

1 UNITED STATES BANKRUPTCY COURT  
2 IN AND FOR THE DISTRICT OF ARIZONA

3  
4 **DON'S MAKING MONEY, LLP,**  
5 **TROPICAL BEACHES, INC., NEW** )  
6 **STRATEGIES, L.L.L.P., DOLPHIN** )  
7 **MEDIA, L.L.L.P., NATIONAL** )  
8 **REMINDER SERVICE, L.L.L.P.,** )  
9 **Debtor.** )

) Chapter 7 proceedings  
Case Nos. 2:99-bk-07757-CGC  
through 2:99-bk-07761-CGC  
(Jointly Administered)

10 **CHARLES L. RILEY, JR., Chapter 7** )  
11 **Trustee,** )  
12 **Plaintiff,** )

Adv. 2-05-ap-00881

13 vs. )

**UNDER ADVISEMENT DECISION**  
**RE: MOTION TO COMPEL**  
**DISCLOSURES AND**  
**MOTION FOR SANCTIONS**

14 **JOSEPH A. DEIHL and SARI DEIHL,** )  
15 **husband and wife; et al.,** )  
16 **Defendants.** )

17 I. Introduction

18 Plaintiff Trustee has filed a motion to compel discovery. The issue presented is whether  
19 personal financial records of the individual Defendants may be obtained where there are pending  
20 claims for piercing the corporate veil of entities owned by those Defendants, and , if so, what is the  
21 allowable scope of such production.

22 II. Legal Analysis

23 A. Is the information discoverable?

24 Defendants claim that because the non-Universal Business Strategies, Inc., an Arizona  
25 corporation, (“UBS”) entities are not shareholders or directors of UBS, Plaintiff’s veil-piercing/alter  
26 ego claim is flawed and cannot serve as a basis for discovering the financial information of the non-  
27 UBS entities. Defendants assert that there is no case law supporting the requests made by Plaintiff  
28 for personal financial information. Defendants are wrong.

The issue was thoroughly explored by the court in *Abu-Nassar v. Elders Futures Inc.*, 1991  
WL 45062 (S.D.N.Y. 1991) where the Court stated:

1 [T]he courts have held that when a party seeks discovery about the relationships between  
2 individuals and a corporation, “relevance is broadly and liberally construed.” *Benchmark*  
3 *Design, Inc. v. BDC, Inc.*, No. 88-10007-FR, slip op., 1989 WL 81618, 1989 U.S. Dist. Lexis  
4 8240, \*2 (D.Or.1989). “The issue is not whether [the party] may ultimately prevail on the  
5 ‘piercing the corporate veil’ theory, but whether the allegations are sufficient to allow them  
6 to conduct discovery in an attempt to prove their allegations.” *Jackam v. Hospital Corp. of*  
7 *America Mideast, Ltd.*, 800 F.2d 1577, 1579-80 (11th Cir.1986).

8 *See also Edgar v. Fred Jones Lincoln-Mercury of Oklahoma City, Inc.*, 524 F.2d 162, 167 (10th  
9 Cir.1975) (“plaintiff is entitled to pursue discovery which would either establish or fail to establish  
10 the existence of facts sufficient to justify the piercing of the corporate veil”); *Electromatic (Pty) Ltd.*  
11 *v. Rad-O-Lite of Philadelphia, Inc.*, 90 F.R.D. 182, 184 (E.D.Pa.1981) (allegation that corporations  
12 were not operated as independent entities insufficient to support discovery, but where a party  
13 demonstrates interrelated transactions and other connections, this is “enough to support further  
14 discovery on the relationships among the various defendants.”) Other cases supporting the type of  
15 discovery sought in this case include: *Melikian v. Corradetti*, 791 F.2d 274,281-82 (3d. Cir 1986)  
16 (discovery permitted where allegations included commingling of assets, undercapitalization, lack  
17 of records, common officers, directors and partners, and fraud); *Minelli Constr. Co. v. United*  
18 *Derrickmen & Riggers Ass'n, Local 197*, 1990 WL 180550, \*5 (S.D.N.Y. November 14, 1990)  
19 (discovery permitted on alter ego defense claim where much of the relevant information was in  
20 control of plaintiff); *Scott v. Arex, Inc.*, 124 F.R.D. 39, 40-41 (D.Conn.1989) (personal and corporate  
21 information and records are discoverable in attempt to pierce corporate veil for a five year period);  
22 *Compagnie Francaise d'Assurance v. Phillips Petroleum Co.*, 105 F.R.D 16, 39-42 (S.D.N.Y. 1984)  
23 (where party seeks to pierce the corporate veil, personal and corporate records discoverable); *Luc*  
24 *Vets Diamant v. Akush*, 2006 WL 258293 (S.D.N.Y.) (discovery was allowed of personal assets up  
25 to and including the time that the company was dissolved.).

26 Based upon these authorities, the Court concludes that personal financial records of Joseph  
27 A. Deihl and Sari Deihl, are discoverable and should be produced. The remaining issues are the  
28

1 types of records that must be produced and the temporal scope of those records.

2 B. What is the applicable time period?

3 UBS bought the assets from the estate in 2001. UBS itself became insolvent in 2003.  
4 Plaintiff alleges that this transaction was part of a continuing scheme underlying, among other  
5 things, his RICO claim. The Court concludes that a time period for three years prior to the  
6 acquisition through the time of UBS's insolvency is the appropriate temporal limitation on the  
7 records. Although the Plaintiff seeks discovery through the present, the Court agrees with  
8 Defendants that this time period is sufficiently attenuated from the claims being made that the  
9 burden on the Defendants to produce such information outweighs any potential relevance of the  
10 information. Therefore, the temporal limitation will be 1998 through 2003.

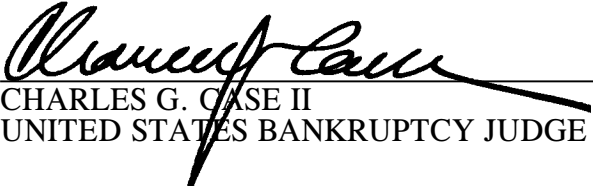
11 C. What type of information should be produced?

12 After considering the positions of the parties, the Court concludes that any and all personal  
13 bank account records and tax returns should be produced for the period stated. At this time, the  
14 Courts concludes that there is insufficient basis to go beyond these basic records (for example,  
15 requiring the present production of the business and real estate documents described in part 3 of the  
16 Joint Statement). However, this ruling is without prejudice to subsequent requests by the Plaintiff  
17 should the production compelled by this order provide a basis upon which to seek additional  
18 documents.

19 III. Sanctions

20 To the extent the motion for sanctions remains viable, the motion is denied.

21 **DATED:** February 19, 2008

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23   
24 CHARLES G. CHASE II  
25 UNITED STATES BANKRUPTCY JUDGE  
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