



**Dated: February 20, 2020**  
**The following is ORDERED:**

*Jennie D. Latta*

Jennie D. Latta  
UNITED STATES BANKRUPTCY JUDGE

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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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In re  
LARRY PARKE CHINN,  
Debtor.

Case No. 17-30912-L  
Chapter 7

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Minnesota Life Insurance Company,  
Plaintiff

v.  
Larry Parke Chinn,  
Defendant.

Adv. Proc. No. 18-00157

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**ORDER ON MOTION TO COMPEL RESPONSES TO  
INTERROGATORIES AND REQUESTS FOR PRODUCTION**

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BEFORE THE COURT is the motion of Plaintiff, Minnesota Life Insurance Company (“Minnesota Life”), filed December 6, 2019, to compel the Defendant, Larry Parke Chinn (“Chinn”), to supplement his responses to Interrogatories and Requests for Production [Dkt. No. 114]. Chinn filed an objection to the motion on December 27, 2019 [Dkt. No. 120]. The court heard argument on January 2, 2020. At the conclusion of that hearing, Chinn was permitted to

submit an affidavit to supplement his response. The hearing was continued to January 16, 2020. Chinn filed the affidavit of Attorney Julie C. Chinn in support of his response to the motion to compel on January 10, 2020 [Dkt. No. 129]. The court conducted a second hearing on January 16, 2020, at the conclusion of which the court asked that Chinn again supplement his response in light of oral representations made by his attorney at the hearing. Chinn has now done so and the matter is ready for decision.

### **BACKGROUND FACTS**

Minnesota Life seeks a determination that a prepetition judgment it obtained against Chinn in the amount of \$3,274,236.25, representing advanced but unearned commission arising from Chinn's sale of 29 Minnesota Life Eclipse Index Life Policies (the "Policies") during the period January 5, 2009, to December 28, 2010, should be excepted from discharge under 11 U.S.C. §§ 523(a)(2)(A), 523(a)(2)(B) and/or 523(a)(6). Minnesota Life served Interrogatories and Requests for Production on Chinn on April 29, 2019. The deadline to respond was extended. Chinn served answers to interrogatories on August 21, 2019, and produced some documents on October 7, 2019. Chinn objected to several interrogatories and requests. The parties exchanged letters in an attempt to resolve their differences, but these efforts were not completely successful.

At the end of the hearing on January 16, the court asked Chinn to supplement his responses again in order to clarify what issues remain for the court's decision. Chinn filed his "Second Supplemental Response of Larry Parke Chinn to Plaintiff's First Set of Requests for Production of Documents" on January 30, 2020 [Dkt. No. 134]. Although the document reflects that it is a "Second Supplemental Response," no other supplemental response appears in the record except perhaps a letter dated October 24, 2019, from Michael P. Coury, attorney for Chinn, to Kelly D. Simpkins and Kevin A. Rogers, attorneys for Minnesota Life, which appears as Exhibit E to the

motion to compel (the “October 24 Letter”). The court hesitates to call this the first supplemental response because in many places it indicates that Chinn intends to supplement his response. No supplement appears in the record until the Second Supplemental Response filed January 30.

### **LEGAL STANDARD**

Under Federal Rule of Civil Procedure 26(b)(1):

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

The scope of discovery under this rule is traditionally quite broad. *Reitz v. City of Mt. Juliet*, 680 F. Supp. 2d 888, 891 (M.D. Tenn. 2010), citing *Conti v. Am. Axle & Mfg.*, 326 Fed. Appx. 900 904 (6th Cir. 2009). Permissible discovery includes information that is relevant to any party’s claim or defense and is proportionate to the needs of the case. *North Shore-Long Island v. Multiplan, Inc.*, 325 F.R.D. 36, 47 (E.D. N.Y. 2018).

### **ISSUES**

The Second Supplemental Response begins by incorporating by reference “the objections outlined in [Chinn’s] original response to Plaintiff’s First Set of Requests for Production of Documents” (there were nine general objections in the original response to the requests for production of documents), and then makes specific responses to the requests for production. No supplemental response was filed with respect to the interrogatories. Despite the court’s hope that a supplemental response would help to narrow the issues, this does not appear to have been the result. The court will take up each objection in turn in the order in which they were presented in the original motion to compel.

