Rothstein's scheme (a requirement for its RICO and fraud claims), or knowingly and substantially assisted in Mr. Rothstein's scheme (requirements for aiding and abetting fraud). TD Bank did neither. Even if Coquina could

demonstrate that Mr. Spinosa knowingly made a misrepresentation to Coquina or knowingly participated in Rothstein's scheme, TD Bank cannot be held liable for his conduct. Coquina plans to establish Spinosa's, and TD Bank's, culpability through a series of negative inferences. However, no negative inferences should be attributable to TD Bank, and the facts and circumstances of this case do not support any adverse inferences from Mr. Spinosa's Fifth Amendment assertions. Coquina thus does not support a federal RICO violation or common law fraud or aiding and abetting fraud claim against TD Bank.

C. Neutral Summary of Claims and Defenses (for purposes of voir dire)

Plaintiff Coquina sued Defendants TD Bank and Scott Rothstein on the following four claims:

Count I- RICO

In Count I, the Plaintiff claims that the Defendants violated a Federal law known as the Racketeer Influenced and Corrupt Organizations Act or the "RICO" Act, and the Plaintiff seeks an award of damages as compensation for that alleged violation. Defendant TD Bank denies that it violated the RICO Act, denies that Plaintiff is entitled to any scheme and denies it caused Coquina to suffer any damages.

Count II- Conspiracy to commit RICO

In Count II, Coquina alleges Defendant TD Bank conspired with Defendant Rothstein to violate the RICO Act and caused Coquina to suffer damages. TD Bank denies that it conspired with Rothstein to violate the RICO Act and denies that it caused Coquina to suffer any damages.

Count III- Fraudulent Misrepresentation

In Count III, Coquina alleges that Defendant TD Bank knowingly made misrepresentations, which TD Bank intended for the Plaintiff to rely upon. Coquina claims that it justifiably relied on

TD Bank's misrepresentations, and consequently, suffered damages for which it seeks compensation in this case. TD Bank denies that any false statements were made to Coquina by anyone at TD Bank. TD Bank also denies that Coquina relied on any false statements or that Coquina suffered any damages as a result of any allegedly false statement.

Count IV- Aiding and Abetting

Lastly, in Count IV, Coquina claims that Defendant TD Bank aided and abetted Defendant Rothstein's fraudulent scheme. In other words, Coquina alleges that TD Bank had knowledge of the fraudulent scheme and provided substantial assistance to advance it. Coquina contends that it was damaged by TD Bank's aiding and abetting the fraud and seeks compensation. TD Bank denies that it had actual knowledge of Rothstein's scheme. It also denies that it substantially assisted Rothstein or that it participated in Rothstein's scheme. TD Bank denies that Coquina suffered any damages as a result of TD Bank's actions.

Affirmative defenses

TD Bank has stated a number of defenses that could bar Coquina from recovering damages in this case. Among those defenses is that TD Bank claims that Coquina failed to conduct adequate due diligence, was willfully blind to and/or acted improperly in its decision to participate in Rothstein's scheme, and that it was obvious to Coquina or Coquina should have known that Rothstein deals were a scheme. Coquina claims that it was deceived by the Defendants, and denies that it knew that Rothstein's investment scheme was a fraud, or that it acted improperly.

II. Basis of federal jurisdiction (L. R. 16.1(e)(2))

The parties agree in part and disagree in part as to the basis of federal jurisdiction.

Coquina and TD Bank agree that this Court has subject matter jurisdiction over RICO claims in Counts I and II pursuant to 28 U.S.C. Section 1331, involving an action pursuant to 18 U.S.C. Sections 1964(a) and (c), the Federal RICO statute.

Coquina also states that this Court has subject matter jurisdiction as follows:

- a. diversity jurisdiction pursuant to 28 U.S.C. Section 1332(a)(1), involving an action between citizens of diverse states with an amount in controversy in excess of seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs; and
- b. supplemental jurisdiction over the Florida state law claims pursuant to 28 U.S.C. Section 1367(a), involving claims that are so related to the claims within the Court's original jurisdiction that they form part of the same case or controversy.

Defendant TD Bank denies that Coquina has properly set forth a basis for subject matter jurisdiction over any other of its claims, including the common law claims of fraudulent misrepresentation and aiding and abetting fraud.

The parties agree that this Court has personal jurisdiction over the parties.

III. The Pleadings (L. R. 16.1(e)(3))

- A. Complaint - [D.E. 1, filed May 12, 2010]
 1. Count I - RICO; 18 U.S.C. §1962(c) [D.E. 1, p. 16]
 2. Count II - RICO conspiracy; 18 U.S.C. §1962(d) [D.E. 1, p. 19]
 3. Count III - fraudulent misrepresentation; [D.E. 1, p. 21]
 4. Count IV - aiding and abetting fraudulent misrepresentation [D.E. 1, p. 22]
- B. Amended Answer and Affirmative Defenses [D.E. 370 filed July 14, 2011]
 1. First Affirmative Defense - Estoppel
 2. Second Affirmative Defense - Waiver
 3. Third Affirmative Defense - Unclean Hands/ *In Pari Delicto*
 4. Fourth Affirmative Defense - Setoff
 5. Fifth Affirmative Defense - No Proximate Cause
 6. Sixth Affirmative Defense - Failure to Mitigate Damages
 7. Seventh Affirmative Defense - UCC and Florida Statutory law preemption
 8. Eighth Affirmative Defense - No Vicarious Liability

IV. Unresolved Motions and Other Matters Requiring Action by the Court (L. R. 16.1(e)(4))

The following motions and other matters are unresolved and require action by this Court:

Date Filed	D.E.#	Description of Motion or Other Matter (docket text used where available)
May 11, 2011	215	Defendant TD Bank, N.A.'s Motion <i>in Limine</i> To Exclude Spinosa's Deposition Testimony
May 11, 2011	216	Defendant TD Bank, N.A.'s Motion <i>in Limine</i> To Preclude Any Testimony, Evidence or Reference to Audit Reports
May 11, 2011	217	Defendant TD Bank, N.A.'s Motion <i>in Limine</i> To Preclude Any Testimony, Evidence or Reference to Bank Policies
May 11, 2011	218	Defendant TD Bank, N.A.'s Motion <i>in Limine</i> to Preclude Any Evidence or Reference to Any Acts Alleged By Other Purported Investors Involving TD Bank
May 11, 2011	<i>filed under seal</i>	Defendant TD Bank, N.A.'s Motion <i>in Limine</i> To Preclude Any Evidence Not Previously Disclosed
May 12, 2011	<i>filed under seal</i>	Defendant TD Bank, N.A.'s Summary Judgment Motion and Incorporated Memorandum of Law
May 12, 2011	<i>filed under seal</i>	Plaintiff's Motion for Summary Judgment
July 18, 2011	373	Defendant TD Bank, N.A.'s Motion For Leave To Amend Witness List To Add William Corte As A Witness
July 20, 2011	<i>filed under seal</i>	Defendant TD Bank, N.A.'s Motion to Exclude Testimony Of Plaintiff's Identified Expert Maria Yip and Incorporated Memorandum of Law
July 20, 2011	<i>filed under seal</i>	Defendant TD Bank, N.A.'s Motion to Exclude Testimony Of Plaintiff's Identified Expert Catherine Ghiglieri and Incorporated Memorandum of Law
July 20, 2011	<i>filed under seal</i>	Plaintiff's Motion to Exclude The Expert Report And Testimony Of Samuel S. Rubin
July 20, 2011	<i>filed under seal</i>	Plaintiff's Motion to Exclude The Expert Report And Testimony Of Craig Lessner

Date Filed	D.E.#	Description of Motion or Other Matter (docket text used where available)
July 20, 2011	<i>filed under seal</i>	Plaintiff's Motion to Exclude The Expert Report And Testimony Of Ivan Garces
July 20, 2011	<i>filed under seal</i>	Plaintiff's Motion to Exclude The Expert Report And Testimony Of Thomas Blake
August 2, 2011	396	Motion of TD Bank, N.A., Seeking The Issuance Of A <i>Writ Of Habeas Corpus</i> Ad Testificandum Compelling the Bureau of Prisons to Produce Debra Villegas For Trial
August 2, 2011	397	Motion of TD Bank, N.A., Seeking The Issuance Of A <i>Writ Of Habeas Corpus</i> Ad Testificandum Compelling The United States Government To Produce Scott W. Rothstein For Trial
August 2, 2011	398	Motion of TD Bank, N.A., To Obtain And Preserve The Sworn Testimony Of Curtis Renie, William Corte, And Stephen Caputi For Use At Trial
August 4, 2011	408	Plaintiff's Motion To Strike Defendant TD Bank, N.A.'s Untimely Rebuttal Report of Ivan Garces
August 4, 2011	409	Plaintiff's Motion To Strike Defendant, TD Bank, N.A.'s Amended Eighth Affirmative Defense
Sept. 12, 2011	449	Defendant TD Bank's Motion to Compel Plaintiff to Provide Notice of its Intent to Use Confidential Information Pursuant To Paragraph 9 Of The Court's Agreed Protective Order (D.E. 56), or alternatively, TD Bank's Application For a Determination Regarding Certain Information Designated "Confidential Information"
Sept. 16, 201	453	Plaintiff's Motion <i>In Limine</i> To Exclude Testimony from Michael Szafranski

In addition, Plaintiff Coquina believes the matter of sealed filings remains pending before the Court, per the Court's Order dated July 29, 2011, directing the Parties to Identify Exhibits to be Maintained Under Seal [D.E. 395] and the Joint Notice filed by the parties on August 12, 2011 [D.E. 421]. Defendant TD Bank does not agree as there is no motion pending on this issue.

V. Statement of Uncontested Facts Requiring No Proof at Trial (L. R. 16.1(e)(5))

The parties agree that:

1. TD Bank is a national bank.
2. TD Bank acquired Commerce Bank on or about March 31, 2008.
3. Frank Spinosa held the position of Regional Vice President for Broward County, Florida, at Commerce Bank and, after TD Bank acquired Commerce Bank, at TD Bank from March 27, 2006, through November 23, 2009.
4. Scott Rothstein was an attorney and one of the founding partners of the law firm Rothstein Rosenfeldt Adler, P.A. ("RRA"), based in Fort Lauderdale, Florida.
5. Scott Rothstein was a well-respected and well-known attorney with deep ties in the South Florida community, including membership on judicial committees, participation in various charitable organizations, and relationships with prominent politicians.
6. RRA maintained accounts at Commerce Bank, and then TD Bank (after Commerce Bank was acquired by TD Bank), during the period November 2007 until approximately November 2009.

VI. Statement of issues of fact that remain to be litigated at trial (L. R. 16.1(e)(6)):

A. Plaintiff

1. whether TD Bank knowingly made fraudulent misrepresentations and omissions to Coquina, in written and verbal communications.
2. whether Defendant TD Bank made false verbal statements to investors, provided false and misleading documents, and actively concealed the fraudulent activity.
3. whether TD Bank acted together with Rothstein to operate the fraudulent scheme to the detriment of Plaintiff, as well as other victims.
4. whether senior TD Bank officers played an active role in the fraudulent scheme and facilitated its existence.
5. whether TD Bank officers met personally with victims, including Plaintiff, in order to create an appearance of a legitimate enterprise and to vouch for the investment and for Rothstein, knowing about and benefitting from the scheme.
6. whether TD Bank misrepresented to investors that the investors' funds were "irrevocably" "locked" in specially designated accounts.
7. whether TD Bank and Rothstein worked together using the RRA accounts at TD Bank to launder hundreds of millions of dollars and to conceal and promote the massive fraudulent activity.
8. whether TD Bank helped Rothstein execute the fraudulent ponzi scheme by taking steps to maintain the appearance of legitimacy of the operation, including meeting with investors, providing documents, such as the "lock letters," account balances, and other documents to conceal the truth from the investors, to keep investors and to attract additional investors.
9. whether TD Bank's involvement was a substantial basis for the investors' confidence in the legitimacy of the transactions and the safety of their funds.
10. whether the openness with which TD Bank senior officers such as Regional Vice President Frank Spinosa met with investors and Rothstein to discuss the accounts and the investments created a false aura of legitimacy regarding the fraudulent ponzi scheme.
11. whether TD Bank officials vouched for defendant Rothstein, explaining that they had dealt with Rothstein for many years and believed in the safety of the investments and the safety of many millions of dollars being held by the bank for the benefit of investors, including Plaintiff.

12. whether TD Bank performed, and profited from, the day-to-day transactions that were necessary both to execute and to conceal the scheme.
13. whether TD Bank received and sent wire transfers of large sums of money to and from investors' bank accounts throughout the United States; in particular, whether TD Bank received and sent wire transfers of money to and from Plaintiff Coquina's bank account in Texas.
14. whether TD Bank transferred millions of dollars among several TD Bank accounts at Rothstein's direction, including covering overdrafts in accounts by transferring funds from trust accounts, assisting in the scheme by concealing the fraudulent operations of the enterprise to personally benefit the Defendants and others.
15. whether management level TD Bank employees met with victim-investors and Rothstein and provided false verbal and written assurances that the accounts in which the settlement funds were held were restricted from distribution to anyone other than the victim-investors.
16. whether TD Bank Regional Vice President Frank Spinosa conferred with Coquina's representatives on different occasions, both in person and via telephone, falsely confirming that the funds that Rothstein said were held for Coquina were being maintained in a TD Bank account for the sole and exclusive benefit of Coquina.
17. whether as part of the scheme, TD Bank opened a separate account for the victim-investor's funds, and whether Rothstein and TD Bank falsely misrepresented to victims that the funds from the "settlement agreement" that the victim-investor purchased had already been deposited into that account and those funds could not be distributed to anyone other than the specified investor.
18. whether TD Bank officials repeatedly provided bank records, including account balances, verifications, signed letters, and other documents confirming that the funds in the victim's trust account were secure in that account.
19. whether on August 17, 2009, Coquina received a letter signed by Rothstein and TD Bank's Regional Vice President Frank Spinosa, known as a "lock letter," stating that the funds relating to the settlements Coquina purchased were being maintained in a separate TD Bank account [#6861011614], that the account was irrevocably restricted, and the funds in the account could only be distributed to Coquina's account at American Bank in Corpus Christi, Texas.
20. whether at the time the lock letter was signed and delivered to Coquina, TD Bank knew that the restrictions described in the letter were false.

