

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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<b>AMERICAN BOARD OF INTERNAL MEDICINE,</b>	:	
	:	
Plaintiff/counterclaim defendant,	:	
	:	
v.	:	Civil Action No. 14-cv-06428-KSH-CLW
	:	
<b>JAIME A. SALAS RUSHFORD, M.D.,</b>	:	
	:	
Defendant/counterclaim plaintiff/third- party plaintiff,	:	
	:	
v.	:	<b>ORAL ARGUMENT REQUESTED</b>
	:	
<b>RICHARD BARON, M.D., et al.,</b>	:	
	:	
Third-party defendants.	:	

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**MEMORANDUM OF ABIM AND THE ABIM INDIVIDUALS  
IN OPPOSITION TO  
DEFENDANT’S MOTION FOR RECONSIDERATION OF THE  
ORDER CONDITIONALLY GRANTING *PRO HAC VICE* APPLICATIONS**

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*Of Counsel and on the Brief*

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
<b>I. PRELIMINARY STATEMENT .....</b>	<b>1</b>
<b>II. STATEMENT OF FACTS AND PROCEDURAL HISTORY .....</b>	<b>2</b>
<b>III. ARGUMENT .....</b>	<b>7</b>
<b>A. STANDARD OF REVIEW .....</b>	<b>7</b>
<b>B. DEFENDANT DOES NOT SATISFY THE STANDARD FOR RECONSIDERATION .....</b>	<b>8</b>
<b>IV. CONCLUSION .....</b>	<b>11</b>

**Table of Authorities**

	<b><u>Page(s)</u></b>
<b><u>Cases</u></b>	
<i>A.K. Stamping Co., Inc., v. Instrument Specialties Co., Inc.</i> , 106 F. Supp. 2d 627 (D.N.J. 2000) .....	7
<i>Damiano v. Sony Music Entm't, Inc.</i> , 975 F. Supp. 623 (D.N.J. 1996) .....	7
<i>Harsco Corp. v. Zlotincki</i> , 779 F.2d 906 (3d Cir.1985), <i>cert. denied</i> , 476 U.S. 1171, 106 S. Ct. 2895, 90 L. Ed. 2d 982 (1986).....	7
<i>NL Indus., Inc., v. Commercial Union Ins. Co.</i> , 935 F. Supp. 513 (D.N.J. 1996) .....	7
<i>N. River Ins. Co. v. CIGNA Reinsurance Co.</i> , 52 F.3d 1194 (3d Cir. 1995).....	7
<i>Veer v. Maibec Inc.</i> , No. 11-3951, 2013 WL 1694835 (D.N.J. Apr. 18, 2013).....	7
 <b><u>Statutes, Rules and other authorities</u></b>	
<i>Fed. R. Civ. P.</i> 59(e) .....	7
<i>L.Civ.R.</i> 7.1(i).....	7
<i>Black's Law Dictionary</i> (10th ed. 2015).....	10

**I. PRELIMINARY STATEMENT.**

Plaintiff/counterclaim defendant American Board of Internal Medicine and the third-party defendants Richard Baron, M.D., Christine K. Cassel, M.D., Lynn O. Langdon, Eric S. Holmboe, M.D., David L. Coleman, M.D., Joan M. Feldt, M.D. and Naomi P. O'Grady, M.D., (collectively, "ABIM") oppose the motion of defendant/counterclaim plaintiff Jaime A. Salas Rushford M.D.'s ("defendant") seeking reconsideration of the Court's January 25, 2016 order ("the Jan. 25<sup>th</sup> order") conditionally granting three motions to appear *pro hac vice* on behalf of defendant.

Reconsideration is an extraordinary remedy granted sparingly in limited circumstances -- none of which is present here. Defendant has failed to identify any change in controlling law or any newly discovered facts that would justify reconsideration. Nor does defendant challenge the original bases on which the Jan. 25<sup>th</sup> order was entered. Instead, defendant asks that the Court revise portions of an order his counsel consented to on the record after having ample opportunity to consider the text of the order and make any desired arguments in opposition to the conditions imposed.

Ironically, defendant -- who, at one point, was represented by six separate lawyers but now, mercifully, is back to five lawyers, four of whom must travel from Puerto Rico to attend any matters in this litigation -- now claims an economic need for *pro hac vice* counsel to appear and communicate on his behalf in contravention of the Court's Jan. 25<sup>th</sup> order, a need that is belied by defendant's own conduct and that, in any event, was equally present when that order was entered. More to the point, the facts relating to his billing arrangements with local counsel and counsel admitted *pro hac vice* are not newly discovered, as they were known by defendant before he consented to the Jan. 25<sup>th</sup> order.

Finally, the conditions imposed by the Jan. 25<sup>th</sup> order are reasonable, well within the Court's considerable discretion in granting admission to practice *pro hac vice*, and, in the end, were consented to by defendant knowingly and with the assistance of four lawyers then and there present.

In short, defendant has failed to identify any newly discovered facts, any change in the law, or any manifest error of law that would justify reconsideration. Defendant's motion for reconsideration must be denied.

## II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

On November 25, 2015, defendant filed three motions for the *pro hac vice* admission of Dora L. Monserrate-Peagaricano, Jaime A. Salas-Soler, and Antonio E. Valiente Rivera, respectively. [D.E. Nos. 47-49]. At the time, defendant already was represented by Marco Gonzalez, Jr., Esq., an attorney admitted to practice law in New Jersey [D.E. No. 5] and Guillermo Mena-Irrizary, Esq., an attorney admitted *pro hac vice* [D.E. No. 32].