General Objections. Chinn makes nine general objections to the interrogatories and requests for production. In general, such objections are disfavored and are not helpful in moving litigation toward conclusion. One court has said: “Boilerplate or generalized objections are tantamount to no objection at all and will not be considered by the Court.” *Nissan N. Am., Inc. v. Johnson Elec. N. Am., Inc.*, No. 09-CV-11783, 2011 WL 669352, at \*2 (E.D. Mich. Feb. 17, 2011). Another notes that, “The use of boilerplate objections ‘obstructs the discovery process, violates numerous rules of civil procedure and ethics, and imposes costs on litigants that frustrate the timely and just resolution of cases.’” *In re Haynes*, 577 B.R. 711, 724 (Bankr. E.D. Tenn. 2017), quoting *Liguria Foods, Inc. v. Griffith Laboratories, Inc.*, 320 F.R.D. 168, 169 (N.D. Iowa 2017). Chinn not only sets out nine boilerplate objections at the beginning of each of his responses but also includes boilerplate objections with respect to most if not all of his specific responses. The court has set out in full the language of each of these responses relevant to the Motion to Compel in order to show the amount of “lawyering” that went into Chinn’s responses (and the unfortunate lack of proofreading). This court does not favor boilerplate responses and found them especially vexing when Chinn was given the opportunity to supplement his responses in order to clarify for the court what issues remain for decision. In his supplemental responses, Chinn “incorporated by reference” all of his prior objections. Thus, the supplemental responses were of very little help to the court.

Scope of Discovery. In its motion to compel, Minnesota Life indicates that the “primary issue in this Motion to Compel is that Chinn has arbitrarily limited his discovery responses and document production to a 2009-2012 time period and to policies issued by Minnesota Life.” Dkt. No. 114, p. 2. At the hearing on January 16, counsel for Minnesota Life, Kevin A. Rogers, indicated that it had agreed to limit the temporal scope of discovery to the years 2007-2012 and

the subjective scope of discovery to premium-financed policies. He explained that obtaining information about other premium-financed policies written by Chinn is necessary because Chinn has maintained that he did not know what would happen with respect to surrender of the Minnesota Life Policies.

Counsel for Chinn, Michael P. Coury, did not specifically respond at the hearing to Minnesota Life's offer to narrow the temporal scope of discovery. He did say that the request to review policies written on behalf of other issuers would not be relevant to the dispute between Chinn and Minnesota Life. Coury referred specifically to policies written by Chinn for Pacific Life, which are the subject of another complaint and said these would not be relevant because the dispute with Pacific Life is factually distinct from that with Minnesota Life.

Relying upon the affidavit of Julie Chinn, Coury also argued that the scope of requested discovery was disproportional. Julie Chinn's affidavit indicates that she is a licensed attorney in Tennessee and that she is employed by Financial Institution Consulting Corporation ("FICC") without compensation. She indicated that FICC is no longer an operating business and has no employees. She said that physical copies of files for insurance policies sold by Chinn and other agents employed by FICC between 2006 and 2012 are stored in two rooms (Rooms 1 and 2) located in Memphis, Tennessee. Room 1 contains eight standard-size file cabinets, each with four drawers. These file cabinets contain between 800 and 900 files including premium-financed policies between 2006 and 2012. Room 2 contains one wide file cabinet with five drawers, one narrow file cabinet with two drawers, and a unit of shelves. Julie Chinn believes this room contains a little over 400 files. She says that it is possible that these files contain premium-financed policies and would need to be reviewed. Julie Chinn says that the number of emails sent from FICC's email server between 2006 and 2012 is "massive." A third-party vendor has indicated that the total

number of emails related to Pacific Life emails is over 165,000. Minnesota Life emails concerning the 29 policies have been identified. More than 1,000 emails have been produced according to Julie Chinn. Julie Chinn says that the third-party vendor has estimated that the cost to isolate Pacific Life emails will be about \$4,500, and the cost to review those emails will be \$50,000.