21. whether on August 17, 2009, in a telephone conversation between Regional Vice Presiden Spinosa, Defendant Rothstein and Coquina, Spinosa falsely confirmed that the RRA-Coquina account was restricted as described in the lock letter, and that this account held \$22 million; whether Spinosa knew these representations were false because the account could not be restricted and the account's actual balance at the time was only \$100.
22. whether based on the August 17th lock letter that Spinosa signed and on the misrepresentations Spinosa made in the telephone conversation that same day, Coquina made another investment of \$15 million.
23. whether in reliance upon on these false representations by TD Bank and Rothstein, including but not limited to the TD Bank's misrepresentations in the August and September lock letters and on TD Bank's misrepresentations in the August 17th telephone conversation with Spinosa and the September 25th meeting with Spinosa, Coquina made additional investments.
24. whether on September 25, 2009, Coquina representatives met with Spinosa in a conference room at TD Bank's corporate office in Fort Lauderdale; whether during the meeting Spinosa stated that he was familiar with the Coquina Account.
25. whether during the September 25th meeting, Spinosa falsely confirmed the irrevocable restrictions on the Coquina account, as described in the August 17th letter he counter-signed, which only allowed for disbursements to Coquina.
26. whether during the September 25th meeting, Spinosa falsely stated that TD Bank had systems in place to facilitate this type of restricted account; that TD Bank had many accounts with such restrictions; that this type of account was customary for TD Bank, and that TD Bank could provide additional segregated accounts for Coquina without any problem, and that there were millions of dollars in the Coquina account.
27. whether also on or about September 25th Defendants provided Coquina with a second lock letter, confirming the restrictions in the August 17th lock letter.
28. whether in reliance upon on these false representations by TD Bank and Rothstein, including but not limited to the TD Bank's misrepresentations in the August and September lock letters and on TD Bank's misrepresentations in the August 17th telephone conversation with Spinosa and the September 25th meeting with Spinosa, Coquina made additional investments.
29. whether in late October, Defendant TD Bank wire transferred \$16,000,000.00 to Morocco for Rothstein's benefit.
30. whether in late October 2009, when Coquina was unable to reach Rothstein (because he had fled the country), Coquina representative Damson called

Frank Spinosa at his office and on his cell phone, to request that TD Bank arrange for the prompt payment of the \$5 million then due and payable to Coquina; whether Spinosa replied that he could not do so without receiving instructions from Rothstein; whether Spinosa never gave any indication that the funds in the Coquina account were insufficient to make the required payment.

31. whether Spinosa falsely told Damson in late October that he had nothing to worry about.
32. whether, in total, Coquina wire transferred approximately \$37.7 million to Rothstein's account at TD Bank in Florida from Coquina's Bank in Texas. With respect to each transaction, Coquina had sought and received verbal and written assurances from the Defendants and others at their direction, sent primarily by telephone or by email, stating that the agreements had been executed and the funds deposited into TD Bank for Coquina's account.
33. whether the August and September lock letters signed by TD Bank Regional Vice-President Frank Spinosa relating to Coquina's account containing critical false and fraudulent misrepresentations and omissions which were intended to, and did, conceal the fraudulent scheme, and were forwarded by Rothstein to Coquina by email.
34. whether other victim-investors received lock letters signed or countersigned by Spinosa containing the same type of fraudulent misrepresentations as in the Coquina lock letter, regarding TD Bank holding funds in a segregated account to be distributed solely to the particular investor.
35. whether TD Bank violated the Bank Secrecy Act and its own policies by opening several accounts for RRA without knowing the purpose of each account, failing to obtain complete information for requisite forms, and failing to monitor activity in the accounts for suspicious activity or indicia of money laundering.
36. whether from 2007 through 2009, TD Bank permitted RRA and Rothstein to conduct thousands of transactions through approximately 26 accounts totaling approximately \$4 billion, the volume, frequency, and nature of which violated federal banking laws and regulations as well as TD Bank's own policies and procedures.
37. whether TD Bank knowingly committed at least two of the predicate acts from among the several acts of wire fraud, money laundering and interstate transportation of stolen property.

38. whether TD Bank by its misrepresentations and conduct of the fraud scheme caused Coquina to transmit funds via wire as represented in the chart below in note 1:¹
39. Whether Defendants' transmission via email or fax of the August and September lock letters to Coquina constituted predicate acts in furtherance of the RICO scheme.
40. Whether based on TD Bank's false representations, Coquina directed funds to be sent by wire transfer to TD Bank as payment for any of the fictitious settlement agreements as listed in the chart above.
41. Whether, with respect to each transaction, Coquina had sought and received verbal and written assurances from the Defendants and others at their direction, sent by telephone, email, or fax, stating that the agreements had been executed and the funds deposited into TD Bank for Coquina's account.
42. Whether, absent the fraud in which TD Bank played a pivotal role making false representations to Coquina, Coquina would not have made any of the wire transfers listed in the chart above.

1

	Settlement Agreement Number	Date of wire transfers from Coquina to Defendants	Amount Coquina wire transferred to TD Bank
A.	S 13	April 29, 2009	\$600,000
B.	S 25	June 2, 2009	\$800,000
C.	S 32	June 22, 2009	\$1,400,000
D.	S 31	June 23, 2009	\$1,100,000
E.	S 39	July 2, 2009	\$2,800,000
F.	S 43, S 44	July 16, 2009	\$1,200,000
G.	S 80, S 81, S 82	July 29, 2009	\$1,800,000
H.	S119, 120, 121, 122, 123	40036	\$4,000,000
I.	S 127	August 18, 2009	\$15,000,000
J.	S 143, 144	September 11, 2009	\$4,000,000
K.	S 154	September 29, 2009	\$5,000,000

43. whether by engaging in the fraudulent scheme, Defendant TD Bank intentionally participated in a scheme, using the wires, to defraud Coquina of money by means of material misrepresentations and omissions, in violation of 18 U.S.C. Section 1343.
44. whether Defendants Rothstein and TD Bank's conduct of the scheme constituted violations of the National Stolen Property Act, 18 U.S.C. section 2314, in that Defendants transported, transmitted and transferred in interstate and foreign commerce goods and money, valued at \$5,000 or more, knowing the same to have been stolen, converted or taken by fraud.
45. whether as part of Defendants commission of the fraud scheme, Defendant TD Bank engaged in or otherwise caused numerous financial transactions and transfers through financial institutions in the United States, in violation of 18 U.S.C. Sections 1956 and 1957.
46. whether TD Bank committed financial transactions to promote the fraudulent scheme in violation 18 U.S.C. Section 1956(a)(1)(A), constituting money laundering.
47. whether TD Bank committed financial transactions to conceal the fraudulent scheme in violation 18 U.S.C. Section 1956(a)(1)(B), constituting money laundering.
48. whether TD Bank engaged in and/or caused the financial transactions listed in chart in note 1, in furtherance of the specified unlawful activity, that is, wire fraud or interstate transportation of stolen property.
49. whether TD Bank and Rothstein associated with each other and with others so as to constitute an "enterprise" within the meaning of 18 U.S.C. Sections 1961(4) and 1962(c).
50. whether the "enterprise" was engaged in and its activities affected interstate or foreign commerce.
51. whether TD Bank associated with the "enterprise" through the involvement of its employees and officers in the underlying racketeering offenses as well as through the continuous concealment and promotion of the enterprises's activity.
52. whether TD Bank associated with Rothstein for the common purpose of defrauding Coquina and others and converting the victims' funds and property for Defendants' personal gain.
53. whether TD Bank knowingly conducted or participated, directly or indirectly, in the conduct of the affairs of the enterprise within the meaning of 18 U.S.C. Section 1962(c).

54. whether TD Bank was “employed by or associated with” the Enterprise within the meaning of 18 U.S.C Section 1962(c).
55. whether, in the course of committing the fraud scheme, Defendants, including TD Bank, engaged in a pattern of related and continuous predicate acts over a substantial period of time, beginning sometime in 2007 and continuing until approximately November 2009.
56. whether the predicate acts amounted to or threatened the likelihood of, continued criminal activity posing a threat of continuity projecting into the future.
57. whether the predicate acts all had the purpose of diverting and misappropriating monies that Coquina and others had invested with the Defendants.
58. whether by TD Bank’s failure to adequately review or monitor the activity in the RRA accounts, including ignoring numerous red flags of fraud, theft, money laundering, and ponzi activity, TD Bank facilitated the fraudulent scheme, and whether such conduct amounted to reckless conduct.
59. whether by TD Bank’s failure to investigate the \$1.4 billion in intra-bank transfers within the RRA trust and operating accounts, TD Bank facilitated the fraudulent scheme.
60. whether TD Bank’s allowing RRA to cover millions of dollars in overdrafts and/or uncollected funds with transfers from trust accounts violated its own policies or procedures and facilitated the fraudulent scheme.
61. whether Spinoso was acting within the scope of his employment when he made misrepresentations to Coquina.
62. whether Spinoso was acting within the scope of his employment when he countersigned Coquina lock letters using his title as Regional Vice President.
63. whether Spinoso was acting within the scope of his employment when he signed a Coquina lock letters on TD Bank letterhead using his title as Regional Vice President.
64. whether TD Bank employees or officers were acting within the scope of their employment when they participated and substantially assisted the execution of the fraudulent ponzi scheme.
65. whether TD Bank benefitted from participating in or substantially assisting the execution of the fraudulent scheme.
66. whether TD Bank officers or employees were acting within the scope of their employment when they participated in investor “shows” at TD Bank

stores promoting the legitimacy of the fraudulent ponzi scheme with Rothstein.

67. whether from June 2008 through October 2009, more than \$1.4 billion in debits and credits were transferred in intra-bank transfers between RRA's trust, IOTA, and operating accounts.
68. Whether TD Bank participated in the Rothstein fraud by allowing RRA to transfer millions of dollars between RRA accounts, including covering overdrafts with transfers from trust accounts.
69. whether TD Bank participated in the Rothstein fraud by paying wires and transfers on uncollected funds.
70. whether TD Bank participated and assisted the Rothstein fraud by allowing Rothstein and others to use TD Bank conference rooms to conduct alleged "shows" in which investors were provided fraudulent account balance statements.
71. whether TD Bank participated in the Rothstein fraud by preparing bank account printouts and letters for Rothstein and his conspirators to use to mislead victim investors.
72. whether TD Bank acted recklessly in failing to detect and interrupt the ponzi scheme and allowed itself to become an instrument of fraud.
73. whether the fraudulent scheme would have continued if TD Bank had taken steps to freeze or close any RRA account.
74. whether the bank's utter failure to properly investigate fraud alerts, failure to take steps or to close the accounts allowed the fraud to continue and facilitated it.