On December 7, 2015, ABIM filed its consolidated opposition to those *pro hac vice* motions. [D.E. No. 53]. In its opposition, ABIM noted that the "involvement of nonadmitted out-of-state attorneys ha[d] become a source of delay and non-cooperation on defendant's part" and asked that the Court either (i) deny defendant's three *pro hac vice* motions or (ii) grant defendant's *pro hac vice* motions subject to several reasonable conditions. *Id.* at 1. Those reasonable conditions were set forth in ABIM's opposition as follows:

- (1) That all communication with the Court concerning this litigation shall be directed through a lawyer with a plenary admission to this Court. (Marco A. Gonzalez, Jr., at present)<sup>1</sup>;

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<sup>1</sup> At the time of ABIM's opposition, Marco A. Gonzalez, Jr. acted as defendant's counsel with a plenary admission to this Court. On February 16, 2016, defendant filed a substitution of counsel, seeking to substitute Andrew Schlafly, Esq. for Mr. Gonzalez. [D.E. No. 68].

(2) That all filings be made solely by a lawyer with a plenary admission to this Court;

(3) That all communications to and with ABIM shall be made through a lawyer with a plenary admission to this Court to ABIM's lead counsel;

(4) That only one unconditionally admitted lawyer per side shall be permitted to address the Court or defend or take depositions; and,

(5) That a lawyer with a plenary admission to this Court shall attend all pretrial and other proceedings with, and directly supervise the conduct, of any *pro hac vice* admitted counsel.

[*Id.* at 3, 5.]

ABIM filed two proposed forms of order with its opposition, one denying admission *pro hac vice* outright [D.E. 53-1], and one conditionally granting admissions *pro have vice* [D.E. 53-2]. On December 11, 2015, defendant filed his reply to ABIM's opposition. [D.E. No. 58].

At the January 22, 2016 hearing before the Court, the motions for *pro hac vice* admission were the first subject addressed. *See* Jan. 22, 2016 Hr'g Tr. 4:10-15. Messrs. Gonzalez, Mena Irizarry, Valiente Rivera, and Salas Soler -- three of the four having travelled from Puerto Rico for the hearing -- attended on defendant's behalf. *Id.* at 5:3-4. Mr. Gonzalez, in consultation with his colleagues, reviewed the proposed form of order conditionally admitting Ms. Monserrate-Peagaricano, and Messrs. Salas Soler and Valiente Rivera, and agreed to the conditions presented in that order. *Id.* at 6:14-15.

That proposed order included the following provisions relevant to this opposition:

7. that all of defendant's communications with the Court concerning this litigation shall be directed through Marco A. Gonzalez, Jr., Esq.; and

....

9. that all communications from defendant and to and with ABIM shall be made through Marco A. Gonzalez, Jr., Esq. to ABIM's lead counsel; and,

10. that only one unconditionally admitted lawyer per side and at a time shall be permitted to address the Court or defend or take depositions; and,

11. that Marco A. Gonzalez, Jr. Esq. shall attend all pretrial and other proceedings with, and directly supervise the conduct, of any *pro hac vice* admitted counsel.

[D.E. No. 53-2.]

Before the Jan. 25<sup>th</sup> order was agreed to, counsel for defendant and ABIM jointly reviewed the proposed form of order. Hr'g Tr. 5:21-24. Defense counsel raised "a concern about what would happen if he was unavailable" and counsel for ABIM stated "we'll work with that. That's not a problem." *Id.* at 6:2-5. Counsel for ABIM then noted that the order was essentially a consent order, *id.* at 6:7-8, and defense counsel represented to the Court that, "Yes, Your Honor, the order that [counsel for ABIM] showed to me is acceptable," *id.* at 6:14-15. After confirming that the form of order the parties had agreed to was what appears as Docket Entry 53-2, the order was signed and entered on the docket on January 25, 2016. [D.E. No. 64].

Immediately following the January 22<sup>nd</sup> hearing, the parties scheduled a meet-and-confer conference for February 2, 2016, in order to resolve any remaining discovery disputes. Although originally scheduled to be held in the New Jersey offices of ABIM's counsel, and solely at the request of defendant's counsel, the location of the meet-and-confer was changed to the firm's Philadelphia office; the basis for that request was the representation by defendant's counsel that Mr. Mena already would be in Philadelphia on that date and wished to attend the meet-and-confer. ABIM agreed to both requests. So far, so good.

On January 29, 2016 -- the Friday before the scheduled meet-and-confer -- Mr. Gonzalez telephoned ABIM's counsel and advised that he would not be able to attend the

February 2nd meet-and-confer due to an emergent medical matter in respect of his mother, over whom Mr. Gonzalez has medical power of attorney. Mr. Gonzalez asked that ABIM's consent to conduct the scheduled meet-and-confer with Mr. Valiente, who is conditionally admitted *pro hac vice*, acting in Mr. Gonzalez's stead. ABIM's counsel informed Mr. Gonzalez that his initial inclination was to reschedule the meet-and-confer for a date on which Mr. Gonzalez would be available, but that ABIM would consider the proposal and respond later that same day.

