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August 28, 2014

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AT 8:30 _____ M
WILLIAM T. WALSH CLERK

Our File: 70896.1

VIA FACSIMILE

The Honorable Douglas E. Arpert, U.S.M.J.
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street, Courtroom 6W
Trenton, NJ 08608

Re: Sivoilella v. AXA Equitable Life Insurance Company, et al.
Civil Action No.: 11-cv-4194

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DOUGLAS E. ARPERT
U.S. MAGISTRATE JUDGE

Dear Judge Arpert:

The Court has scheduled a telephone conference with counsel for 11:00 A.M. on August 28, 2014 to address expert depositions and briefing on dispositive motions. Counsel have conferred and thought that it might be helpful to submit a proposed schedule for expert depositions to the Court in advance of the telephone conference. The current proposed schedule is set forth below:

*	{	Richard Kopcke (Plaintiffs' Expert):	September 30, 2014
		Francis Vitagliano (Plaintiffs' Expert):	October 1, 2014
		Kent Barrett, CPA (Plaintiffs' Expert):	October 15, 2014
		Phillip Goldstein (Plaintiffs' Expert):	October 27, 2014
		Russell R. Wermers, Ph.D. (Defendants' Expert):	November 12, 2014
		Steve Pomerantz (Plaintiffs' Expert):	November 14, 2014
		William W. Holder, CPA (Defendants' Expert):	November 20, 2014

Additionally, counsel for Defendants have proposed October 23, 2014 for the deposition of Marianne K. Smythe (Defendants' expert) and December 3, 4 or 5, 2014 for the deposition of Christopher M. James, Ph.D. (Defendants' expert). We expect to be able to reach agreement on the dates for those two depositions shortly.

**SZAFERMAN
LAKIND**

The Honorable Douglas E. Arpert, U.S.M.J.
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There is one area of potential dispute. Defendants prefer to depose Plaintiffs' experts before Plaintiffs depose Defendants' experts. While Plaintiffs would propose that the depositions proceed concurrently, they are prepared to acquiesce to Defendants' request (with the exception of the deposition of Defendants' expert Dr. Wermers, who will be deposed prior to the deposition of Plaintiffs' expert Dr. Pomerantz, who is only available on November 14, 2014). However, Plaintiffs would like to depose Ms. Smythe last as her questioning may be influenced by the deposition responses of the other of Defendants' experts. It appears that Defendants prefer that Ms. Smythe be deposed in October rather than at the end of the schedule for expert depositions, which (as currently proposed) would run into December.

We realize that we are seeking approximately 75 days from September 19, 2014 (the date of submission of Plaintiffs' expert rebuttal reports) to complete expert depositions. Counsel have worked together in good faith to identify the earliest possible dates that the experts and counsel are available for the depositions. However, as a result of the availability of the experts and counsel; the number of depositions, which will be held in geographically dispersed locations (ranging from Boston to Los Angeles); and the breadth of the issues to be covered in the depositions, it would be difficult to complete the depositions in a shorter period of time. Importantly, we also note that counsel for Plaintiffs and counsel for Defendants in this action are also counsel for, respectively, the plaintiffs and defendants in *Kasilag v. Hartford Inv. Fin. Servs., LLC*, No. 1:11-cv-1083-RMB-KMW (D.N.J.)—a Section 36(b) case pending in the District of New Jersey that was filed in February 2011, and which is currently in fact discovery with a number of previously scheduled depositions set to take place concurrently over the next several months.

If the schedule for expert depositions set forth above is acceptable to the Court, we would propose the following deadlines for the filing of any dispositive and Daubert motions:

* {	Motion(s) to be filed:	January 16, 2015
	Response Brief(s) to be filed:	March 2, 2015
	Reply Brief(s) to be filed:	April 9, 2015

Thank you.

Respectfully submitted,

SZAFERMAN, LAKIND,
BLUMSTEIN & BLADER, P.C.

Arnold C. Lakind

Arnold C. Lakind

* The Court will conduct a
telephone status conference on
December 8, 2014 at 11:30am
Plaintiffs' counsel to initiate.
ACL/s

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* So Ordered -
SS [Signature] usst

**SZAFERMAN
LAKIND**

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cc: Robert Hora, Esq. (via email and regular mail)