B. Defendant

TD Bank respectfully submits that the following issues of fact will need to be determined at trial:

1. Whether, in March 2009, Coquina learned of an investment opportunity in Fort Lauderdale, Florida, in which Rothstein offered fully funded confidential settlements (payable over a period of time) of potential sexual harassment lawsuits that he claimed he settled on behalf of clients of RRA for investment or purchase by individuals or entities;
2. Whether Coquina learned of these alleged investment opportunities through Ira Sochet, a long-time friend and business associate of Melvyn Klein, one of the investors through Coquina;
3. Whether Coquina retained Szafranski to act as a “verifier” of the confidential structured settlements;
4. Whether Szafranski was Coquina’s agent;
5. Whether Coquina agreed to pay Szafranski 15% of Coquina’s profits for his services;
6. Whether Coquina received all information regarding available and potential settlements from Rothstein and Szafranski, not from TD Bank;
7. Whether Coquina was never a customer of TD Bank;
8. Whether there was nothing false in a letter from Rothstein and Mr. Spinosa, dated August 17, 2009;
9. Whether Rothstein has admitted that he devised, managed, and supervised an elaborate Ponzi scheme involving the sale of fraudulent “structured settlements” to investors;
10. Whether, on January 27, 2010, Rothstein pleaded guilty to RICO conspiracy and fraud charges;
11. Whether, on June 9, 2010, Rothstein was sentenced to 50 years in prison;
12. Whether Rothstein used his employees to perpetrate his scheme and directed them to falsify TD Bank documents and e-mails, forge signatures of TD Bank officers, and create and maintain a fake TD Bank website;
13. Whether Rothstein directed Stephen Caputi to impersonate a TD Bank employee;

14. Whether Debra Villegas, formerly the chief operating officer of RRA, has admitted to participating in Rothstein's fraudulent scheme by preparing at Rothstein's direction fictitious settlement agreements and forging at Rothstein's direction signatures on documents used in Rothstein's scheme;
15. Whether, on June 11, 2010, Villegas pleaded guilty to criminal charges in connection with her role in Rothstein's scheme. Villegas was later sentenced to 10 years in prison;
16. Whether Curtis Renie, formerly the information technology director at RRA, has admitted to participating in Rothstein's fraudulent scheme by creating and maintaining at Rothstein's direction a fake TD Bank website located on the RRA computer system;
17. Whether, on June 17, 2011, Renie pleaded guilty to criminal charges in connection with his role in Rothstein's scheme;
18. Whether William Corte, a former RRA employee, has admitted to assisting Renie at Rothstein's direction in creating and maintaining a fake TD Bank website located on the RRA computer system;
19. Whether, on June 22, 2011, Corte pleaded guilty to criminal charges in connection with his role in Rothstein's scheme;
20. Whether Stephen Caputi, Rothstein's friend and former business colleague, has admitted to participating in Rothstein's fraudulent scheme by posing at Rothstein's direction as a TD Bank employee and at another time as a fake plaintiff who was selling a fake "structured settlement;"
21. Whether, on June 15, 2011, Caputi pleaded guilty to criminal charges in connection with his role in Rothstein's scheme;
22. Whether Barrie Damson ("Damson"), and Kathleen White ("White"), met Caputi when he posed as a fake plaintiff in a settlement, but did not question him about the settlement;
23. Whether Damson and White allowed themselves to be misrepresented to Caputi as an attorney and administrative assistant without an interest in his fake settlement when in fact they were considering an investment in that settlement;
24. Whether a letter from Rothstein to Mr. Spinosa dated August 17, 2009 contained any material false statements by TD Bank;
25. Whether anyone at TD Bank had actual knowledge that a letter from Rothstein to Mr. Spinosa dated August 17, 2009 contained any false statements by TD Bank;
26. Whether Mr. Spinosa acted outside the scope of his employment at TD

Bank by co-signing a letter from Rothstein to Mr. Spinosa dated August 17, 2009;

27. Whether Coquina relied sufficiently on a letter from Rothstein to Mr. Spinosa dated August 17, 2009 to invest thereafter in Rothstein's deals;
28. Whether anyone at TD Bank made any oral material false statements to Coquina on August 17, 2009;²
29. Whether anyone at TD Bank had actual knowledge of any oral material false statements to Coquina on August 17, 2009;
30. Whether, if anyone at TD Bank made any oral material false statement to Coquina on August 17, 2009, that person acted outside the scope of his or her employment;
31. Whether Coquina relied sufficiently on an alleged oral material false statement by Mr. Spinosa on August 17, 2009 to invest thereafter in Rothstein's deals;
32. Whether a letter from Mr. Spinosa to Rothstein dated September 18, 2009 contained any material false statement of fact by TD Bank;
33. Whether anyone at TD Bank had actual knowledge that a letter from Mr. Spinosa to Rothstein dated September 18, 2009 contained any material false statement of fact by TD Bank;
34. Whether Mr. Spinosa acted outside the scope of his employment at TD Bank by signing a letter to Rothstein dated September 18, 2009;
35. Whether Coquina relied sufficiently on an alleged material false statement by Mr. Spinosa in a letter dated September 18, 2009 to invest thereafter in Rothstein's deal;

² Although not alleged in its Complaint, not described in its Civil RICO Statement, and not disclosed until days before the end of the discovery, Coquina now claims that certain misrepresentations were made by Spinosa during a purported phone call. TD Bank has filed a Motion *in Limine* to exclude this claim from trial. (See TD Bank, N.A.'s Motion *in Limine* To Preclude Evidence Not Previously Disclosed, filed under seal on May 12, 2011.)

36. Whether anyone at TD Bank made any oral material false statement to Coquina on September 25, 2009;³
37. Whether anyone at TD Bank had actual knowledge of any oral material false statement to Coquina on September 25, 2009;
38. Whether, if anyone at TD Bank made any oral material false statements to Coquina on September 25, 2009, that person acted outside the scope of his or her employment;
39. Whether Coquina sufficiently relied on any alleged oral material false statement by TD Bank to Coquina on September 25, 2009 to invest thereafter in Rothstein's scheme;
40. Whether anyone at TD Bank had actual knowledge of Rothstein's scheme;
41. Whether, if anyone at TD Bank had actual knowledge of Rothstein's scheme, that person obtained that knowledge while acting outside the scope of his or her employment;
42. Whether anyone at TD Bank participated in Rothstein's scheme;
43. Whether, if anyone at TD Bank participated in Rothstein's scheme, that person participated while acting outside the scope of his or her employment;
44. Whether anyone at TD Bank substantially assisted Rothstein's scheme;
45. Whether, if anyone at TD Bank substantially assisted in Rothstein's scheme, that person did so while acting outside the scope of his or her employment;
46. Whether anyone at TD Bank knew that the structured settlements that Rothstein offered as investments were fictitious;
47. Whether anyone at TD Bank misappropriated any of Coquina's funds for his or her own use, or benefitted from Rothstein's fraudulent scheme;
48. Whether Coquina relied on the false TD Bank documents, false TD Bank balance statements, and false TD Bank website created by Rothstein or other RRA employees in its decision to continue to invest in Rothstein's fraudulent scheme;

³ Although not alleged in its Complaint, not described in its Civil RICO Statement, and not disclosed until days before the end of the discovery, Coquina now claims that certain misrepresentations regarding an amount of money in an RRA account were made by Spinoso during a September 25, 2009 meeting. TD Bank has filed a Motion *in Limine* to exclude this claim from trial. (See TD Bank, N.A.'s Motion *in Limine* To Preclude Evidence Not Previously Disclosed, filed under seal on May 12, 2011.)

49. Whether Coquina relied on representations made by Ira Sochet in its decisions to invest in Rothstein's scheme;
50. Whether Coquina relied on representations made by Michael Szafranski in its decisions to invest in Rothstein's scheme;
51. Whether Coquina knew or should have known Rothstein's deals were an unlawful scheme;
52. Whether Coquina ignored or was willfully blind to facts showing that Rothstein's settlement deals were an unlawful scheme ;
53. Whether Coquina acted improperly or demonstrated misconduct in investing in Rothstein's fraudulent scheme;
54. Whether Coquina made misrepresentations in the course of its investing;
55. Whether Coquina made misrepresentations to TD Bank;
56. Whether Coquina partners or investors received any financial, tax, or other monetary benefit as a result of investing in Rothstein's fraudulent scheme;
57. Whether Coquina received any financial, tax, or other monetary benefit as a result of investing Rothstein's fraudulent scheme;
58. Whether Coquina is a valid legal entity;
59. Whether Coquina is a valid partnership;
60. Whose money was invested through Coquina;
61. What amount of damages Coquina is entitled to recover, if any;
62. Michael Szafranski, individually and through various corporate entities, including Alexa Funding, LLC, and Onyx Capital Management, participated in Rothstein's scheme by falsely representing to Coquina that he personally "verified" numerous aspects of the "transaction" including: that the "plaintiff" and the "defendant" to the settlement agreement had signed the agreement; that the "defendant" had transferred the full amount of the settlement to a TD Bank escrow account for the Plaintiff's sole benefit; and more;
63. Debra Villegas participated in Rothstein's scheme by drafting and conforming the documents constituting the bogus settlements, including fabricating the names of the fictitious plaintiffs and defendants, preparing the fictitious confidential settlement agreements and related documents, and forging the signatures of the fictitious parties on those agreements;
64. Steven Caputi falsely represented himself to be a plaintiff in a whistle-

blower lawsuit. He signed a bogus settlement agreement and other related documents in the presence of Kathleen White and Barrie Damson; and

65. Irene Stay worked for Rothstein and assisted in the scheme by providing investors with fraudulent documents, including but not limited to fictitious bank account statements and wire transfer confirmations.

VII. Statement of Uncontested Issues of Law (L. R. 16.1(e)(7))

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. Section 1331, involving an action pursuant to 18 U.S.C. Sections 1964(a) and (c), the Federal RICO statute.

2. This Court has personal jurisdiction over the parties.

3. Venue is proper in this district pursuant to 18 U.S.C. Section 1965 and 28 U.S.C. Section 1391.

4. Count I of Coquina's Complaint, for "Federal RICO Violations," is governed by federal law, specifically, Title 18 of the United States Code, Section 1962.

5. Count II of Coquina's Complaint, for "Conspiracy to Violate Federal RICO," is governed by federal law, specifically, Title 18 of the United States Code, Section 1962.

VIII. Concise statement of legal issues remaining for Court to determine (L. R. 16.1(e)(8))

The parties respectfully submit that the issues in this case are, to a great extent, mixed questions of fact and law. Further, the parties expressly reserve all prior positions asserted in the parties' pending motions for summary judgment, motions *in limine*, and motions to exclude expert testimony under *Daubert*. The parties have also identified issues of law that they each contend are part of the case:

A. Plaintiff

Coquina respectfully submits that the following issues of law will need to be determined at trial of Coquina's Complaint.

Count I

1. Whether TD Bank violated Title 18, United States Code Section 1962(c);
2. Whether TD Bank was associated with an "enterprise" operating as an ongoing organization and functioning as a continuing unit, as those terms are defined in the RICO statute and applicable federal case law;
3. Whether TD Bank knowingly committed at least two acts of racketeering activity, or "predicate" acts, as those terms are defined in the RICO statute and applicable federal case law;
4. As to Coquina's claim that TD Bank committed the predicate act of wire fraud, whether TD Bank violated Title 18, United States Code Section 1343;
5. As to Coquina's claim that TD Bank committed the predicate act of wire fraud, whether TD Bank intentionally participated in a scheme, using the wires, to defraud Coquina of money by means of material misrepresentations and omissions;
6. As to Coquina's claim that TD Bank committed the predicate act of wire fraud, whether TD Bank intentionally made any material misrepresentations or material omissions to Coquina;
7. As to Coquina's claim that TD Bank committed the predicate act of wire fraud, whether Coquina reasonably relied on any misrepresentations and material omissions made by TD Bank;
8. As to Coquina's claim that TD Bank committed the predicate act of wire fraud, whether Coquina suffered any injury as a result of its reliance on any material misrepresentations or omissions made by TD Bank;
9. As to Coquina's claim that TD Bank committed the predicate act of interstate stolen property, whether TD Bank violated Title 18, United States Code Section 2314;
10. As to Coquina's claim that TD Bank committed the predicate act of interstate stolen property, whether TD Bank intentionally transferred or caused to be transferred in interstate commerce items of property stolen, converted or taken by fraud;
11. As to Coquina's claim that TD Bank committed the predicate act of

interstate stolen property, whether such items had a value of \$5,000 or more;

12. As to Coquina's claim that TD Bank committed the predicate act of interstate stolen property, whether TD Bank transported the stole items intentionally and with knowledge that the property had been stolen, converted, or taken by fraud;
13. As to Coquina's claim that TD Bank committed the predicate act of money laundering, whether TD Bank violated Title 18, United States Code Sections 1956 and 1957;
14. As to Coquina's claim that TD Bank committed the predicate act of money laundering, whether TD Bank had knowledge that the money in Rothstein's accounts at TD Bank represented the proceeds of some form of specified unlawful activity;
15. As to Coquina's claim that TD Bank committed the predicate act of money laundering, whether TD Bank knowingly engaged or attempted to engage in monetary transactions in criminally derived property of a value greater than \$10,000, that was derived from specified unlawful activity;
16. As to Coquina's claim that TD Bank committed the predicate act of money laundering, whether TD Bank engaged in the monetary transaction knowing that the transaction was designed, in whole or in part, to conceal or disguise the nature, location, source, ownership, or the control of the proceeds of such specified unlawful conduct;
17. Whether TD Bank knowingly committed at least two acts of racketeering in a "pattern" as that term is defined in the RICO statute and applicable federal case law;
18. Whether TD Bank knowingly committed at least two acts of racketeering that amounted to continued criminal activity to meet the closed end continuity standard of a Federal RICO claim, that is, criminal activity extending over a substantial period of time as such terms are defined in the RICO statute and applicable federal case law;
19. Whether TD Bank, through two or more acts of racketeering, "conducted or participated" in the conduct of the affairs of an "enterprise" as defined in the RICO statute, by taking part in directing those affairs and exercising an element of control over those affairs, as these terms are defined in the RICO statute and applicable federal case law;
20. Whether an "enterprise" as defined in the RICO statute engaged in, or through its activities affected, interstate commerce; and
21. Whether, if TD Bank committed the activities in paragraphs 2 through 7, *supra*, its commission of those activities was the proximate cause of injury

to Coquina's business or property;

22. Whether, because the alleged predicate acts of wire fraud do not constitute acts of securities fraud, Coquina's RICO predicate acts are permitted, and thus, are not barred; and
23. Whether because the alleged structured settlements in this case do not constitute securities fraud, Coquina's RICO claim are permitted, and thus, are not barred.

Count II

24. Whether TD Bank violated Title 18, United States Code Section 1962(d);
25. Whether TD Bank and Rothstein entered into a conspiracy to commit a violation of the RICO statute;
26. Whether TD Bank knowingly and willingly became a member of that conspiracy;
27. Whether TD Bank or Rothstein committed at least one overt act in furtherance of the alleged conspiracy;
28. Whether the alleged conspiracy between Rothstein and TD Bank was the proximate cause of injury to Coquina's business or property;
29. Whether, because the alleged overt act does not constitute securities fraud, Coquina's RICO predicate acts are permitted and, thus, not barred; and
30. Whether because the alleged structured settlements in this case do not constitute securities fraud, Coquina's RICO claim is permitted, and thus, not barred.