Counsel for ABIM followed up with an e-mail to Mr. Gonzalez summarizing their earlier discussion and informing Mr. Gonzalez that "it simply makes more sense -- and is more consistent with Magistrate Judge Waldor's January 25, 2016 order (to which defendant consented) -- to reschedule the meet-and-confer to a date when [Mr. Gonzalez is] able [to] attend and play the role that order commands."<sup>2</sup> Mr. Gonzalez replied, stating that he would "relay [ABIM's] response to [his] client" and that he would "get back to [ABIM's counsel regarding scheduling]."<sup>3</sup> Shortly thereafter, Mr. Valiente -- not Mr. Gonzalez and plainly in violation of the Court's January 25, 2016 Order -- sent an e-mail to ABIM's counsel asking that the scheduled meet-and-confer go ahead on February 2<sup>nd</sup> and incorrectly representing ABIM's statement that the parties would "work with" Mr. Gonzalez's unavailability as automatically consenting to an attorney admitted *pro hac vice* conducting a proceeding without Mr. Gonzalez's presence, as required by the Jan. 25<sup>th</sup> order.<sup>4</sup> Seemingly unaware that it had been represented that Mr. Mena

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<sup>2</sup> A true and correct copy of the January 29, 2016 e-mail from R. Rivera-Soto to M. Gonzalez is attached hereto as **Exhibit "A"** and is made a part hereof by reference.

<sup>3</sup> A true and correct copy of the January 29, 2016 e-mail from M. Gonzalez to R. Rivera-Soto is attached hereto as **Exhibit "B"** and is made a part hereof by reference.

<sup>4</sup> A true and correct copy of the January 29, 2016 e-mail from A. Valiente to R. Rivera-Soto is attached hereto as **Exhibit "C"** and is made a part hereof by reference.



already would be in the area, Mr. Valiente also represented that defendant had incurred expenses, including Mr. Mena's travel to the mainland, to conduct the February 2<sup>nd</sup> meet-and-confer. *Ibid.*

Counsel for ABIM, solely as a professional courtesy, responded to Mr. Valiente and directed him to review paragraph 9 of the Jan. 25<sup>th</sup> order in respect of the proper persons to communicate with ABIM.<sup>5</sup> That e-mail also corrected Mr. Valiente's statement that defendant had incurred expenses associated with Mr. Mena's travels, as ABIM had been informed that Mr. Mena would be in the area anyway "and certainly not solely to be present at the meet-and-confer." *Ibid.*

Mr. Valiente -- again in violation of the Jan. 25<sup>th</sup> order -- responded, proclaiming himself "designated lead counsel for defendant."<sup>6</sup> In an exercise of illogical bootstrapping, Mr. Valiente further stated that because ABIM had not addressed the errors in his previous e-mail concerning ABIM's representations at the January 22<sup>nd</sup> hearing, ABIM was not denying that erroneous characterization. *Ibid.* Consistent with both the Jan. 25<sup>th</sup> order and the courtesy response earlier sent to Mr. Valiente, no response was made to Mr. Valiente's second email.

On February 3, 2016, defendant filed his motion for reconsideration under Mr. Gonzalez's signature. [D.E. No. 65]. On February 9, 2016, an email inquiry was made of Mr. Gonzalez's availability to conduct the meet-and-confer, particularly as he seemingly was able to file a reconsideration motion while he claimed to be tending to his mother.<sup>7</sup> Interestingly, that

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<sup>5</sup> A true and correct copy of the January 29, 2016 e-mail from R. Rivera-Soto to A. Valiente is attached hereto as **Exhibit "D"** and is made a part hereof by reference.

<sup>6</sup> A true and correct copy of the second January 29, 2016 e-mail from A. Valiente to R. Rivera-Soto is attached hereto as **Exhibit "E"** and is made a part hereof by reference.

<sup>7</sup> A true and correct copy of the February 9, 2016 e-mail from R. Rivera-Soto to M. Gonzalez is attached hereto as **Exhibit "F"** and is made a part hereof by reference.

email generated an automatic reply from Mr. Gonzalez, stating that he was “currently travelling on business and will not have regular access to [voice mail] and email.”<sup>8</sup>

This opposition follows.

### III. ARGUMENT

#### A. STANDARD OF REVIEW.

Motions for reconsideration are governed by *Fed. R. Civ. P.* 59(e) and *L.Civ.R.*

7.1(i). Reconsideration is an “extraordinary remedy” that should be “granted sparingly.” *Veer v. Maibec Inc.*, No. 11-3951, 2013 WL 1694835, at \*1 (D.N.J. Apr. 18, 2013) (quoting *A.K. Stamping Co., Inc., v. Instrument Specialties Co., Inc.*, 106 F. Supp. 2d 627, 662 (D.N.J. 2000)). On reconsideration, the Court will not “look[] to matters which were not originally presented.” *Id.* (quoting *Damiano v. Sony Music Entm’t, Inc.*, 975 F. Supp. 623, 634 (D.N.J. 1996)).

The “purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence.” *Harsco Corp. v. Zlotincki*, 779 F.2d 906, 909 (3d Cir.1985), *cert. denied*, 476 U.S. 1171, 106 S. Ct. 2895, 90 L. Ed. 2d 982 (1986).

Reconsideration is not to be used “to relitigate old matters.” *NL Indus., Inc., v. Commercial Union Ins. Co.*, 935 F. Supp. 513, 516 (D.N.J. 1996). A motion for reconsideration should be granted only in limited circumstances: where “(1) an intervening change in the law has occurred, (2) new evidence not previously available has emerged, or (3) the need to correct a clear error of law or prevent a manifest injustice arises.” *Veer, supra*, 2013 WL 1694835, at \*1 (citing *N. River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir. 1995)).

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<sup>8</sup> A true and correct copy of the February 99, 2016 e-mail from M. Gonzalez to R. Rivera-Soto is attached hereto as **Exhibit “G”** and is made a part hereof by reference.