Rogers responded on behalf of Minnesota Life that the disputes need not be factually similar for information related to Chinn's conduct and knowledge with respect to other insurers to be relevant, especially in the context of this dischargeability complaint in which Chinn's knowledge and experience would tend to show intent. He also stated that Julie Chinn's affidavit does not demonstrate an undue burden. Specifically, he said that there is no need to review emails because there is a protective order in place. See "Order Granting Defendants [sic] Motion for Protective Order," October 7, 2019, Dkt. No. 110.

Chinn is defending himself against a charge that a judgment in the amount of \$3,274,236.25, should be excepted from discharge as the result of a fraudulent scheme conducted by him. Chinn's knowledge and intent with respect to policies that he or those under his control solicited is key to Minnesota Life's case. As this court said in its prior Order Denying Defendant's Motion to Strike Portions of Amended Complaint, "When the question before the court is whether the debtor was involved in a fraudulent scheme, an allegation that his actions with respect to one creditor are similar to those taken toward other creditors are clearly material and pertinent." Dkt. No. 93, p. 7. Because the allegations are material and pertinent, discovery concerning the facts underlying those allegations is relevant.

As to proportionality, the court does not find that review of two rooms of file cabinets, or even the review of 165,000 emails at a cost of \$50,000 creates an undue burden especially in light of the amount in controversy and the previous entry of a protective order. The information that

Minnesota Life seeks is uniquely within the control of Chinn, and it is within his power to stipulate to his knowledge and experience with respect to premium-financed policies.

Minnesota Life is entitled to conduct discovery for the period 2007-2012 concerning all premium-financed policies written by Chinn or those under his employment or direction.

Interrogatory Nos. 6, 7, 8, 9, and 10. Chinn indicated through the October 24 Letter that he would supplement his responses to these interrogatories. The Second Supplemental Response does not address the interrogatory responses at all. Chinn shall supplement his responses to these interrogatories within the established scope of discovery.

Interrogatory No. 14. Interrogatory No. 14 asks that Chinn “Please identify each and every agent and/or agency with whom you shared commissions received from Minnesota Life.”

Chinn responded as follows: “Chinn objects to this interrogatory on the grounds that the terms ‘agent’ or ‘agency’ are vague and undefined. Without waiving this objection, Chinn states that he is still in the process of reviewing records in order to respond to this Interrogatory and will supplement this response if additional names are identified. Chinn states that commissions received from Minnesota Life were shared directly or indirectly through FICC with the following persons:

1. James Davidson and/or his company
2. GWS Financial Services
3. Mark Alvig and/or his company
4. Garry Otte
5. Paul Brooks
6. Advanced Wealth Advisors
7. Thomas Schreier and/or his company.”

In its Motion to Compel, Minnesota Life notes that in the definition section of its Interrogatories, “identify” means to state a person’s full name, present or last known home address, telephone number, business address, business telephone number, employer and the person’s

position with that employer. Dkt. No. 114, Exh. A. Chinn did not “identify” persons in response to Interrogatory 14. In the October 24 Letter, Chinn indicated that he would supplement his response to Interrogatory 14. He has not done so and shall do so.

Interrogatory No. 15. Interrogatory No. 15 asks that Chinn “Please identify each and every agent and/or agency with whom you shared commissions received from Pacific Life Insurance Company.”

Chinn responded as follows: “Chinn objects to this Interrogatory on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to any party’s claims and/or proportional to the needs of the case under Fed. R. Civ. P. 26(b)(1).” Chinn did not refer to this interrogatory in his Second Supplemental Response.

In its Motion to Compel, Minnesota Life notes that Chinn fails to state the basis for his objection and in the October 24 Letter refused to supplement his response. Minnesota Life presumes that Chinn’s refusal to respond is related to insurers other than Minnesota Life. Minnesota Life reiterates its reasons for requesting this information.

For the reasons stated above, the court finds that Chinn’s objection is not well-taken. The identification of agents and agencies with whom Chinn shared commissions received from Pacific Life is reasonably calculated to lead to the discovery of the names and whereabouts of persons familiar with Chinn’s activities which are alleged by another insurer, Pacific Life, to have been fraudulent. Chinn shall fully respond to this interrogatory.