Count III

31. Whether Coquina's claim for fraudulent misrepresentation in Count III is governed by Florida law
32. Whether TD Bank made one or more misrepresentations or omissions to Coquina;
33. Whether the misrepresentations or omissions made by TD Bank to Coquina related to a material existing fact;
34. Whether TD Bank knew at the time that it made the misrepresentations or omissions that they were false;
35. Whether TD Bank intended to induce Coquina to rely and act on the misrepresentations or omissions;

36. Whether Coquina justifiably relied upon and acted upon on TD Bank's misrepresentations or omissions;
37. Whether Coquina's reliance on TD Bank's misrepresentations or omissions was the proximate cause of injury to Coquina's business or property; and
38. Whether because the Uniform Commercial Code, Article 4A, including Article 4A, and Florida statutory laws, including Fla. Stat. § 670.101 *et seq.* and Fla. Stat. § 673.1011, do not apply to Coquina's common claims, Coquina's common law claims are not preempted.

Count IV

39. Whether Coquina's claim for aiding and abetting a fraud is governed by Florida law;
40. Whether because a common law claim for aiding and abetting fraud is recognized under Florida law, Coquina's aiding and abetting fraud claim is not barred;
41. Whether because Rothstein admitted to the underlying fraud claim in his criminal conviction, Coquina has met the fraud element of this claim;
42. Whether TD Bank knew of that fraud;
43. Whether TD Bank substantially assisted in the fraud;
44. Whether any TD Bank officer or employee was acting within the scope of his or her employment in providing assistance to advance the goals of the fraud;
45. Whether that fraud was the proximate cause of injury to Coquina's business or property;
46. Whether because the Uniform Commercial Code, Article 4A, including Article 4A, and Florida statutory laws, including Fla. Stat. § 670.101 *et seq.* and Fla. Stat. § 673.1011, do not apply to Coquina's aiding and abetting claim, Coquina's common law claims are not preempted.

All of the claims in Coquina's Complaint:

47. Whether former TD Bank officer Frank Spinosa's invocation of the 5th Amendment warrants an adverse inference against TD Bank;
48. Whether TD Bank is vicariously liable for Frank Spinosa's acts during his employment at TD Bank;
49. Whether, if anyone at TD Bank knew of Rothstein's scheme, that person's knowledge should be imputed to TD Bank;

50. Whether because Coquina never made any material misrepresentations to TD Bank upon which TD Bank relied to its detriment, the doctrine of estoppel does not apply;
51. Whether because Coquina had no actual or constructive knowledge of the fraud, no claims against TD Bank have been waived;
52. Whether because Coquina did not assert any claims of equitable relief, the doctrine of unclean hands is inapplicable;
53. Whether because Coquina did not take affirmative action that caused damage to TD Bank, the doctrine of unclean hands is inapplicable;
54. Whether because Coquina did not commit any wrongful act, the doctrine *in pari delicto* is inapplicable;
55. Whether because Coquina did not participate in the same wrongful conduct as alleged against TD Bank, the doctrine *in pari delicto* is inapplicable;
56. Whether if Coquina proves any of its claims, and is awarded compensatory damages, the doctrine of setoff is inapplicable;
57. Whether if Coquina proves its damages were proximately caused by TD Bank for each of its claims against TD Bank, none of Coquina's claims are barred;
58. Whether because Coquina has no duty to mitigate its damages as a victim of TD Bank's fraud and RICO violations, there was no duty to mitigate;
59. Whether because Coquina's common law claims are not preempted by the Uniform Commercial Code, including Article 4A, and Florida statutory laws, including Fla. Stat. § 670.101 *et seq.* and Fla. Stat. § 673.1011, these defenses are inapplicable;
60. Whether under Florida law, a corporate principal is liable for its agent's acts of fraud;
61. Whether under Florida law, a corporate principal is liable for an agent's unauthorized acts if the agent had apparent authority and Coquina reasonably relied upon the agent's apparent authority;
62. Whether under Florida law, TD Bank is liable for its agent's fraudulent acts because TD Bank placed the agent in the position to commit the act that defrauded Coquina;
63. Whether TD Bank has waived all standing defenses by failing to challenge Coquina's standing in TD Bank's Rule 12(b)(6), Fed. R. Civ. P., motion;

64. Whether because Coquina has standing, upon finding that Coquina proved all the elements to any of its claims, Coquina is entitled to collect the damages that it seeks in this action;
65. Pursuant to the pending Plaintiff's Motion in Limine, during the relevant time period, whether Michael Szafranski was acting as Rothstein's agent;

B. Defendant - legal issues

TD Bank respectfully submits that the following issues of law will need to be determined at trial for Count I of Coquina's Complaint:

1. Whether TD Bank violated Title 18, United States Code Section 1962();
2. Whether TD Bank was associated with an "enterprise" operating as an ongoing organization and functioning as a continuing unit, as those terms are defined in the RICO statute and applicable federal case law;
3. Whether TD Bank knowingly committed at least two acts of racketeering activity, or "predicate" acts, as those terms are defined in the RICO statute and applicable federal case law;
4. As to Coquina's claim that TD Bank committed the predicate act of wire fraud, whether Coquina can prove that TD Bank violated Title 18, United States Code Section 1343;
5. As to Coquina's claim that TD Bank committed the predicate act of wire fraud, whether TD Bank intentionally participated in a scheme, using the wires, to defraud Coquina of money by means of material misrepresentations and omissions;
6. As to Coquina's claim that TD Bank committed the predicate act of wire fraud, whether TD Bank intentionally made any material misrepresentations or material omissions to Coquina;
7. As to Coquina's claim that TD Bank committed the predicate act of wire fraud, whether Coquina reasonably relied on any misrepresentations and material omissions made by TD Bank;
8. As to Coquina's claim that TD Bank committed the predicate act of wire fraud, whether Coquina suffered any injury as a result of its reliance on any material misrepresentations or omissions made by TD Bank;
9. As to Coquina's claim that TD Bank committed the predicate act of interstate stolen property, whether Coquina can prove that TD Bank violated Title 18, United States Code Section 2314;

10. As to Coquina's claim that TD Bank committed the predicate act of interstate stolen property, whether TD Bank intentionally transferred or caused to be transferred in interstate commerce items of property stolen, converted or taken by fraud;
11. As to Coquina's claim that TD Bank committed the predicate act of interstate stolen property, whether such items had a value of \$5,000 or more;
12. As to Coquina's claim that TD Bank committed the predicate act of interstate stolen property, whether TD Bank transported the stole items intentionally and with knowledge that the property had been stolen, converted, or taken by fraud;
13. As to Coquina's claim that TD Bank committed the predicate act of money laundering, whether Coquina can prove that TD Bank violated Title 18, United States Code Sections 1956 and 1957;
14. As to Coquina's claim that TD Bank committed the predicate act of money laundering, whether TD Bank knew the money in Rothstein's accounts at TD Bank represented the proceeds of a specified form of unlawful activity;
15. As to Coquina's claim that TD Bank committed the predicate act of money laundering, whether TD Bank knowingly engaged or attempted to engage in monetary transactions in criminally derived property of a value greater than \$10,000, that was derived from specified unlawful activity;
16. As to Coquina's claim that TD Bank committed the predicate act of money laundering, whether TD Bank engaged in the monetary transaction knowing that the transaction was designed, in whole or in part, to conceal or disguise the nature, location, source, ownership, or the control of the proceeds of such specified unlawful conduct;
17. Whether TD Bank knowingly committed at least two acts of racketeering in a "pattern" as that term is defined in the RICO statute and applicable federal case law;
18. Whether TD Bank knowingly committed at least two acts of racketeering that amounted to continued criminal activity to meet the closed end continuity standard of a Federal RICO claim, that is, criminal activity extending over a substantial period of time as such terms are defined in the RICO statute and applicable federal case law;
19. Whether TD Bank, through two or more acts of racketeering, "conducted or participated" in the conduct of the affairs of an "enterprise" as defined in (i) *supra*, (i) by taking part in directing those affairs and exercising an element of control over those affairs, as these terms are defined in the RICO statute

and applicable federal case law;

20. Whether an “enterprise” as defined in (i), *supra*, engaged in, or through its activities affected, interstate commerce;
21. Whether, if TD Bank committed the activities in (i) through (vi), *supra*, its commission of those activities was the proximate cause of injury to Coquina’s business or property;
22. Whether the alleged predicate acts of mail and wire fraud are alleged acts of securities fraud and are thus barred as RICO predicate acts; and
23. Whether the alleged structured settlements were securities, and thus Coquina’s RICO claim is barred.

TD Bank respectfully submits that the following issues of law will need to be determined at trial for Count II of Coquina’s Complaint:

24. Whether Coquina can prove that TD Bank violated Title 18, United States Code Section 1962(d);
25. Whether TD Bank and Rothstein entered into a conspiracy to commit a violation of the RICO statute;
26. Whether TD Bank knowingly and willingly became a member of that conspiracy; Whether TD Bank or Rothstein committed at least one overt act in furtherance of the alleged conspiracy;
27. Whether Coquina can prove that the alleged conspiracy was the proximate cause of injury to Coquina’s business or property;
28. Whether the alleged overt act is an alleged act of securities fraud and is thus barred as RICO predicate acts; and
29. Whether the alleged structured settlements were securities, and thus Coquina’s RICO claim is barred.

TD Bank respectfully submits that the following issues of law will need to be determined at trial for Count III of Coquina’s Complaint:

30. Whether TD Bank made one or more misrepresentations to Coquina;
31. Whether the misrepresentations made by TD Bank to Coquina related to a material existing fact;

32. Whether TD Bank had actual knowledge at the time that it made the misrepresentation(s) that it was false;
33. Whether TD Bank intended to induce Coquina to rely and act on the misrepresentation;
34. Whether Coquina did sufficiently rely and act on the misrepresentation;
35. Whether Coquina can prove that its reliance on the misrepresentation was the proximate cause of injury to Coquina's business or property; and
36. Whether the Uniform Commercial Code, Article 4A, including Article 4A, and Florida statutory laws, including Fla. Stat. § 670.101 *et seq.* and Fla. Stat. § 673.1011, preempts Coquina's common law claims.

TD Bank respectfully submits that the following issues of law will need to be determined at trial for Count IV of Coquina's Complaint:

37. Whether a common law claim for aiding and abetting fraud will be recognized under Florida law;
38. Whether there was an underlying fraud committed by Rothstein;
39. Whether TD Bank had actual knowledge of that fraud;
40. Whether TD Bank substantially assisted in the fraud;
41. Whether that fraud was the proximate cause of injury to Coquina's business or property; and
42. Whether Uniform Commercial Code, Article 4A, including Article 4A, and Florida statutory laws, including Fla. Stat. § 670.101 *et seq.* and Fla. Stat. § 673.1011, preempts Coquina's common law claims.

TD Bank respectfully submits that the following issues of law will need to be determined at trial for all of the claims in Coquina's Complaint:

43. Whether this Court has jurisdiction over Coquina's claims;
44. Whether, if anyone at TD Bank had actual knowledge of Rothstein's scheme, that person's knowledge should be imputed to TD Bank;
45. Whether, if Coquina is able to prove any of its claims, those claims are barred by the doctrine of estoppel;

46. Whether Coquina has waived all claims against TD Bank;
47. Whether, if Coquina is able to prove any of its claims, those claims are barred by the doctrine of unclean hands;
48. Whether, if Coquina is able to prove any of its claims, those claims are barred by the doctrine *in pari delicto*;
49. Whether, if Coquina is able to prove any of its claims, its right to damages must be offset and reduced to extent that Coquina has recovered, or will recover, settlements or other amounts in this action or in other actions, or to the extent that Coquina has received any financial or tax benefit, including, but not limited to, any moneys returned or otherwise paid to Coquina through its alleged investments, in connection with the alleged investments by the value of any benefits it received;
50. Whether, if Coquina is able to prove any of its claims, those claims are barred because its damages were not proximately caused by any acts or omissions of TD Bank;
51. Whether, if Coquina is able to prove any of its claims, its right to damages must be reduced or denied because Coquina has failed to take reasonable steps to mitigate its damages;
52. Whether Coquina's common law claims are preempted by the Uniform Commercial Code, including Article 4A, and Florida statutory laws, including Fla. Stat. § 670.101 *et seq.* and Fla. Stat. § 673.1011;
53. Whether, if Coquina is able to prove any of its claims, those claims are barred because TD Bank is not vicariously liable for the acts or omissions of its former employees or officers;
54. Whether Coquina has standing to assert its claims;
55. Whether the alleged investment opportunities as presented to Coquina violated criminal usury laws;
56. Whether any of the damages Coquina alleges were caused by the alleged false representations of TD Bank;
57. Whether Coquina has standing or is otherwise entitled to collect the damages that it seeks in this action;
58. Whether Coquina is entitled to seek all of the damages it is seeking;
59. Whether Coquina's request for a constructive trust should be denied because a constructive trust is not an appropriate remedy.

IX. LIST OF TRIAL EXHIBITS

Each party is filing separately a list of trial exhibits, other than impeachment exhibits, with objections, if any, to each exhibit, including the basis of all objections to each document, electronically stored information and thing. Based on Defendant TD Bank's request, over Coquina's objection, the exhibit lists are being filed under seal, pending further determination by the Court.

X. LIST OF TRIAL WITNESSES

Each party has attached a list of trial and expert witnesses, other than rebuttal witnesses, that each party expects to call, or may call at trial.