**B. DEFENDANT DOES NOT SATISFY THE STANDARD FOR RECONSIDERATION.**

Defendant cannot satisfy his burden on reconsideration. Notably, defendant does not even address the standard applicable to motions for reconsideration: he has not presented an intervening change in the law, new evidence not previously available, or an error of law or a manifest injustice requiring correction. Instead, he oddly relies on the standards initially governing *pro hac vice* admissions, standards that were well in place when the Jan. 25<sup>th</sup> order was entered. *See* Def.'s Br. at 11. That is not enough.

Acknowledging that he is unable to meet the standard for reconsideration, defendant attempts to recharacterize the conditions imposed on counsel admitted *pro hac vice* as having meanings other than those conveyed by their plain language. Def.'s Br. 7-11. He also attempts to breathe a new meaning into ABIM's representation that the parties would "work with" any instance in which defendant's plenary-admitted counsel would be unavailable, a new interpretation that renders meaningless many of the conditions imposed by the Jan. 25<sup>th</sup> order. As plainly laid out in the transcript of proceedings, ABIM's representation did not include a consent for *pro hac vice* attorneys to appear at proceedings without the supervision of defendant's plenary-admitted counsel. Rather, ABIM represented that it would "work with" defendant's plenary-admitted counsel's unavailability, that is, if defendant's plenary-admitted counsel was unavailable, the parties would reschedule, by agreement, so as to remain in compliance with the Jan. 25<sup>th</sup> order.

Contrary to defendant's assertions, paragraph 9 of the Jan. 25<sup>th</sup> order on its face requires that communications to and with ABIM be by defendant's plenary-admitted counsel, and defendant's plenary-admitted counsel alone, on behalf of defendant. Paragraph 9 is clear: if defendant had any doubts as to what that provision requires, its meaning and rationale were stated clearly in ABIM's consolidated opposition to defendant's *pro hac vice* motions. *See* D.E.

53, at 5-6 (requesting “[t]hat all communication to and with ABIM shall be made through a lawyer with a plenary admission to this Court to ABIM’s lead counsel” and noting that “the attempts of the out-of-state attorneys to participate prematurely in this litigation ha[d] caused confusion and delay”). Likewise, the term “unconditionally admitted lawyer” in paragraph 10 of the Jan. 25<sup>th</sup> order does in fact refer to attorneys other than those conditionally admitted. And, in the final analysis, defendant unambiguously consented to that condition, and he has not tendered any grounds sufficient to warrant reconsideration.

Also, defendant’s ill-fated attempt at reconsideration does nothing to address the core reasons ABIM opposed defendant’s multiple *pro hac vice* applications in the first place: none of the lawyers for whom *pro hac vice* status was sought claimed any particular expertise otherwise lacking in defendant’s plenary-admitted counsel, “defendant’s desire to retain and speak through multiple counsel adversely affects either the Court’s processes or ABIM[,]” and that “[t]he reasonable conditions ABIM propose[d] protect against others having to pay for defendant’s lawyer-retention spree.” [D.E. No. 53, at 3, 4-5]. As ABIM noted earlier:

Granting leave to appear *pro hac vice* subject to conditions is explicitly allowed under *L.Civ.R.* 101.1(c). This is one of those instances where the imposition of conditions is not only warranted, but salutary. Experience in this case teaches us that the attempts of the out-of-state attorneys to participate prematurely in this litigation has caused confusion and delay, and has been responsible for non-cooperation on the part of defendant’s admitted attorneys. The conduct of out-of-state counsel and their attempts to participate unnecessarily in meet-and-confer discussions before properly being admitted has made obtaining even simple “yes” or “no” responses to ABIM’s inquiries in a timely fashion a needlessly arduous task. No doubt, defendant has an interest in being represented by counsel of his choice. That interest, however, does not and cannot trump the important concerns this Court and ABIM must confront in this litigation, and defendant’s choices cannot result in an undue burden on the Court and ABIM.

[*Id.* at 5-6.]

Nothing has changed. On the contrary, those concerns have proven prophetic in this very instance. Although Mr. Gonzalez -- when asking if Mr. Mena could attend the meet-and-confer and whether the location could be moved from New Jersey to Philadelphia -- represented that Mr. Mena wished to attend the meet-and-confer because he already would be in the Philadelphia area, Mr. Valiente complains that re-scheduling the date of the meet-and-confer due to Mr. Gonzalez's claimed unavailability somehow caused defendant to incur additional costs in respect of Mr. Mena's attendance. Those statements cannot coexist: either Mr. Mena already planned to be in Philadelphia or he was making a trip there solely to represent defendant at the meet-and-confer. And, that conflict highlights precisely the need to insure that defendant speaks to the Court and to ABIM with only one voice, and not through a discordant cacophony of lawyers.

Finally, the phrase "all pretrial and other proceedings" in paragraph 11 of the Jan. 25<sup>th</sup> order necessarily includes all proceedings, including court-mandated meet-and-confer conferences to resolve discovery disputes. *See, e.g., Black's Law Dictionary* 1398 (10th ed. 2015) (defining proceeding as "[t]he regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment"). There is no basis, either in the language of the Jan. 25<sup>th</sup> order or in the record, for an interpretation of that provision that does not include all formal interactions between the parties.

In sum, defendant has not satisfied the standard necessary for reconsideration: he has produced no newly discovered facts, no new authority, and no evidence of a clear error of law or manifest injustice. Defendant's seeming attack of "buyer's remorse" cannot suffice to permit relitigation of a settled issue. Defendant's motion for reconsideration must be denied.