Request for Production Nos. 2, 10, and 13. In its Motion to Compel, Minnesota Life deals with these three requests together.

Request No. 2 asks that Chinn “produce each and every document pertaining to or relating to the ‘third party agents’ to whom you claim you paid 50% of your commissions, including but



not limited to, correspondence between you and the ‘third party agents,’ copies of checks evidencing said payments, marketing materials sent or received from said ‘third party agents,’ financial records, records of payments, and 1099s.”

In his initial Response to Plaintiff’s First Set of Requests for Production of Documents, Chinn responded as follows: “Chinn objects to this Request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to any party’s claims and/or proportional to the needs of the case under Fed. R. Civ. P. 26(b)(1). Further, this interrogatory [sic] is overly broad, unduly burdensome and harassing as there is no limitation in time period or geography, or subject matter, nor is it limited to policies issued by the Plaintiff. Without waiving this objection, Chinn produces the documents attached as Bates No. CHINN-ML 1 to CHINN-ML 208 which relate to Minnesota Life policies sold.”

In his Second Supplemental Response, Chinn responded as follows: “Chinn incorporates by reference his objections from his prior responses to Plaintiff’s First Set of Requests for Production of Documents. Without waiving any objection, Chinn previously produced the documents marked with Bates No. CHINN-ML 1 to CHINN-ML 208 which relate to Minnesota Life policies sold. Chinn has not conducted a search for responsive documents that do not relate to Minnesota Life policies.”

Request No. 10 asks that Chinn “Produce copies of any and all illustrations you and/or any ‘third party agents’ used with any customer or potential customer during the solicitation of a sale of any insurance product from 2006-2012.”

In his initial Response to Plaintiff’s First Set of Requests for Production of Documents, Chinn responded as follows: “Chinn objects to this Request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to any party’s claims

and/or proportional to the needs of the case under Fed. R. Civ. P. 26(b)(1). Further, this interrogatory [sic] is overly broad, unduly burdensome and harassing as the time period requested exceeds the relevant time frame relating to issues raised in the complaint and [sic] is it limited to policies actually issued by Plaintiff. Without waiving this objection, Chinn states that each issued Minnesota Life policy was accompanied by an illustration which was received by and/or acknowledged by the policy owner at the time of sale and such documents are in the possession of ML life [sic]. Chinn refers to all signed illustrations produced in response to Request No. 12 and those contained in Minnesota Life's files which were previously produced by Minnesota Life in prior litigation with Chinn and those contained in FICC's files which were produced in prior litigation with Chinn."

In his Second Supplemental Response, Chinn responded as follows: "Chinn incorporates by reference his objections from his prior responses to Plaintiff's First Set of Requests for Production of Documents. Without waiving any objection, Chinn states that each issued Minnesota Life policy was accompanied by an illustration which was received by and/or acknowledged by the policy owner at the time of sale and such documents are in the possession of ML life [sic]. Chinn refers to all signed illustrations produced in response to Request No. 12 and those contained in Minnesota Life's files which were previously produced by Minnesota Life in prior litigation with Chinn and those contained in FICC's files which were produced in prior litigation with Chinn. Chinn has not searched for any additional documents responsive to this request."

Request No. 13 asks that Chinn: "Please produce all documents regarding or relating to any entities or individuals, including but not limited to, Strategic Financial, with whom you or

FICC shared or split commissions with regard to the sale of any policies issued by Minnesota Life, including but not limited to, all agreements and communications with such entities or individuals.”

In his initial Response to Plaintiff’s First Set of Requests for Production of Documents, Chinn responded as follows: “Chinn objects to this Request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to any party’s claims and/or proportional to the needs of the case under Fed. R. Civ. P. 26(b)(1). Further, this interrogatory [sic] is overly broad, unduly burdensome and harassing as there is no limitation in time period or geography, and encompasses all communications without regard to whether they are related to any issues related to plaintiff’s claims. Without waiving this objection, Chinn incorporates by reference the documents produced in response to Request No. 2 and 12, as well as documents attached as Bates No. CHINN-ML 2673 - CHINN-ML 2828.”