XI. ESTIMATED TRIAL TIME

Coquina estimates the trial of this case will take approximately two to three weeks.

TD Bank estimates the trial of this case will take approximately four weeks.

XII. ATTORNEY'S FEES

Plaintiff's attorney's fees are undetermined at this time.

Dated September 26, 2011

Respectfully submitted,

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 10-60786-Civ-COOKE/BANDSTRA

COQUINA INVESTMENTS,

Plaintiff,

vs.

SCOTT W. ROTHSTEIN and TD BANK, N.A.,

Defendants.

COURT'S INSTRUCTIONS TO THE JURY

Members of the Jury:

I will now explain to you the rules of law that you must follow and apply in deciding this case.

When I have finished you will go to the jury room and begin your discussions – what we call your deliberations.

In deciding the case, you must follow and apply all of the law as I explain it to you, whether you agree with that law or not; and you must not let your decision be influenced in any way by sympathy, or by prejudice, for or against anyone.

The fact that a corporation is involved as a party must not affect your decision in any way. A corporation and all other persons stand equal before the law and must be dealt with as equals in a court of justice. When a corporation is involved, of course, it may act only through people as its employees; and, in general, a corporation is responsible under the law for any of the acts and statements of its employees that are made within the scope of their duties as employees of the company.

In your deliberations you should consider only the evidence -- that is, the testimony of the witnesses and the exhibits I have admitted in the record -- but as you consider the evidence, both direct and circumstantial, you may make deductions and reach conclusions which reason and common sense lead you to make. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is proof of a chain of facts and circumstances tending to prove, or disprove, any fact in dispute. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

Remember that anything the lawyers say is not evidence in the case. And, except for my instructions to you on the law, you should disregard anything I may

have said during the trial in arriving at your decision concerning the facts. It is your own recollection and interpretation of the evidence that controls.

Now, in saying that you must consider all of the evidence, I do not mean that you must accept all of the evidence as true and accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision, you may believe or disbelieve any witness, in whole or in part. Also, the number of witnesses testifying concerning any particular dispute is not controlling.

In deciding whether you believe or do not believe any witness, I suggest that you ask yourself a few questions: Did the witness impress you as one who was telling the truth? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness seem to have a good memory? Did the witness have the opportunity and ability to observe accurately the things he or she testified about? Did the witness appear to understand the questions clearly and answer them directly? Did the witness' testimony differ from other testimony or other evidence?

You should also ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact; or, whether there was evidence that at some other time the witness said or did something, or failed to say or do something, which was different from the testimony the witness gave before you during the trial.

The fact that a witness has been convicted of a felony offense, or a crime involving dishonesty or false statement, is another factor you may consider in deciding whether you believe the testimony of that witness.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people naturally tend to forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that misstatement was simply an innocent lapse of memory or an intentional falsehood; and the significance of that may depend on whether it has to do with an important fact or with only an unimportant detail.

When knowledge of a technical subject matter might be helpful to the jury, a person having special training or experience in that technical field is permitted to state his or her opinion concerning those technical matters.

Merely because an expert witness has expressed an opinion, however, does not mean that you must accept that opinion. The same as with any other witness, it is up to you to decide whether to rely upon it.

In this case each party asserting a claim or a defense has the responsibility to prove every essential part of the claim or defense by a “preponderance of the evidence.” This is something called the “burden of proof” or the “burden of persuasion.”

A “preponderance of the evidence” simply means an amount of evidence that is enough to persuade you that a claim or contention is more likely true than not true.

When more than one claim is involved, and when more than one defense is asserted, you should consider each claim and each defense separately; but in deciding whether any fact has been proved by a preponderance of the evidence, you may consider the testimony of all of the witnesses, regardless of who may have called them, and all of the exhibits received in evidence, regardless of who may have produced them.

If the proof fails to establish any essential part of a claim or contention by a preponderance of the evidence you should find against the party making that claim or contention.

In this case the Plaintiff claims that the Defendant Rothstein and TD Bank committed a fraud -- that Defendant Rothstein and Defendant TD Bank made certain allegedly false and fraudulent misrepresentations and omissions to the Plaintiff. TD Bank denies that it engaged in any fraudulent conduct and denies that it made any misrepresentations to the Plaintiff.

The term “fraud” is generally defined in the law as an intentional misrepresentation of material existing fact made by one person to another with knowledge of its falsity; made for the purpose of inducing the other person to act; and upon which the other person does in fact rely with resulting injury or damage. Fraud may also include an omission or intentional failure to state material facts, knowledge of which would be necessary to make other statements by Defendant TD Bank not misleading to the Plaintiff.

In this instance the alleged misrepresentations and omissions that the Plaintiff claims Defendant Rothstein and Defendant TD Bank fraudulently made are as follows:

Defendant Rothstein fraudulently represented:

- a. That his law firm, Rothstein, Rosenfeldt & Adler, or “RRA,” had various clients who were settling sexual harassment or whistle-blower

- claims against wealthy, successful defendants, in exchange for series of payments over time;
- b. that these clients wanted to sell the series of payments in exchange for an immediate discounted payment;
 - c. that the alleged defendant of the sexual harassment claim had already deposited the full amount of the settlement in RRA's accounts at TD Bank;
 - d. that these structured settlements were available for sale, in exchange for the lump-sum payment that would be paid immediately to the alleged plaintiff.

Defendant TD Bank, through its officer former Regional Vice President Frank Spinosa, made false and fraudulent representations and omissions in personal meetings, in conversations over the telephone, and in writing, on which he knew Coquina would rely. Specifically:

- (A) fraudulently misrepresenting the existence and value of the settlement agreements purchased by Coquina;
- (B) fraudulently misrepresenting that the settlements actually existed and had been fully funded;
- (C) fraudulently misrepresenting that the settlement agreements would be paid out to Coquina over a predetermined schedule;

- (D) supplying Coquina with false and fraudulent letters purporting to irrevocably restrict transfers from the Coquina account at TD BANK;
- (E) supplying Coquina with false and fraudulent bank account statements for the Coquina account at TD BANK;
- (F) TD Bank, through its officers and employees, failing to inform Coquina that the accounts at TD Bank could not be restricted in the manner represented by TD Bank in the lock letters; and
- (G) TD Bank, through its officers and employees, failing to inform Coquina that at the time the representations were made to Coquina, the bank account designated for Coquina's benefit did not contain millions of dollars, but in fact contained \$100.

Each of these alleged misrepresentations and omissions should be considered and judged separately in accordance with the instructions that follow. Plaintiff does not need to prove all of them in order to recover, but must prove at least one of them.

To prevail on this claim of fraud, therefore, the Plaintiff must prove each of the following by a preponderance of the evidence:

- First: That Defendant TD Bank made one or more of those alleged misrepresentations or omissions;

- Second: That the misrepresentation or omission related to a material existing fact;
- Third: That Defendant TD Bank knew at the time it made the misrepresentation that it was false or acted with reckless disregard for its truth or falsity or that the omission made other statements materially misleading;
- Fourth: That Defendant TD Bank intended to induce the Plaintiff to rely and act upon the misrepresentation or omission;
- Fifth: That the Plaintiff relied upon the misrepresentation or omission; and
- Sixth: That the Plaintiff suffered injury or damage as a result.

In the verdict form that I will explain in a moment, you will be asked to answer a series of questions concerning each of these factual issues.

To make a “misrepresentation” simply means to state as a fact something that is false or untrue. To make a material “omission” is to omit or withhold the statement of a fact, knowledge of which is necessary to make other statements not misleading.

To constitute fraud, then, a misrepresentation must not only be false, or an omission must not only make other statements misleading, but must also be “material” in the sense that it relates to a matter of some importance or significance rather than a minor or trivial detail.

It must also relate to an “existing fact.” Ordinarily, a promise to do something in the future does not relate to an existing fact and cannot be the basis of

a claim for fraud unless the person who made the promise did so without any present intent to perform it or with a positive intent not to perform it. Similarly, a mere expression of opinion does not relate to an existing fact and cannot be the basis for a claim of fraud unless the person stating the opinion has exclusive or superior knowledge of existing facts that are inconsistent with such opinion.

To constitute fraud the Plaintiff must also prove that Defendant TD Bank made the misrepresentation or omission knowingly and intentionally, not as a result of mistake or accident. It must be proved that Defendant TD Bank either knew of the falsity of the misrepresentation or the false effect of the omission, or that Defendant TD Bank made the misrepresentation or omission in reckless disregard for its truth or falsity.

Finally, to constitute fraud Coquina must prove that Defendant TD Bank intended for the Coquina to rely upon the misrepresentation or omission; that Coquina did in fact rely upon the misrepresentation or omission; and that the Plaintiff suffered injury or damage as a proximate result of the fraud.

(Florida Law)

When it is shown that TD Bank made a material misrepresentation with the intention that Coquina rely upon it, then, under the law, Coquina may rely upon the truth of the representation even though its falsity could have been discovered had

Coquina made an investigation, unless Coquina knows the representation to be false or its falsity is obvious to it.

Damages are the proximate or legal result of the fraud if you find from a preponderance of the evidence that, except for Defendant TD Bank's conduct, the damages would not have occurred. The fraudulent act may be a proximate or legal cause of damages even though the act operates in combination with the act of another so long as the fraud contributes substantially to producing the damages.

Now, if you find that the Plaintiff has failed to prove the claim of fraud under these instructions, then, of course, your verdict will be for TD Bank, and you need not give any consideration to the issue of damages.

On the other hand, if you find for the Plaintiff, you must then consider any defenses as to which TD Bank has the burden of proof by a preponderance of the evidence.

The Plaintiff also claims that Defendant TD Bank aided and abetted Rothstein's fraud. To prevail on this claim of aiding and abetting fraud, the Plaintiff must prove each of the following facts:

First: The existence of the underlying Rothstein fraud against Coquina;

Second: That TD Bank had knowledge of the fraudulent representations Rothstein made to perpetrate the fraud against Coquina;

Third: That TD Bank provided substantial assistance to advance the commission of the fraud against Coquina; and

Fourth: That Coquina was injured in its business or property as a proximate result of TD Bank's substantial assistance in Rothstein's fraud against Coquina.

First, Coquina must prove each element of what it alleges is the underlying fraud by Rothstein against Coquina. To do so, it must prove that:

- (1) that Rothstein made one or more of the alleged misrepresentations to Coquina;
- (2) that the misrepresentation related to a material existing fact;
- (3) that Rothstein knew at the time he made the misrepresentations that they were false or acted with reckless disregard for their truth or falsity;
- (4) that Rothstein intended to induce Coquina to rely and act upon the misrepresentation;

- (5) that Coquina relied upon the misrepresentations, and that Rothstein's misrepresentations were not known or obvious to Coquina; and
- (6) that Coquina suffered injury or damage as a result.

In order to prove knowledge, Coquina must prove that TD Bank was generally aware of its role in Rothstein's fraud.

TD Bank's knowledge of the fraud may be inferred from circumstantial evidence. Knowledge of the fraud may be inferred from transactions that are atypical or lack business justification.

To prove substantial assistance, Coquina must prove that TD Bank affirmatively assisted Rothstein or helped conceal Rothstein's fraud against Coquina. In making this determination, you may consider the totality of the evidence.

Plaintiff must also prove that it suffered damages as a proximate result of TD Bank's aiding and abetting the fraud. Under the law, an aider-abettor is liable for damages caused by the main perpetrator. You may only find that TD Bank "substantially assisted" in the fraud causing the damages Coquina seeks to recover from TD Bank if you find that TD Bank's alleged conduct in the fraud against Coquina proximately caused those damages.

You are instructed that Defendant Scott Rothstein has defaulted on the fraud count of the complaint that Coquina filed against Defendants Rothstein and TD Bank. A “default” means that Rothstein failed to answer or otherwise defend the allegations in the Complaint. You are instructed that the effect of the entry of a default is that all of the factual allegations in the Complaint are taken as true as to Defendant Rothstein. You are instructed that Rothstein’s default judgment relates only to the allegations against Rothstein, and does not have any effect on Plaintiff’s allegations against TD Bank.

On the Plaintiff's claim there is a preliminary issue for you to decide. That issue is whether any TD Bank employee was an agent of TD Bank and was acting within the scope of his or her employment at the time relevant to this case. An agent is a person who is employed to act for another, and whose actions are controlled by his or her employer or are subject to his or her employer's right of control. An employer is responsible for the acts of its agent if the acts occur while the agent is performing services which he or she was employed to perform or while the agent is acting at least in part because of a desire to serve his or her employer and is doing something that is reasonably incidental to his or her employment or something the doing of which was reasonably foreseeable and reasonably to be expected of persons similarly employed.

If the preponderance of the evidence does not support Plaintiff's claim on this issue, then your verdict on Plaintiff's claims should be for the Defendant. However, if the preponderance of the evidence supports the claim of Plaintiff on this issue, then you should decide the issue in favor of Plaintiff.

Under the law, the knowledge and actions of a bank officer or director, such as Regional Vice-President Frank Spinosa, may be imputed to a bank, such as Defendant, TD Bank. This is known as the imputation doctrine.