**III. CONCLUSION.**

For the foregoing authority, arguments and reasons, ABIM respectfully requests that defendant's motion for reconsideration of the Court's order conditionally granting *pro hac vice* applications be denied.

Respectfully submitted,



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Casey G. Watkins  
watkinsc@ballardspahr.com

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*Attorneys for plaintiff/counterclaim defendant  
American Board of Internal Medicine and third-  
party defendants the ABIM individuals*

**DATED:** February 22, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that on February 22, 2015, I electronically filed the foregoing memorandum of plaintiff/counterclaim defendant ABIM and third-party defendants the ABIM individuals to the motions of defendant/counterclaim plaintiff/third-party plaintiff Jaime A. Salas Rushford, M.D. in opposition to the motion of defendant Jaime A. Salas Rushford, M.D. for reconsideration of the Court's order granting *pro hac vice* applications with the Clerk of Court using the CM/ECF system, and thereby served all counsel of record with a copy thereof.

**DATED:** February 22, 2015



Roberto A. Rivera-Soto

# **EXHIBIT “A”**



**Rivera-Soto, Roberto A. (NJ)**

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**From:** Rivera-Soto, Roberto A. (NJ)  
**Sent:** Friday, January 29, 2016 1:00 PM  
**To:** mgonzalez@ndslaw.com  
**Subject:** ABIM v. Salas Rushford

Dear Mr. Gonzalez:

As we discussed earlier today, you have advised that – due to an emergent medical matter with your mother, over whom you have a medical power of attorney – you will not be able to attend the meet-and-confer scheduled for Tuesday, February 2, 2016; as you will recall, we agreed on that date immediately following the January 22, 2016 hearing before Magistrate Judge Waldor and we already have changed the site for that meet-and-confer from our Cherry Hill, NJ offices to our Philadelphia, PA offices in order to accommodate your co-counsel, Guillermo Mena, who you asked to be allowed to attend, to which we also agreed. You advised that, given your unavailability on February 2<sup>nd</sup>, your client wanted you to propose that we nonetheless retain the February 2, 2016 meet-and-confer date and that Mr. Antonio Valiente would take your place. I advised that, while my initial inclination was to reject that proposal and simply reschedule the meet-and-confer to a date when you could attend, I wanted to think about it a bit more.

I have done so; I also have consulted with my colleagues. In the end, it simply makes more sense – and is more consistent with Magistrate Judge Waldor's January 25, 2016 order (to which defendant consented) – to reschedule the meet-and-confer to a date when you are able attend and play the role that order commands.

Therefore, please check your calendar and let me know what alternate dates you propose for the meet-and-confer; I will check those against our schedules and get back to you.

On a personal note, please accept my most heartfelt wishes that your mother's health condition improves; she will be in my thoughts and prayers.

Sincerely,

**Roberto A. Rivera-Soto**  
Ballard Spahr LLP  
210 Lake Drive East - Suite 200  
Cherry Hill, New Jersey 08002  
Direct: 856.761.3416  
Fax: 856.761.1020  
[riverasotor@ballardspahr.com](mailto:riverasotor@ballardspahr.com)

**EXHIBIT “B”**

**Rivera-Soto, Roberto A. (NJ)**

---

**From:** Marco Gonzalez <mgonzalez@ndslaw.com>  
**Sent:** Friday, January 29, 2016 1:20 PM  
**To:** Rivera-Soto, Roberto A. (NJ)  
**Cc:** 'Antonio Valiente' (avaliente@msglawpr.com); Guillermo Mena  
**Subject:** RE: ABIM v. Salas Rushford

Dear Mr. Rivera-Soto,

I will relay your response to my client. We will get back to you regarding rescheduling.

On a personal note, I appreciate your concern and offer of best wishes for my mother. Thank you.

Best Regards,

Marco Gonzalez



**Marco A. Gonzalez Jr.**  
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---

**From:** Rivera-Soto, Roberto A. [<mailto:RiveraSotoR@ballardspahr.com>]  
**Sent:** Friday, January 29, 2016 1:00 PM  
**To:** Marco Gonzalez  
**Subject:** ABIM v. Salas Rushford

Dear Mr. Gonzalez:

As we discussed earlier today, you have advised that – due to an emergent medical matter with your mother, over whom you have a medical power of attorney – you will not be able to attend the meet-and-confer scheduled for Tuesday, February 2, 2016; as you will recall, we agreed on that date immediately following the January 22, 2016 hearing before Magistrate Judge Waldor and we already have changed the site for that meet-and-confer from our Cherry Hill, NJ offices to our Philadelphia, PA offices in order to accommodate your co-counsel, Guillermo Mena, who you asked to be allowed to attend, to which we also agreed. You advised that, given your unavailability on February 2<sup>nd</sup>, your client wanted you to propose that we nonetheless retain the February 2, 2016 meet-and-confer date and that Mr.

Antonio Valiente would take your place. I advised that, while my initial inclination was to reject that proposal and simply reschedule the meet-and-confer to a date when you could attend, I wanted to think about it a bit more.

I have done so; I also have consulted with my colleagues. In the end, it simply makes more sense – and is more consistent with Magistrate Judge Waldor's January 25, 2016 order (to which defendant consented) – to reschedule the meet-and-confer to a date when you are able attend and play the role that order commands.

Therefore, please check your calendar and let me know what alternate dates you propose for the meet-and-confer; I will check those against our schedules and get back to you.