In his Second Supplemental Response, Chinn responded as follows: “Chinn incorporates by reference his objections from his prior responses to Plaintiff’s First Set of Requests for Production of Documents. Without waiving any objection, Chinn previously incorporated by reference the documents produced in response to Request No. 2 and 12, as well as documents marked with Bates No. CHINN-ML 2673 to CHINN-ML 2828 and CHINN-ML 2895 to CHINN-ML 3488. Chinn is not withholding any documents responsive to this request.”

In its Motion to Compel, with respect to Request for Production Nos. 2, 10, and 13, Minnesota Life notes that it is unclear from Chinn’s responses whether he is withholding responsive documents. Further, it notes that Chinn arbitrarily limited his response to Minnesota Life policies and to the 2009-2012 time period.

Minnesota Life has agreed to limit the temporal scope of discovery to the period 2007-2012, and has agreed to limit the subjective scope to premium-financed policies. For the reasons

stated above, the court has found that discovery concerning other premium-financed policies in addition to those written on behalf of Minnesota Life, is relevant and reasonably calculated to lead to the discovery of admissible evidence. Despite being given an opportunity to supplement his responses, Chinn essentially repeated his general objections and initial responses to Interrogatory Nos. 2, 10, and 13. With respect to Interrogatory No. 2, Chinn has not conducted a search for responsive documents that do not relate to Minnesota Life policies. With respect to Interrogatory No. 10, Chinn has not searched for any additional documents responsive to this request. With respect to Interrogatory No. 13, Chinn has produced some additional documents and says that he is not withholding any responsive documents. Chinn may not limit his responses to Minnesota Life policies. He shall fully respond to Request No. 2 and Request No. 10. Chinn's response to Request No. 13 appears to be complete.

Request for Production Nos. 3 and 15. In its Motion to Compel, Minnesota Life deals with these requests together.

Request No. 3 asks that Chinn "Please produce each and every document pertaining to or relating to marketing of or use of premium financing for insurance policies regardless of the insurer."

In his initial Response to Plaintiff's First Set of Requests for Production of Documents, Chinn responded as follows: "Chinn objects to this Request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to any party's claims and/or proportional to the needs of the case under Fed. R. Civ. P. 26(b)(1). Further, this interrogatory [sic] is overly broad, unduly burdensome and harassing as there is no limitation in time period or geography, nor is it limited to policies issued by Plaintiff. Without waiving this objection, Chinn references ML to FICC's loan files on each of the ML policies sold which were

previously produced to ML in the District Court litigation. See Bates Nos. CHINN-ML 209 to CHINN-ML 337.”

In his Second Supplemental Response, Chinn responded as follows: “Chinn incorporates by reference his objections from his prior responses to Plaintiff’s First Set of Requests for Production of Documents. Without waiving any objection, Chinn previously referenced ML to FICC’s loan files on each of the ML policies sold which were previously produced to ML in the District Court litigation. Chinn also previously produced documents marked with Bates Nos. CHINN-ML 209 to CHINN-ML 337. Chinn now incorporates by reference the documents produced in response to Request No. 12, which contains communications related to marketing of or use of premium financing for policies issued by ML. Chinn has not conducted a search for responsive documents that do not relate to Minnesota Life policies.”

Request No. 15 asks that Chinn “Please produce documents and/or records of all internal communications between FICC employees, officers and directors regarding marketing of products using premium financing for the time period of 2006 to 2018.”

In his initial Response to Plaintiff’s First Set of Requests for Production of Documents, Chinn responded as follows: “Chinn objects to this Request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to any party’s claims and/or proportional to the needs of the case under Fed. R. Civ. P. 26(b)(1). Further, this interrogatory [sic] is overly broad, unduly burdensome and harassing as the time frame requested covers a 12 year period and far exceeds the time frame relevant to the issues raised by the complaint, nor is it limited to policies issued by Plaintiff which form the basis of Plaintiff’s claim.”