During the trial you heard evidence by a past employee of Defendant TD Bank, Frank Spinosa, refusing to answer certain questions on the grounds that it may tend to incriminate them based on the Fifth Amendment privilege against self-incrimination. A witness has a constitutional right to decline to answer on the grounds that it may tend to incriminate him. Under the law, whenever a past TD Bank employee refuses to answer questions, you may infer, but do not need to find that the answers would have been adverse to TD Bank's interests. A TD Bank employee's assertion of the Fifth Amendment privilege alone is not a proper basis for finding TD Bank liable in this case. However, in conjunction with other evidence that was presented, you may consider a TD Bank employee's assertion of the Fifth Amendment privilege in determining TD Bank's liability in this case.

During trial a witness, Steven Caputi, followed the instruction of his counsel and invoked his constitutional right under the Fifth Amendment to decline to answer questions. You should not automatically assume that a witness has done something wrong because that witness asserts his or her Fifth Amendment rights.

Where a witness has refused to answer a question by invoking his or her Fifth Amendment right, for certain questions you may, but you need not, draw a negative inference against the witness based on the witness's refusal to answer a particular question. A negative inference means that you can infer from the

witness's assertion of his Fifth Amendment privilege that the answer would have been adverse, or harmful, to the witness's interest. You can make this inference only if that inference is warranted by the facts surrounding the case, and there is independent, corroborating evidence for the inference. However, you need not draw such an inference.

If you find that Coquina has failed to prove any element of its two claims under these instructions, then, of course, your verdict will be for TD Bank. On the other hand, if you find that Coquina has proved any of its claims, you must then consider TD Bank's defense to these claims. TD Bank has raised one defense, which I will now explain. As to this defense, TD Bank has the burden of proof by a preponderance of the evidence.

TD Bank has asserted a waiver defense. Waiver is a defense to a charge of fraud where the party claiming to have been defrauded discovered, or reasonably should have discovered, the nature of the deception through ordinary diligence. The intent to waive a claim of fraud may be inferred from the party's conduct and the surrounding circumstances. In order to find that the Plaintiffs waived their rights to recover damages for the alleged fraud you must find that Coquina had actual or constructive knowledge of Rothstein's fraudulent activity yet continued to invest.

If you find for the Plaintiff on either fraud claim and against Defendant TD Bank on the defense to those claims, you will then consider the amount of money damages to be awarded to the Plaintiff. In that respect you should award the Plaintiff an amount of money shown by a preponderance of the evidence to be fair and adequate compensation for such loss or damage as resulted from the fraud.

In considering the issue of the Plaintiff's damages you should assess the amount you find to be justified by a preponderance of the evidence as full, just and reasonable compensation for all of the Plaintiff's damages, no more and no less. Compensatory damages are not allowed as a punishment and must not be imposed or increased to penalize Defendant TD Bank. Also, compensatory damages must not be based on speculation or guesswork because it is only actual damages that are recoverable.

The Plaintiff claims that punitive damages should be awarded against TD Bank for its employees' conduct in this case. Punitive damages are warranted if you find by clear and convincing evidence that at least one TD Bank employee was personally engaged in intentional misconduct, which was a substantial cause of loss, injury, or damage to the Plaintiff, and that:

(A). TD Bank actively and knowingly participated in such conduct of its employees; or

(B). The officers, directors, or managers of TD Bank knowingly condoned, ratified, or consented to such conduct of its employees.

If clear and convincing evidence does not show such conduct by TD Bank, punitive damages are not warranted against TD Bank.

“Intentional misconduct” means that TD Bank had actual knowledge of the wrongfulness of the conduct and there was a high probability of injury or damage to Plaintiff and, despite that knowledge, TD Bank intentionally pursued that course of conduct, resulting in injury or damage.

“Clear and convincing evidence” differs from the “greater weight of the evidence” in that it is more compelling and persuasive. As I have already instructed you, “greater weight of the evidence” means the more persuasive and convincing force and effect of the entire evidence in the case.

Only if you find all of the elements set forth above may you then decide the amount of punitive damages, if any, to be assessed as punishment against TD Bank and as a deterrent to others. This amount would be in addition to the compensatory damages you have previously awarded.

When assessing punitive damages, you must be mindful that punitive damages are meant to punish TD Bank for the specific conduct that harmed the Plaintiff in the case and for only that conduct. For example, you cannot assess punitive damages for TD Bank being a distasteful individual or business. Punitive damages are meant to punish TD Bank for this conduct only and not for conduct that occurred at another time. Your only task is to punish TD Bank for the actions they took in this particular case.

If you find that punitive damages should be assessed against TD Bank, you may consider the financial resources of TD Bank in fixing the amount of such damages.

You may in your discretion decline to assess punitive damages.

Of course, the fact that I have given you instructions concerning the issue of Plaintiff's damages should not be interpreted in any way as an indication that I believe that the Plaintiff should, or should not, prevail in this case.

Any verdict you reach in the jury room must be unanimous. In other words, to return a verdict you must all agree. Your deliberations will be secret; you will never have to explain your verdict to anyone.

It is your duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case do not hesitate to re-examine your own opinion and change your mind if you become convinced that you were wrong. But do not give up your honest beliefs solely because the others think differently or merely to get the case over with.

Remember, that in a very real way you are judges -- judges of the facts. Your only interest is to seek the truth from the evidence in the case.

When you go to the jury room you should first select one of your members to act as your foreperson. The foreperson will preside over your deliberations and will speak for you here in court.

A form of verdict has been prepared for your convenience.

[Explain verdict]

You will take the verdict form(s) to the jury room and when you have reached unanimous agreement you will have your foreperson fill in the verdict form(s), date and sign it/them, and then return to the courtroom.

If you should desire to communicate with me at any time, please write down your message or question and pass the note to the marshal who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so that I can address you orally. I caution you, however, with regard to any message or question you might send, that you should not tell me your numerical division at the time.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.

COQUINA INVESTMENTS,

Plaintiff,

vs.

SCOTT W. ROTHSTEIN and
TD BANK, N.A.

Defendants.

AMENDED COMPLAINT

Plaintiff, COQUINA INVESTMENTS (“Coquina”), hereby alleges the following against Defendants SCOTT W. ROTHSTEIN (“ROTHSTEIN”) and TD BANK, N.A., (“TD BANK”):

Nature of the Action

1. Plaintiff brings this action for racketeering and other wrongs committed by Defendants who conspired with each other and with others to perpetrate an enormous fraud and money laundering scheme through which the Defendants stole and diverted hundreds of millions of dollars from numerous victims, including Plaintiff. What appeared to be legitimate short-term opportunities to purchase structured settlements turned out to be an extensive fraudulent enterprise through which the Defendants stole or diverted millions of dollars through a pattern of racketeering involving criminal acts of wire fraud, money laundering, conspiracy, and more. This scheme was made possible through the active involvement of Defendant TD BANK, which played a crucial and pivotal role.

2. Defendant ROTHSTEIN, with the participation of others known and unknown, promoted, managed and supervised this theft scheme to fraudulently induce investors to purchase

settlements of sexual harassment and qui tam or “whistleblower” claims so that the purported “plaintiffs,” who were falsely portrayed as clients of ROTHSTEIN’s firm, could receive a lump sum payment rather than the structured payments set forth in the settlement agreements. According to ROTHSTEIN, the putative “defendants” in these cases were wealthy individuals or businesses that paid large amounts to settle claims and maintain confidentiality.

3. As described below, Defendant TD BANK made false verbal statements to investors, provided false and misleading documents, and actively concealed the fraudulent activity. Acting in concert, ROTHSTEIN and TD BANK operated the scheme to the detriment of Plaintiff, as well as other victims.

4. Senior TD BANK officers played an active role in the scheme and facilitated its continued existence. To convince investors of the legitimacy of the investment, TD BANK officers met personally with many victims, including Plaintiff, in order to create an appearance of a legitimate enterprise and to vouch for the investment and for ROTHSTEIN, all the while knowing about and benefiting from the illegitimate scheme.

5. On January 27, 2010, Defendant ROTHSTEIN admitted his role in the criminal scheme and pled guilty to RICO conspiracy in *United States v. Scott Rothstein*, Case No. 09-Cr-60331-COHN (S.D. Fla.). United States District Judge James I. Cohn accepted ROTHSTEIN’s plea and found him guilty.

Jurisdiction and Venue

6. This Court has jurisdiction over the subject matter of the causes of action in this Complaint by virtue of:

- (A) federal question jurisdiction pursuant to 28 U.S.C. Section 1331, involving an action pursuant to 18 U.S.C. Sections 1964(a) and (c), the Federal Racketeer Influenced and Corrupt Organizations Act (“RICO”);

- (B) diversity jurisdiction pursuant to 28 U.S.C. Section 1332(a)(1), involving an action between citizens of diverse states with an amount in controversy in excess of seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs;
- (C) supplemental jurisdiction pursuant to 28 U.S.C. Section 1367(a), involving claims that are so related to claims in the action within the Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution; and

7. This Court has jurisdiction over the persons of the Defendants because:

- (A) each Defendant either resides or transacts business within this judicial district; and
- (B) each Defendant is amenable to service of process within the meaning of Federal Rule of Civil Procedure 4(e), 4(f) and 18 U.S.C. Section 1965(b).

8. Venue is proper in this district pursuant to 18 U.S.C. Section 1965 and 28 U.S.C. Section 1391 because Defendants either reside or transact business in this district or, alternatively, this district is where a substantial part of the events or omissions giving rise to the claim occurred.

Parties

9. Plaintiff Coquina Investments is an investment partnership located in the State of Texas.

10. Defendant ROTHSTEIN is a disgraced and disbarred lawyer. He is a citizen of the State of Florida; at present, however, pursuant to the Court's order he is in the custody of the United States Bureau of Prisons. Formerly, ROTHSTEIN was chairman and CEO of Rothstein Rosenfeldt Adler, P.A. ("RRA"), a law firm with approximately 70 lawyers and seven offices and with its principal place of business located in Ft. Lauderdale, Florida. The law firm handled a variety of litigation matters, including labor and employment law.

11. Upon information and belief, Defendant TD BANK is a bank holding company with its national headquarters located in Portland, Maine. It holds itself out as one of the 15

largest commercial banks in the United States. TD BANK is a wholly owned subsidiary of TD Bank Financial Group of Toronto Canada, a top 10 financial services company in North America. TD BANK operates more than 1000 retail banks in 13 states and the District of Columbia, and offers personal and business banking services as well as wealth management services to more than 6.5 million customers. It has several offices in Florida, including Ft. Lauderdale and Weston. As of January 31, 2010, TD BANK claimed that it had total assets in excess of \$150 billion.

12. Defendants used an elaborate scheme involving the sale of bogus “structured settlements” to victim-investors, which purportedly came from ROTHSTEIN’s clients having settled potential lawsuits against high-profile defendants for large sums of money. TD BANK played a critical role in this scheme by misrepresenting to investors that the funds were “irrevocably” “locked” in specially designated accounts; in truth and in fact, Defendants used those accounts to launder hundreds of millions of dollars and to conceal and promote the massive fraudulent activity.

13. Defendant ROTHSTEIN promoted, managed and supervised the scheme by making false statements to victim-investors and directing others to make similar false and misleading statements; these were communicated in person, via telephone and via email, as well as by using false and fictitious documents and computer records. Investors were misled to believe that individuals who were purportedly RRA’s clients and who had potential claims for sexual harassment or whistle-blower claims against wealthy, successful “defendants” had agreed to settle their claims in exchange for an amount of money to be paid to them over a period of time. These same “plaintiffs” agreed to sell their rights to the full settlement in exchange for an immediate lump sum payment of a lesser amount. In each instance, ROTHSTEIN would tell the investors that the purported “defendant” had already deposited the full amount of the settlement

in ROTHSTEIN'S accounts at TD BANK. ROTHSTEIN offered these "structured settlements" for sale to the victim-investors, in exchange for the lump-sum payment that would be paid to the "plaintiff."

14. A critical part of Defendants' fraudulent scheme required Defendants to conceal the misappropriations and to maintain the pretense that payments to victim-investors were drawn from the purported structured settlements. To accomplish this, ROTHSTEIN needed TD BANK's help to do at least two things: (1) to make payments to investors under the pretense that these payments came from the structured settlements; and (2) to take steps to maintain the appearance of legitimacy of the overall operation, including meeting with investors, speaking with investors on the telephone, providing documents, such as the "lock letters," account balances, and other documents to conceal the truth from the investors, to keep the investors and encourage them to re-invest, and to attract additional investors.

15. The investors relied heavily upon TD BANK's involvement and actions, and considered TD BANK's participation to be a substantial basis for the investors' confidence in the legitimacy of the transactions and the safety of their funds. The openness with which TD BANK senior officers such as Regional Vice President Frank Spinosa ("Spinosa") met with investors and ROTHSTEIN to discuss the accounts and the investments contributed to this aura of legitimacy. Bank officials vouched for defendant ROTHSTEIN, explaining that they had dealt with ROTHSTEIN for many years and confirmed the safety of the investments and the many millions of dollars being held by TD BANK for the benefit of investors, including Plaintiff.

16. TD BANK also performed and profited from the day-to-day transactions that were necessary both to execute and to conceal the scheme. TD BANK received and sent wire transfers of large sums of money to and from investors' bank accounts throughout the United States; in particular, TD BANK received and sent wire transfers of money to and from Plaintiff

Coquina's bank account in Texas. TD BANK also transferred money among several TD BANK accounts at ROTHSTEIN's direction, assisting in the scheme by concealing the fraudulent operations of the enterprise to personally benefit the Defendants and others.