On a personal note, please accept my most heartfelt wishes that your mother's health condition improves; she will be in my thoughts and prayers.

Sincerely,

**Roberto A. Rivera-Soto**  
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Fax: 856.761.1020  
[riverasotor@ballardspahr.com](mailto:riverasotor@ballardspahr.com)

**EXHIBIT “C”**

**Rivera-Soto, Roberto A. (NJ)**

---

**From:** Antonio Valiente <avaliente@msglawpr.com>  
**Sent:** Friday, January 29, 2016 2:50 PM  
**To:** Rivera-Soto, Roberto A. (NJ)  
**Cc:** Guillermo Mena; 'Marco Gonzalez'; Dora Monserrate  
**Subject:** RE: ABIM v. Salas Rushford

**Importance:** High  
**Sensitivity:** Private

Dear Mr. Rivera-Soto,

I write to you as lead counsel designated by defendant in this case, admitted *pro hac vice* through local counsel, Marco A. Gonzalez, Jr.

The purpose of this note is to ask that you maintain the agreed upon date of the meet & confer that, as you correctly state, was scheduled immediately following the January 22<sup>nd</sup> hearing before the Honorable Magistrate Judge Waldor. As you may recall, during that hearing you also stated that should Mr. Gonzalez be, for any one reason or another unavailable, that things would be attended by other counsel representing defendant without a need to have to further delay matters.

That is precisely the case here and it is unfortunate that what was represented to the Court is now being negated by ABIM. This, certainly, changes everything.

Furthermore, and regardless of the aforementioned, Defendant has already incurred in expenses including that Mr. Guillermo Mena-Irizarry, Esq., is already in the United States mainland so as to be present on Tuesday's meet & confer, as well as the undersigned has reservations to make this trip so as to finally make progress on ABIM's long overdue discovery in this case.

I once again ask and look forward to a reconsideration from your side and to meet and confer the considerable issues pending at your Philadelphia office on February 2<sup>nd</sup> at the agreed upon time.

Sincerely,  
Antonio Valiente  
Cel. 787-567-1234  
Tel. 787-620-5300  
Fax 787-620-5305

Monserrate, Simonet & Gierbolini  
Maramar Plaza – Suite 1120  
101 San Patricio Avenue  
Guaynabo, Puerto Rico 00968-2646

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ATTORNEY WORK-PRODUCT DOCTRINE. If received in error, please delete it and notify sender to this address. Thank you.

---

**From:** Marco Gonzalez [mailto:mgonzalez@ndslaw.com]  
**Sent:** Friday, January 29, 2016 2:20 PM  
**To:** Rivera-Soto, Roberto A. <RiveraSotoR@ballardspahr.com>  
**Cc:** Antonio Valiente <avaliente@msglawpr.com>; Guillermo Mena <guillermo75@gmail.com>  
**Subject:** RE: ABIM v. Salas Rushford

Dear Mr. Rivera-Soto,

I will relay your response to my client. We will get back to you regarding rescheduling.

On a personal note, I appreciate your concern and offer of best wishes for my mother. Thank you.

Best Regards,

Marco Gonzalez



**Marco A. Gonzalez Jr.**  
Nicoll Davis & Spinella LLP  
95 Route 17 South, Suite 316 | Paramus, NJ 07652  
office (201) 712-1616  
mobile (201) 317-3047 | fax (201) 712-9444

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---

**From:** Rivera-Soto, Roberto A. [mailto:RiveraSotoR@ballardspahr.com]  
**Sent:** Friday, January 29, 2016 1:00 PM  
**To:** Marco Gonzalez  
**Subject:** ABIM v. Salas Rushford

Dear Mr. Gonzalez:

As we discussed earlier today, you have advised that – due to an emergent medical matter with your mother, over whom you have a medical power of attorney – you will not be able to attend the meet-and-confer scheduled for Tuesday, February 2, 2016; as you will recall, we agreed on that date immediately following the January 22, 2016 hearing before Magistrate Judge Waldor and we already have changed the site for that meet-and-confer from our Cherry Hill, NJ offices to our Philadelphia, PA offices in order to accommodate your co-counsel, Guillermo Mena, who you asked to be allowed to attend, to which we also agreed. You advised that, given your unavailability on February 2<sup>nd</sup>, your client wanted you to propose that we nonetheless retain the February 2, 2016 meet-and-confer date and that Mr.

Antonio Valiente would take your place. I advised that, while my initial inclination was to reject that proposal and simply reschedule the meet-and-confer to a date when you could attend, I wanted to think about it a bit more.

I have done so; I also have consulted with my colleagues. In the end, it simply makes more sense – and is more consistent with Magistrate Judge Waldor's January 25, 2016 order (to which defendant consented) – to reschedule the meet-and-confer to a date when you are able attend and play the role that order commands.

Therefore, please check your calendar and let me know what alternate dates you propose for the meet-and-confer; I will check those against our schedules and get back to you.

On a personal note, please accept my most heartfelt wishes that your mother's health condition improves; she will be in my thoughts and prayers.