In his Second Supplement Response, Chinn responded as follows: “Chinn incorporates by reference his objections from his prior responses to Plaintiff’s First Set of Requests for Production

of Documents. Without waiving any objection, Chinn incorporates by reference the documents previously produced in response to Requests No. 2, 10, and 12. Chinn is not withholding any responsive documents related to Minnesota Life policies for the period 2006 to 2012, although Chinn is still searching for such documents. Chinn has not searched for any responsive documents related to policies of other insurers nor has he searched for responsive documents outside of the 2006 to 2012 time period.”

In its Motion to Compel, Minnesota Life notes that in response to Request No. 3, it is unclear whether Chinn is withholding any documents and that Chinn did not produce any documents in response to Request No. 15. In his Second Supplemental Response, Chinn incorporates documents produced in response to other requests. Chinn does, however, continue to withhold documents related to other insurers. Minnesota Life has agreed to limit the temporal scope of discovery to the years 2007-2012, and the subjective scope of discovery to premium-financed policies. Documents within that scope are relevant to Minnesota Life’s complaint and proportional to the needs of the case. Chinn shall fully respond to these requests within the established scope of discovery.

Request for Production Nos. 5 and 7. Minnesota Life announced during oral argument that it would withdraw its motion to compel with respect to Request for Production Nos. 5 and 7.

Request for Production Nos. 8 and 14. In its Motion to Compel, Minnesota Life deals with these requests together.

Request No. 8 asks that Chinn “Produce any financial statements, or supplemental financial statements you have created, generated or submitted to a third party since 2007, including, but not limited to lenders and insurance companies.”

In his initial Response to Plaintiff's First Set of Requests for Production of Documents, Chinn responded as follows: "Chinn objects to this Request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to any party's claims and/or proportional to the needs of the case under Fed. R. Civ. P. 26(b)(1). Further, this interrogatory [sic] is overly broad, unduly burdensome and harassing as there is no limitation in time period to the time periods in which the Minnesota Life policies were sold or to Minnesota Life policies. Without waiving this objection, Chinn produces documents attached as Bates No. CHINN-ML 730 to CHINN-ML 731."

In his Second Supplemental Response, Chinn states the following: "Chinn incorporates by reference his objections from his prior responses to Plaintiff's First Set of Requests for Production of Documents. Without waiving any objection, Chinn previously produced documents marked as Bates No. CHINN-ML 730 to CHINN-ML 731 as well as those marked as Bates No. CHINN-ML 3489 to CHINN-ML 3493. Chinn is not withholding any responsive documents for the period 2006 to 2012 but has not searched for responsive documents outside of that period."

Request No. 14 asks that Chinn "Please produce the complete corporate records of FICC from 2006 to 2018, including but not limited to the following documents:

1. Tax returns;
2. Financial statements;
3. Profit and loss statements;
4. Minutes of meetings;
5. Bylaws and amendments to the bylaws;
6. Audited financial statements;
7. Valuations;
8. Balance sheets;
9. Income statements; and
10. Cash flow statements."

In his initial Response to Plaintiff's First Set of Requests for Production of Documents, Chinn responded as follows: "Chinn objects to this Request on the grounds that it is not reasonably

calculated to lead to the discovery of admissible evidence and is not relevant to any party's claims and/or proportional to the needs of the case under Fed. R. Civ. P. 26(b)(1). Further, this interrogatory [sic] is overly broad, unduly burdensome and harassing as the time period requested covers a 12-year time period and far exceeds the relevant time frame relating to the issues raised in the complaint. Without waiving this objection, Chinn incorporates by reference the documents produced in response to Request No. 7 as well as the documents Bates Stamped No. CHINN-ML 2829 to CHINN-ML 2894."

In his Second Supplemental Response, Chinn states the following: "Chinn incorporates by reference his objections from his prior responses to Plaintiff's First Set of Requests for Production of Documents. Without waiving any objection, Chinn previously incorporated by reference the documents produced in response to Request No. 7 as well as the documents Bates Stamped No. CHINN-ML 2829 to CHINN-ML 2894. Chinn is not withholding responsive documents from the 2006 to 2012 period and has not searched for responsive documents outside of that period."