17. In addition, management level bank employees met with victim-investors and ROTHSTEIN, providing verbal and written assurances that the accounts in which the settlement funds were held were restricted from distribution to anyone other than the victim-investors. In particular, TD BANK Regional Vice President Frank Spinosa conferred with Coquina's representatives on different occasions, both in person and via telephone, confirming that the funds that ROTHSTEIN said were held for Coquina were being maintained in a TD BANK account for the sole and exclusive benefit of Coquina.

18. Among the numerous fraudulent representations Defendants made to Plaintiff were the following:

- (A) ROTHSTEIN told the victims that he was able to settle potential sexual harassment and/or whistle blower cases for very large amounts of money, conditioned on complete confidentiality;
- (B) ROTHSTEIN told the victim-investors that the purported defendant was a person or business that would be highly embarrassed by the lawsuit, and therefore was willing to pay a premium to maintain confidentiality;
- (C) According to the terms of a given "structured settlement," the purported defendant would be required to deposit the full amount of the settlement, into an account at TD Bank;
- (D) Also according to the terms of a given "structured settlement," the purported plaintiff would agree to receive the settlement payout over a period of time, usually four to six months;

- (E) Defendants told the victims that only one person, the so-called “independent verifier” Michael Szafranski, knew the identities of the parties to the “settlement agreement” and confirmed that the defendant had transferred the total amount into the relevant account at TD BANK;
- (F) ROTHSTEIN also told victim-investors that the “plaintiff” needed a large sum of money quickly and would agree to take a lesser amount immediately instead of waiting for the full payout, relinquishing any claim to the full settlement amount;
- (G) Defendants told victims that their investments were totally safe.

19. As part of the scheme, TD BANK would open a separate account for the victim-investor’s funds. ROTHSTEIN and TD BANK falsely represented to victims that the funds from the “settlement agreement” that the victim-investor purchased had already been deposited into that account and those funds could not be distributed to anyone other than the specified investor.

20. TD BANK provided apparent security over the “investments” and assisted in documenting the transaction. In particular, TD BANK further misrepresented the safety and security of these accounts through the use of so-called “lock letters” that TD BANK officers signed, characterizing these accounts as “irrevocably” “locked” and completely secure. TD BANK officers confirmed to Plaintiff that such arrangements were customary for TD BANK.

21. At various times, TD BANK officials met personally and spoke on the telephone with victim-investors, including Plaintiff, to assure them of the security of their funds and the procedures relating to the relevant account.

22. TD BANK officials repeatedly provided bank records, including account balances, verifications, signed letters, and other documents confirming that the funds in the victim’s trust account were secure in that account.

23. Over the course of the conspiracy, hundreds of millions of dollars from victims of the “confidential settlement” scheme were held and managed by TD BANK.

24. Defendant ROTHSTEIN through and with the assistance of TD BANK and other co-conspirators used the funds obtained from victim-investors in various ways to conceal the true nature of the fraud and to provide an air of legitimacy to attract additional investments by Coquina and others. For example, ROTHSTEIN and other co-conspirators used these funds to create a false appearance of success by, among other things:

- making large charitable contributions to public and private institutions;
- hiring and paying gratuities to local police departments for security for ROTHSTEIN and to curry favor to deflect law enforcement scrutiny away from Defendants’ activities;
- making political contributions to local, state and federal political candidates; and
- purchasing expensive real estate, business interests, boats, and exotic cars for Defendant ROTHSTEIN and others.

25. The intended and actual result of Defendants’ actions was that Defendants illegally obtained millions of dollars from plaintiff Coquina and others. Defendants repeatedly made false and fraudulent misrepresentations to Coquina, upon which Coquina relied to its detriment. Each transaction that resulted in Coquina’s transferring funds to Defendants was followed by another such criminal transaction, and the Defendants’ criminal scheme did not end until F.B.I. agents arrested ROTHSTEIN in November 2009.

PLAINTIFF FALLS VICTIM TO DEFENDANTS' SCHEME

26. In March 2009, representatives of Coquina spoke with Michael Szafranski, who purported to be an "independent verifier" connected with ROTHSTEIN. Szafranski described the structured settlement as a safe investment and explained TD BANK's role in maintaining the funds. Szafranski also sent sample "structured settlement" documents to Coquina to review.

27. In April 2009, Coquina received documents from ROTHSTEIN through Szafranski relating to a structured settlement agreement identified by ROTHSTEIN as S-13. On April 27, 2009, Szafranski emailed his "verifications" of the agreement to Coquina, stating that he had met with ROTHSTEIN, that the "plaintiff" and "defendant" had signed the settlement agreement, and that the "defendant" had transferred the settlement funds to ROTHSTEIN'S account at TD BANK. Szafranski told Coquina he "logged in to" TD Bank's website and saw the account balance, including the deposit by the "defendant." After reviewing the documents and receiving assurances from Szafranski that the settlement funds were in the TD BANK account, and also relying on the fact that TD Bank was a financial institution subject to U.S. banking regulations, on April 29, 2009, Coquina wire transferred \$600,000 to TD BANK.

28. As part of the Defendants' efforts to conceal the scheme, on or about May 27, 2009, ROTHSTEIN sent an email to Coquina and attached a copy of a wire confirmation from TD BANK showing that the first payment on the first transaction, S-13, was transferred to Coquina's account at American Bank in Texas. This payment was consistent with and according to the structured settlement agreement. Without receiving this payment, Coquina would not have continued to invest with ROTHSTEIN and TD BANK.

29. In June, Coquina agreed to purchase additional settlement agreements, identified by ROTHSTEIN as S-26, S-31, and S-32, based upon false and fraudulent verbal and written

misrepresentations from ROTHSTEIN and Szafranski, and based upon the payments that Coquina received from TD BANK purportedly from the first settlement agreement.

**AT MEETINGS WITH PLAINTIFF, ROTHSTEIN AND TD BANK
PROVIDED FALSE STATEMENTS AND FRAUDULENT DOCUMENTS**

30. Before making additional investments, Coquina asked to meet with ROTHSTEIN. Szafranski arranged the meeting for July 9, 2009, in South Florida. Coquina representatives traveled to Ft. Lauderdale and met with ROTHSTEIN at his office. ROTHSTEIN made numerous false and fraudulent representations to Coquina regarding the settlement agreements.

31. During the meeting, ROTHSTEIN told Coquina that when Coquina had invested a sufficient amount of money, ROTHSTEIN would open a separate account at TD BANK solely for Coquina's funds. Until then, Coquina's funds would remain in ROTHSTEIN's general trust account at TD BANK. After further discussion, ROTHSTEIN agreed to arrange for TD BANK to open a separate Coquina account.

32. On August 17, 2009, ROTHSTEIN advised Coquina that TD BANK had established the Coquina Account (Account #6861011614) ("Coquina Account"). ROTHSTEIN sent Coquina a copy of a letter, known as a "lock letter," in which ROTHSTEIN irrevocably instructed TD BANK that funds in the account could only be transferred to Coquina. Frank Spinosa, TD BANK's Regional Vice President, counter-signed the "lock letter" on behalf of TD BANK. In addition, Defendants forwarded to Coquina a copy of a TD BANK statement for the Coquina Account showing that \$22 Million had been deposited into the account by the "defendant" from the settlement agreement. Based on these false and fictitious documents and on the false representations by TD BANK and ROTHSTEIN, Coquina made additional investments.

33. In September 2009, ROTHSTEIN e-mailed Coquina a second “lock letter” signed by TD BANK’s Regional Vice President Spinosa that confirmed ROTHSTEIN’s instruction to TD BANK to add another individual, Stuart Rosenfeldt, as an authorized person who could distribute funds from the Coquina account at TD BANK to Coquina’s account at American Bank in Texas. Coquina had asked ROTHSTEIN to add a second signor on the account in the event he was unavailable. The second “lock letter” also specified that “conveyances shall only be made from the RRA Account referenced above to the Coquina Account at American Bank.”

34. After receiving the second “lock letter,” Coquina representatives traveled to Florida to meet with ROTHSTEIN and Spinosa at TD BANK. Coquina representatives first met with ROTHSTEIN at his office, and then traveled together to TD BANK’s corporate office at 5900 North Andrews Avenue in Ft. Lauderdale, where they met with Spinosa. Spinosa stated that he knew about, and was familiar with, the Coquina Account. He confirmed that there were irrevocable restrictions on the Coquina Account that limited disbursements only to Coquina. Spinosa also confirmed that the terms and restrictions on that account were exactly as he had specified in the two “lock letters” previously sent to Coquina.

35. During this meeting, Spinosa said that TD BANK had certain systems in place to facilitate this type of restricted account, and that TD BANK had numerous accounts with such restrictions. He also indicated that this type of account was customary for TD BANK. Spinosa said that anytime Coquina needed to open another segregated account for new funds, TD BANK could do that without any problem.

36. As late as the end of October 2009, Spinosa continued to reinforce the legitimacy of the transactions by implicitly confirming that requisite funds to pay Coquina were in the Coquina account. In fact, when Coquina was unable to reach ROTHSTEIN during that time period, they called Frank Spinosa at his office. Coquina requested that TD BANK arrange for

the prompt payment of the \$5 million due and payable to Coquina. In reply, Spinosa only said that he could not do so without receiving instructions from ROTHSTEIN. Spinosa never gave any indication that the funds in the Coquina Account were insufficient to make the required payment.

37. Coquina representatives also contacted Szafranski regarding ROTHSTEIN's whereabouts. In an attempt to conceal the unraveling of the fraudulent scheme, Szafranski falsely told Coquina that ROTHSTEIN was unavailable "because his father was in the hospital." As Coquina later learned, ROTHSTEIN had actually fled the United States to Morocco and was under investigation by federal law enforcement authorities. Upon information and belief, the Defendants also wire transferred \$16,000,000.00 to Morocco for ROTHSTEIN'S benefit.

38. On further information and belief, there are currently no funds in the Coquina Account at TD BANK. The funds were misappropriated by the Defendants, either wrongfully taken out of the Coquina Account or never actually deposited into the Coquina Account.

WIRE FRAUD

39. During the period from April through September 2009, Coquina purchased approximately nineteen (19) fictitious "settlement agreements" from the Defendants based on numerous false and fraudulent representations as described hereinabove which were intended to conceal the fraudulent scheme. In total, Coquina sent approximately \$37.7 million to ROTHSTEIN's account at TD BANK by means of wire transfers between Coquina's bank in Texas and TD BANK in Florida. With respect to each transaction, Coquina had sought and received verbal and written assurances from the Defendants and others at their direction, sent primarily by telephone or by email, stating that the agreements had been executed and the funds deposited into TD BANK for Coquina's account.

40. In addition, the August and September lock letters signed by TD BANK Regional Vice-President Frank Spinosa relating to the Coquina Account contained critical false and fraudulent representations which were intended to, and did, conceal the fraudulent scheme. These letters were forwarded by ROTHSTEIN to Coquina by email.

41. All of the Defendants' assurances were false and fraudulent. Without having received these false and fraudulent representations, Coquina would not have invested in any of ROTHSTEIN's settlement agreements or transferred any funds to TD BANK.

42. On or about the following dates, Coquina directed funds to be wire transferred to Defendants as payment for settlement agreements based on false and fraudulent representations by Defendants:

	Settlement Agreement Number	Date of wire transfers from Coquina to Defendants	Amount Coquina wire transferred to TD Bank
A.	S 13	April 29, 2009	\$600,000
B.	S 25	June 2, 2009	\$800,000
C.	S 32	June 22, 2009	\$1,400,000
D.	S 31	June 23, 2009	\$1,100,000
E.	S 39	July 2, 2009	\$2,800,000
F.	S 43, S 44	July 16, 2009	\$1,200,000
G.	S 80, S 81, S 82	July 29, 2009	\$1,800,000
H.	S119, 120, 121, 122, 123	August 11, 2009	\$4,000,000
I.	S 127 (partial payment)	August 18, 2009	\$5,000,000
J.	S 127 (partial payment)	August 20, 2009	\$10,000,000
K.	S 143, 144	September 11, 2009	\$4,000,000
L.	S 154	September 29, 2009	\$5,000,000

43. Absent the fraud orchestrated by ROTHSTEIN and assisted by TD BANK and others, Coquina would not have made any of the wire transfers listed above in paragraph 42.

44. By engaging in the foregoing scheme involving the sale of structured settlements, ROTHSTEIN and TD BANK intentionally participated in a scheme, using the wires, to defraud

Coquina of money by means of material misrepresentations and omissions. Coquina reasonably relied on misrepresentations and material omissions made by ROTHSTEIN, TD BANK, and others in furtherance of the fraudulent scheme. Coquina suffered injury as a result of the fraud in the amounts of money Defendants obtained from Coquina.

45. Through the foregoing conduct, ROTHSTEIN and TD BANK, having devised, and intending to devise, a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by means of wire communication in interstate and foreign commerce writings, signs and signals for the purpose of executing such scheme and artifice to defraud, in violation of 18 U.S.C. Section 1343.

INTERSTATE TRANSPORTATION OF STOLEN PROPERTY

46. In addition, the foregoing scheme and each act committed in furtherance thereof set forth in paragraphs 1 through 44 constitute violations of the National Stolen Property Act, 18 U.S.C. Section 2314, in that Defendants transported, transmitted, and transferred in interstate and foreign commerce goods and money, of the value of \$5,000 or more, knowing the same to have been stolen, converted and taken by fraud, in violation of 18 U.S.C. Section 2314.

MONEY LAUNDERING

47. Further, as part of ROTHSTEIN and TD BANK's operation of the fraudulent structured settlement scheme, they engaged in, and otherwise caused, numerous financial transactions and transfers through financial institutions in the United States, which transactions violated 18 U.S.C. Sections 1956 and 1957 (money laundering).