Sincerely,

**Roberto A. Rivera-Soto**  
Ballard Spahr LLP  
210 Lake Drive East - Suite 200  
Cherry Hill, New Jersey 08002  
Direct: 856.761.3416  
Fax: 856.761.1020  
[riverasotor@ballardspahr.com](mailto:riverasotor@ballardspahr.com)



# **EXHIBIT “D”**

**Rivera-Soto, Roberto A. (NJ)**

---

**From:** Rivera-Soto, Roberto A. (NJ)  
**Sent:** Friday, January 29, 2016 3:36 PM  
**To:** 'Antonio Valiente'  
**Cc:** Guillermo Mena; 'Marco Gonzalez'; Dora Monserrate  
**Subject:** ABIM v. Salas Rushford

**Sensitivity:** Private

Dear Mr. Valiente:

I respond to you solely as a professional courtesy and to correct a factual misstatement in your email below.

Please note that the January 25, 2016 order issued by Magistrate Judge Waldor is quite clear. Therefore, please refrain from communicating with me, as paragraph 9 of that order makes clear all communications are to be between Mr. Gonzalez and me.

Furthermore, the facts you relate below are in error. As I am certain Mr. Gonzalez will confirm, I was asked earlier this week by Mr. Gonzalez whether ABIM would object to Mr. Mena attending the meet-and-confer because, we were informed, he already would be in the area anyway – and certainly not solely to be present at the meet-and-confer. That is why we (a) consented to allow Mr. Mena to attend and (b) for his convenience, we moved the site of the meet-and-confer to our Philadelphia offices. Asserting now that defendant somehow already has incurred expenses in having Mr. Mena attend a meet-and-confer originally scheduled for four days hence is factually incorrect. Also, if defendant so wishes, we can cure that concern permanently by revoking our consent to his attendance at any meet-and-confer, no matter when scheduled.

Kindly comply with paragraph 9 of the Court's January 25, 2016 order; I will respond solely to communications from Mr. Gonzalez.

Sincerely,

**Roberto A. Rivera-Soto**  
Ballard Spahr LLP  
210 Lake Drive East - Suite 200  
Cherry Hill, New Jersey 08002  
Direct: 856.761.3416  
Fax: 856.761.1020  
riverasotor@ballardspahr.com

---

**From:** Antonio Valiente [mailto:avaliente@msglawpr.com]  
**Sent:** Friday, January 29, 2016 2:50 PM  
**To:** Rivera-Soto, Roberto A. (NJ)  
**Cc:** Guillermo Mena; 'Marco Gonzalez'; Dora Monserrate  
**Subject:** RE: ABIM v. Salas Rushford  
**Importance:** High  
**Sensitivity:** Private

Dear Mr. Rivera-Soto,

I write to you as lead counsel designated by defendant in this case, admitted *pro hac vice* through local counsel, Marco A. Gonzalez, Jr.

The purpose of this note is to ask that you maintain the agreed upon date of the meet & confer that, as you correctly state, was scheduled immediately following the January 22<sup>nd</sup> hearing before the Honorable Magistrate Judge Waldor. As you may recall, during that hearing you also stated that should Mr. Gonzalez be, for any one reason or another unavailable, that things would be attended by other counsel representing defendant without a need to have to further delay matters.

That is precisely the case here and it is unfortunate that what was represented to the Court is now being negated by ABIM. This, certainly, changes everything.

Furthermore, and regardless of the aforementioned, Defendant has already incurred in expenses including that Mr. Guillermo Mena-Irizarry, Esq., is already in the United States mainland so as to be present on Tuesday's meet & confer, as well as the undersigned has reservations to make this trip so as to finally make progress on ABIM's long overdue discovery in this case.

I once again ask and look forward to a reconsideration from your side and to meet and confer the considerable issues pending at your Philadelphia office on February 2<sup>nd</sup> at the agreed upon time.

Sincerely,  
Antonio Valiente  
Cel. 787-567-1234  
Tel. 787-620-5300  
Fax 787-620-5305

Monserate, Simonet & Gierbolini  
Maramar Plaza – Suite 1120  
101 San Patricio Avenue  
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---

**From:** Marco Gonzalez [<mailto:mgonzalez@ndslaw.com>]  
**Sent:** Friday, January 29, 2016 2:20 PM  
**To:** Rivera-Soto, Roberto A. <[RiveraSotoR@ballardspahr.com](mailto:RiveraSotoR@ballardspahr.com)>  
**Cc:** Antonio Valiente <[avaliente@msglawpr.com](mailto:avaliente@msglawpr.com)>; Guillermo Mena <[guillermo75@gmail.com](mailto:guillermo75@gmail.com)>  
**Subject:** RE: ABIM v. Salas Rushford

Dear Mr. Rivera-Soto,

I will relay your response to my client. We will get back to you regarding rescheduling.

On a personal note, I appreciate your concern and offer of best wishes for my mother. Thank you.

Best Regards,

Marco Gonzalez



**Marco A. Gonzalez Jr.**  
Nicoll Davis & Spinella LLP  
95 Route 17 South, Suite 316 | Paramus, NJ 07652  
office (201) 712-1616  
mobile (201) 317-3047 | fax (201) 712-9444

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---

**From:** Rivera-Soto, Roberto A. [<mailto:RiveraSotoR@ballardspahr.com>]  
**Sent:** Friday, January 29, 2016 1:00 PM  
**To:** Marco Gonzalez  
**Subject:** ABIM v. Salas Rushford

Dear Mr. Gonzalez:

As we discussed earlier today, you have advised that – due to an emergent medical matter with your mother, over whom you have a medical power of attorney – you will not be able to attend the meet-and-confer scheduled for Tuesday, February 2, 2016; as you will recall, we agreed on that date immediately following the January 22, 2016 hearing before Magistrate Judge Waldor and we already have changed the site for that meet-and-confer from our Cherry Hill, NJ offices to our Philadelphia, PA offices in order to accommodate your co-counsel, Guillermo Mena, who you asked to be allowed to attend, to which we also agreed. You advised that, given your unavailability on February 2<sup>nd</sup>, your client wanted you to propose that we nonetheless retain the February 2, 2016 meet-and-confer date and that Mr. Antonio Valiente would take your place. I advised that, while my initial inclination was to reject that proposal and simply reschedule the meet-and-confer to a date when you could attend, I wanted to think about it a bit more.