In its Motion to Compel, Minnesota Life states that it is unclear from Chinn's responses whether he is withholding documents responsive to Request Nos. 8 and 14.

The court has previously established that Minnesota Life is entitled to conduct discovery for the period 2007-2012 concerning all premium-financed policies written by Chinn or those under his employment or direction. Chinn appears now to have affirmatively stated that he is not withholding any responsive documents for the period 2006 to 2012. At the hearing, however, Coury stated that the responses would be supplemented. If there are additional documents responsive to these requests within the scope of discovery established by the court, Chinn shall produce them.



Request for Production No. 11. Request No. 11 asks that Chinn “Produce any and all documents evidencing or relating to communications from 2006-2013 with any premium financing company regarding said premium financing company’s reason(s) for surrendering premium financed policies for which you received a commission regardless of whether your assigned or shared the commission.”

At the hearing, Rogers indicated that this request would be subsumed by others if the scope of discovery was established as he proposed on behalf of Minnesota Life.

The court has established that Minnesota Life is entitled to discovery for the period 2007 to 2012 concerning all premium-financed policies written by Chinn or those under his employment or direction. This scope should be applied to Request No. 11 unless it is wholly subsumed by other requests.

### SANCTIONS

Courts have broad discretion in determining whether to impose sanctions for failure to comply with discovery requests. *Beil v. Lakewood Eng’g and Mfg. Co.*, 15 F.3d 546, 551-52 (6th Cir. 1994). Federal Rule of Civil Procedure 37, made applicable in this adversary proceeding by Federal Rule of Bankruptcy Procedure 7037, provides in pertinent part:

**(5) Payment of Expenses; Protective Orders.**

**(A) If the Motion is Granted (or Disclosure or Discovery Is Provided After Filing).** If the motion [to compel discovery] is granted -- or if the disclosure or requested discovery is provided after the motion was filed -- the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant’s reasonable expenses incurred in making the motion, including attorney’s fees. But the court must not order this payment if:

- (i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;
- (ii) the opposing party’s nondisclosure, response, or objection was substantially justified; or
- (iii) other circumstances make an award of expenses unjust.

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**(C) If the Motion Is Granted in Part and Denied in Part.** If the motion [to compel discovery] is granted in part and denied in part, the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.

The court will conduct a further hearing to consider the propriety of shifting some or all of the expenses of bringing the motion to compel to Chinn.

### **CONCLUSION**

Having fully reviewed the parties' motion and responses and considered the arguments of counsel, Minnesota Life's Motion to Compel Responses to Interrogatories and Requests for Production is **GRANTED** in part and **DENIED** in part.

**IT IS ORDERED** as follows:

- (1) The scope of discovery is limited to the time period 2007 to 2012, and to premium-financed policies written by Chinn or by those under his employment or direction.
- (2) Chinn shall fully respond to Interrogatory Nos. 6, 7, 8, 9, 14, and 15 within fourteen days of this order.
- (3) Chinn shall fully respond to Request for Production Nos. 2, 3, 8, 9, 10, 14, and 15 within 28 days of this order.
- (4) Chinn's response to Request for Production No. 13 appears to be complete. He shall supplement his response if this is not true.
- (5) Minnesota Life previously withdrew its motion with respect to Request for Production Nos. 5 and 7. No additional response is required by Chinn unless he becomes aware that his previous response is incomplete.

(6) Failure of Chinn to timely and fully respond may result in the imposition of sanctions upon him which may include any or all of the sanctions described at Bankruptcy Rule 7037(b)(2)(A)(i)-(vi), (c), and (d).

(7) The court will conduct a hearing on **Thursday, April 9, 2020, at 10:15 a.m.**, Courtroom 645, 200 Jefferson Avenue, Memphis, TN 38103, to consider the propriety of shifting some or all of the expenses of bringing the motion to compel to Chinn. Minnesota Life and Chinn are directed to file statements for or against the shifting of expenses not less than three days prior to the scheduled hearing.

cc: Debtor/Defendant  
Attorney for Debtor/Defendant  
Plaintiff  
Attorney for Plaintiff  
Chapter 7 Trustee