

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

MARY ANN SIVOLELLA,  Plaintiff,  v.  AXA EQUITABLE LIFE INSURANCE COMPANY and AXA EQUITABLE FUNDS MANAGEMENT GROUP, LLC,  Defendants.	Civil Action No. 11-04194 (PGS/DEA)
GLENN D. SANFORD, et al.,  Plaintiffs,  v.  AXA EQUITABLE FUNDS MANAGEMENT GROUP, LLC,  Defendant.	Civil Action No. 13-00312 (PGS/DEA)

**JOINT STIPULATION AND PROPOSED ORDER REGARDING PRIVILEGE ISSUES**

Pursuant to Rule 502(d), (e), and (f) of the Federal Rules of Evidence, Plaintiffs and Defendants in *Sivolella v. AXA Equitable Life Insurance Co.*, et al. (Case No. 11-04194) (“*Sivolella*”) and *Sanford, et al. v. AXA Equitable Funds Management Group, LLC* (Case No. 13-00312) (“*Sanford*”), along with the non-party independent trustees of the Board of Trustees of EQ Advisors Trust (collectively, the “Independent Trustees”) (together, the “Parties”),<sup>1</sup> by and through their respective counsel, hereby agree and stipulate as follows:

<sup>1</sup> There are eleven Independent Trustees that serve or have served on the Board of Trustees of EQ Advisors Trust between 2009 and 2014. The Independent Trustees are: (1) Theodossios (“Ted”) Athanassiades; (2) Jettie M. Edwards; (3) David W. Fox; (4) William M. Kearns, Jr.; (5) Christopher P.A. Komisarjevsky; (6) Harvey Rosenthal;

1. Plaintiffs agree not to seek privileged communications from the Independent Trustees on any theory, including the contentions in Plaintiffs' December 3, 2013 letter to Defendants and the Independent Trustees, in exchange for all Parties and deponents, including the Defendants, the Board of Trustees of the EQ Advisors Trust and the Independent Trustees agreeing not to assert the attorney-client privilege or attorney work product doctrine in response to any questions posed by Plaintiffs' counsel at depositions relating to the Independent Trustees' communications with, and advice given to them by, any counsel to the Independent Trustees, counsel to the EQ Advisors Trust (the "Trust"), or counsel to Defendants about any aspect of the review and approval of all fees, including management, administrative and distribution fees (the "Subject Matter").

2. Plaintiffs agree not to seek the production of email or other writings between the Independent Trustees and their counsel or Trust counsel or a privilege log of those communications as long as the Independent Trustees and Trust counsel do not provide such writings to defendants or their counsel.

3. Plaintiffs further agree not to re-depose Ms. Edwards or Mr. Rosenthal unless any other deponent specifically identifies one of them as having had separate individual communications covered by Paragraph 1 with counsel for the Independent Trustees, Trust counsel, or Defendants' counsel that the deponent did not participate in, and in that case Plaintiffs agree only to recall Ms. Edwards or Mr. Rosenthal for the limited purpose of questioning them on those communications.

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(7) Gary S. Schpero; (8) Caroline L. Williams; (9) Kenneth L. Walker; (10) H. Thomas McMeekin; and (11) Donald E. Foley. Mr. Fox retired from the Board of Trustees in December 2012. There is one interested member of the Board of Trustees: Steven Joenk. Mr. Joenk is the President, Chief Executive Officer and Chairman of AXA Equitable Funds Management Group, LLC.

4. Plaintiffs agree that they will not seek communications relating to the defense of the *Sivolella* or *Sanford* litigation or the preparation of any witness for depositions in those cases.

5. Plaintiffs also agree that, as a consequence of this Joint Stipulation, they will not assert that there has been any waiver of the attorney-client privilege, work product protection, common interest privilege or other privilege, and agree not to seek any broader disclosure about the Subject Matter other than the limited waiver outlined above.

6. Plaintiffs, Defendants, and the Independent Trustees agree that this Joint Stipulation is being made pursuant to Rule 502(d), (e), and (f) of the Federal Rules of Evidence.

7. Defendants agree that they will not rely upon or seek to introduce at trial any oral or written communications between the Board of Trustees and the Independent Trustees (individually or collectively) and any counsel that Plaintiffs have not had the opportunity to elicit or obtain in discovery ("Protected Information"). The foregoing limitation does not apply, however, to any Protected Information used or introduced by Defendants for rebuttal purposes. In such a case, Plaintiffs shall be entitled to conduct a deposition concerning any such Protected Information.

8. Defendants' experts will not be provided nor will they rely upon any Protected Information. The foregoing limitation does not apply, however, to any Protected Information used or introduced by Defendants for rebuttal purposes. In such a case, Plaintiffs shall be entitled to conduct a deposition concerning any such Protected Information

9. The Parties agree to comply with this Joint Stipulation pending the Court's approval.

Date: January 30, 2014

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**SO ORDERED:**

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Hon. Douglas E. Arpert  
United States Magistrate Judge

Date: \_\_\_\_\_