48. ROTHSTEIN and TD BANK committed acts of money laundering, namely financial transactions, to promote their unlawful misappropriation of investor funds in violation

of 18 U.S.C. Section 1956(a)(1)(A), and to conceal their unlawful activity in violation of 18 U.S.C. Section 1956(a)(1)(B).

49. The following chart lists the dates and amounts of the financial transactions engaged in and caused by Defendants in furtherance of the specified unlawful activity, as set forth in detail hereinabove, that is, wire fraud and/or interstate transportation of stolen property:

	DATE	AMOUNT	WIRE TRANSFER
A.	4/29/09	\$600,000	From Coquina's account at American Bank to ROTHSTEIN'S trust account at TD BANK
B.	6/2/09	\$800,000	From Coquina's account at American Bank to ROTHSTEIN'S trust account at TD BANK
C.	6/22/09	\$1,400,000	From Coquina's account at American Bank to ROTHSTEIN'S trust account at TD BANK
D.	6/23/09	\$1,100,000	From Coquina's account at American Bank to ROTHSTEIN'S trust account at TD BANK
E.	7/02/09	\$2,800,000	From Coquina's account at American Bank to ROTHSTEIN'S trust account at TD BANK
F.	7/16/09	\$1,200,000	From Coquina's account at American Bank to ROTHSTEIN'S trust account at TD BANK
G.	7/29/09	\$1,800,000	From Coquina's account at American Bank to ROTHSTEIN'S trust account at TD BANK
H.	8/11/09	\$4,000,000	From Coquina's account at American Bank to ROTHSTEIN'S trust account at TD BANK
I.	8/18/09	\$5,000,000	From Coquina's account at American Bank to ROTHSTEIN'S trust account at TD BANK
J.	8/20/09	\$10,000,000	From Coquina's account at American Bank to ROTHSTEIN'S trust account at TD BANK
K.	9/11/09	\$4,000,000	From Coquina's account at American Bank to ROTHSTEIN'S trust account at TD BANK
L.	9/29/09	\$5,000,000	From Coquina's account at American Bank to ROTHSTEIN'S trust account at TD BANK

50. Upon information and belief, after the funds were received in ROTHSTEIN's trust account at TD BANK, ROTHSTEIN transferred the money to other accounts at TD BANK and elsewhere, and used the funds for various purposes having nothing to do with the purported settlement agreements that Coquina believed it had purchased.

51. The foregoing scheme, as set forth in detail hereinabove in paragraphs 1 through 50, and each act committed in furtherance thereof, constitutes money laundering within the meaning of 18 U.S.C. Sections 1956 and 1957 in that:

- (A) Defendants ROTHSTEIN and TD BANK, knowing that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, conducted and attempted to conduct such financial transactions which in fact involved proceeds of a specified unlawful activity, namely wire fraud (18 U.S.C. § 1343) and interstate transportation of stolen goods (18 U.S.C. § 2314), knowing that the transactions were designed in whole or in part to promote the carrying on of the foregoing specified unlawful activity, in violation of 18 U.S.C. §1956(a)(1)(A)(i);
- (B) Defendants ROTHSTEIN and TD BANK, knowing that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, conducted and attempted to conduct such financial transactions which in fact involved proceeds of a specified unlawful activity, namely wire fraud (18 U.S.C. § 1343) and interstate transportation of stolen goods (18 U.S.C. § 2314), knowing that the transactions were designed in whole or in part to conceal and disguise the nature, the location, the source, the ownership and the control of the proceeds of the foregoing specified unlawful activity, in violation of 18 U.S.C. §1956(a)(1)(B)(i); and
- (C) Defendants ROTHSTEIN and TD BANK, in an offense that took place in the United States, knowingly engaged or attempted to engage in monetary transactions in criminally derived property of a value greater than \$10,000, that was derived from specified unlawful activity, namely wire fraud (18 U.S.C. § 1343) and interstate transportation of stolen goods (18 U.S.C. § 2314), in violation of 18 U.S.C. §1957.

COUNT I

FRAUDULENT MISREPRESENTATION

(against all Defendants)

52. The allegations of paragraphs 1 through 51 are incorporated herein by reference.

53. Count I seeks relief from ROTHSTEIN and TD BANK for fraudulent misrepresentations and omissions.

54. As described more fully above, ROTHSTEIN was operating a fraudulent scheme with the assistance of TD BANK and others.

55. In furtherance of the scheme, and as alleged throughout this Complaint, ROTHSTEIN and TD BANK knowingly made material false statements, representations, and omissions, including, but not limited to:

- (A) fraudulently misrepresenting the existence and value of the settlement agreements purchased by Coquina;
- (B) fraudulently misrepresenting that the settlements actually existed and had been fully funded;
- (C) fraudulently misrepresenting that the settlement agreements would be paid out to Coquina over a predetermined schedule;
- (D) supplying Coquina with false and fraudulent letters purporting to “irrevocably” restrict transfers from the Coquina account at TD BANK;
- (E) supplying Coquina with false and fraudulent bank account statements for the Coquina account at TD BANK;
- (F) TD Bank, through its officers and employees, failing to inform Coquina that the accounts at TD Bank could not be restricted in the manner represented by TD Bank in the “lock letters;” and

(G) TD Bank, through its officers and employees, failing to inform Coquina that at the time the representations were made to Coquina, the bank account designated for Coquina's benefit did not contain millions of dollars, but in fact contained \$100.

56. The Defendants intended for Coquina to rely and act upon their knowingly false representations and withholding of facts that were necessary to make other statements not misleading

57. Coquina justifiably relied on the Defendants' false statements and omissions of material information.

58. As a direct and proximate result of the Defendants' false statements and omissions, Coquina has sustained damages.

COUNT II

AIDING AND ABETTING FRAUD

(against TD BANK)

59. The allegations of paragraphs 1 through 51 are incorporated herein above by reference.

60. Count II seeks relief from TD BANK for aiding and abetting fraud.

61. As described more fully above, ROTHSTEIN was operating a scheme to defraud investors with the assistance of TD BANK and others.

62. At all times material thereto, the TD BANK officers and representatives named throughout this Complaint were acting within the scope of their employment.

63. TD BANK knew of ROTHSTEIN's fraudulent scheme.

64. TD BANK actively provided substantial assistance to ROTHSTEIN in his financial exploitation of Coquina through fraud. As more fully described throughout this Complaint, TD BANK's assistance included, but was not limited to, providing ROTHSTEIN with numerous bank accounts to use during the course of the fictitious structured settlement scheme, supplying investors including Coquina with false "lock letters," supplying Coquina with false bank account statements, confirming the balance of the Coquina Account, and vouching for the legitimacy of the "lock letters" and the safety of the investments.

65. TD BANK's actions have directly caused injury and damage to Coquina.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Coquina prays for trial by jury and requests that this Court:

A. Enter judgment in favor of Plaintiff Coquina and against Defendants ROTHSTEIN and TD BANK, jointly and severally;

B. Award Plaintiff Coquina treble damages for all injuries deemed at trial to have resulted from ROTHSTEIN and TD BANK's racketeering activities, pursuant to 18 U.S.C. § 1964(c);

C. Impose a constructive trust on ROTHSTEIN and TD BANK in favor of Plaintiff Coquina for the proceeds of ROTHSTEIN and TD BANK's unlawful activity relating to Coquina;

D. Award Plaintiff Coquina compensatory damages in an amount to be determined at trial;

E. Award Plaintiff Coquina punitive damages in an amount to be determined at trial appropriate to the severity of the Defendants' conduct;

F. Award Plaintiff Coquina its costs, interest, and reasonable attorneys' fees incurred in prosecuting this action pursuant to 18 U.S.C. § 1964; and

G. Such other and further relief as this Court may deem just and proper.

Dated: January 13, 2012

Respectfully submitted,

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By: _____

DAVID S. MANDEL
Florida Bar No. 38040
Attorneys for Coquina Investments

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 10-60786-Civ-COOKE/BANDSTRA

COQUINA INVESTMENTS,

Plaintiff,

vs.

SCOTT W. ROTHSTEIN and TD BANK, N.A.,

Defendants.

VERDICT FORM AND SPECIAL INTERROGATORIES

We, the jury return the following verdict:

COUNT I

Do you find, by a preponderance of the evidence presented, that:

1. A TD Bank employee or employees made one or more misrepresentations or omissions to Coquina, acting within the scope of his or her employment?

Answer Yes or No: Yes

2. The misrepresentation or omission related to a material existing fact?

Answer Yes or No: Yes

3. TD Bank knew at the time it made the misrepresentation or omission that it was false or acted with reckless disregard for its truth or falsity or that the omission made other statements materially misleading?

Answer Yes or No: Yes

4. TD Bank intended to induce Coquina to rely and act upon the misrepresentation or omission?

Answer Yes or No: Yes

5. Coquina relied upon the misrepresentation or omission?

Answer Yes or No: Yes

6. TD Bank's misrepresentations or omissions were not known or obvious to Coquina?

Answer Yes or No: Yes

7. Coquina suffered injury or damage as a result?

Answer Yes or No: Yes

Note: If you answered "no," to any of the preceding questions, please skip all remaining questions and have the Foreperson sign below.

8. Coquina should be awarded the following compensatory damages:

\$ 16 mm.

9. Do you find, by clear and convincing evidence, that:

a. There was intentional misconduct against Coquina by at least one TD Bank employee.

Answer Yes or No: Yes

If you answered "no," you may not award punitive damages.
If you answered "yes," please proceed to the next question.

b. And you find at least one of the following:

(1). TD Bank actively and knowingly participated in such conduct of its employees; or

(2). The officers, directors, or managers of TD Bank knowingly condoned, ratified, or consented to such conduct of its employees.

Answer Yes or No: Yes

If you answered "no," you may not award punitive damages.
If you answered "yes," please proceed to the next question.

c. Coquina should be awarded the following punitive damages:

\$ 17.5.

So say we all, this 18 day of January, 2012.

Foreperson

COUNT II

Do you find, by a preponderance of the evidence presented, that:

1. The existence of the underlying Rothstein fraud against Coquina;

Answer Yes or No: Yes

2. TD Bank had knowledge of the fraudulent representations Rothstein made to perpetrate the fraud against Coquina;

Answer Yes or No: Yes

3. TD Bank provided substantial assistance to advance the commission of the fraud against Coquina; and

Answer Yes or No: Yes

4. Coquina was injured in its business or property as a proximate result of TD Bank's substantial assistance in Rothstein's fraud against Coquina.

Answer Yes or No: Yes

Note: If you answered "no," to any of the preceding questions, please skip all remaining questions and have the Foreperson sign below.

5. Coquina should be awarded the following compensatory damages:

\$ 16 mm.

6. Do you find, by clear and convincing evidence, that:

- a. There was intentional misconduct against Coquina by at least one TD Bank employee.

Answer Yes or No: Yes

If you answered "no," you may not award punitive damages.
If you answered "yes," please proceed to the next question.

b. And you find at least one of the following:

(1). TD Bank actively and knowingly participated in such conduct of its employees; or

(2). The officers, directors, or managers of TD Bank knowingly condoned, ratified, or consented to such conduct of its employees.

Answer Yes or No: Yes

If you answered "no," you may not award punitive damages.
If you answered "yes," please proceed to the next question.

c. Coquina should be awarded the following punitive damages:

\$ 17.5 mm.

So say we all, this 10 day of January, 2012.

Foreperson

AFFIRMATIVE DEFENSE

Proceed to the following question only if you have found for Coquina on one or more of the Counts above. If you have not found for Coquina on one or more of the counts above, please skip the following question and proceed to the end of this form.

Do you find, by a preponderance of the evidence presented, that Coquina through its own conduct voluntarily and intentionally waived its right to recover in this action?

Answer Yes or No: No.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 10-60786-Civ-COOKE/BANDSTRA

COQUINA INVESTMENTS,

Plaintiff,

vs.

SCOTT W. ROTHSTEIN and TD BANK, N.A.,

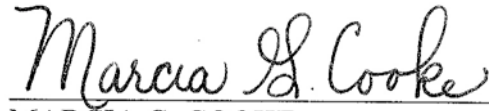
Defendants.

FINAL JUDGMENT FOLLOWING JURY TRIAL

THIS MATTER is before me following the jury trial, which commenced November 8, 2011, and concluded January 18, 2012. As to Count I, the jury returned a verdict in favor of the Plaintiff Coquina Investments and against Defendant TD Bank, N.A. in the amount of \$16 million in compensatory damages and \$17.5 million in punitive damages. As to Count II, the jury returned a verdict in favor of the Plaintiff Coquina Investments and against Defendant TD Bank, N.A. in the amount of \$16 million in compensatory damages and \$17.5 million in punitive damages.

It is **ORDERED and ADJUDGED** that judgment is entered in this matter in favor of the Plaintiff Coquina Investments and against Defendant TD Bank, N.A. in the total amount of **\$67 million**, as set forth above, and for which sum let execution issue. The Clerk is directed to **CLOSE** this case. All motions, if any, are **DENIED *as moot***.

DONE and ORDERED in chambers, at Miami, Florida, this 25th day of January 2012.

A handwritten signature in cursive script that reads "Marcia G. Cooke". The signature is written in black ink and is positioned above a horizontal line.

MARCIA G. COOKE
United States District Judge

Copies furnished to:
Ted E. Bandstra, U.S. Magistrate Judge
Counsel of record