I have done so; I also have consulted with my colleagues. In the end, it simply makes more sense – and is more consistent with Magistrate Judge Waldor's January 25, 2016 order (to which defendant consented) – to reschedule the meet-and-confer to a date when you are able attend and play the role that order commands.

Therefore, please check your calendar and let me know what alternate dates you propose for the meet-and-confer; I will check those against our schedules and get back to you.

On a personal note, please accept my most heartfelt wishes that your mother's health condition improves; she will be in my thoughts and prayers.

Sincerely,

**Roberto A. Rivera-Soto**  
Ballard Spahr LLP  
210 Lake Drive East - Suite 200  
Cherry Hill, New Jersey 08002

Direct: 856.761.3416  
Fax: 856.761.1020  
[riverasotor@ballardspahr.com](mailto:riverasotor@ballardspahr.com)

# **EXHIBIT “E”**

**Rivera-Soto, Roberto A. (NJ)**

---

**From:** Antonio Valiente <avaliente@msglawpr.com>  
**Sent:** Friday, January 29, 2016 3:48 PM  
**To:** Rivera-Soto, Roberto A. (NJ)  
**Cc:** 'Guillermo Mena'; 'Marco Gonzalez'; Dora Monserrate  
**Subject:** RE: ABIM v. Salas Rushford

**Sensitivity:** Private

Dear Mr. Rivera-Soto,

Please note that any communication originated by me is done as the designated lead counsel for Defendant, as I mentioned below. That aside, I have the response that I needed whilst ABIM is not denying its representation to the Court that is now underlined below. Thus, it is but unfortunate for ABIM not to follow-through with the scheduled “meet & confer”. Have a good weekend.

Sincerely,  
Antonio Valiente  
Cel. 787-567-1234  
Tel. 787-620-5300  
Fax 787-620-5305

---

**From:** Rivera-Soto, Roberto A. [mailto:RiveraSotoR@ballardspahr.com]  
**Sent:** Friday, January 29, 2016 4:36 PM  
**To:** Antonio Valiente <avaliente@msglawpr.com>  
**Cc:** Guillermo Mena <guillermo75@gmail.com>; 'Marco Gonzalez' <mgonzalez@ndslaw.com>; Dora Monserrate <dmonserrate@msglawpr.com>  
**Subject:** ABIM v. Salas Rushford  
**Sensitivity:** Private

Dear Mr. Valiente:

I respond to you solely as a professional courtesy and to correct a factual misstatement in your email below.

Please note that the January 25, 2016 order issued by Magistrate Judge Waldor is quite clear. Therefore, please refrain from communicating with me, as paragraph 9 of that order makes clear all communications are to be between Mr. Gonzalez and me.

Furthermore, the facts you relate below are in error. As I am certain Mr. Gonzalez will confirm, I was asked earlier this week by Mr. Gonzalez whether ABIM would object to Mr. Mena attending the meet-and-confer because, we were informed, he already would be in the area anyway – and certainly not solely to be present at the meet-and-confer. That is why we (a) consented to allow Mr. Mena to attend and (b) for his convenience, we moved the site of the meet-and-confer to our Philadelphia offices. Asserting now that defendant somehow already has incurred expenses in having Mr. Mena attend a meet-and-confer originally scheduled for four days hence is factually incorrect. Also, if defendant so wishes, we can cure that concern permanently by revoking our consent to his attendance at any meet-and-confer, no matter when scheduled.

Kindly comply with paragraph 9 of the Court's January 25, 2016 order; I will respond solely to communications from Mr. Gonzalez.

Sincerely,

**Roberto A. Rivera-Soto**  
Ballard Spahr LLP  
210 Lake Drive East - Suite 200  
Cherry Hill, New Jersey 08002  
Direct: 856.761.3416  
Fax: 856.761.1020  
[riverasotor@ballardspahr.com](mailto:riverasotor@ballardspahr.com)

---

**From:** Antonio Valiente [<mailto:avaliente@msslawpr.com>]  
**Sent:** Friday, January 29, 2016 2:50 PM  
**To:** Rivera-Soto, Roberto A. (NJ)  
**Cc:** Guillermo Mena; 'Marco Gonzalez'; Dora Monserrate  
**Subject:** RE: ABIM v. Salas Rushford  
**Importance:** High  
**Sensitivity:** Private

Dear Mr. Rivera-Soto,

I write to you as lead counsel designated by defendant in this case, admitted *pro hac vice* through local counsel, Marco A. Gonzalez, Jr.

The purpose of this note is to ask that you maintain the agreed upon date of the meet & confer that, as you correctly state, was scheduled immediately following the January 22<sup>nd</sup> hearing before the Honorable Magistrate Judge Waldor. As you may recall, during that hearing you also stated that should Mr. Gonzalez be, for any one reason or another unavailable, that things would be attended by other counsel representing defendant without a need to have to further delay matters.

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I once again ask and look forward to a reconsideration from your side and to meet and confer the considerable issues pending at your Philadelphia office on February 2<sup>nd</sup> at the agreed upon time.

Sincerely,  
Antonio Valiente  
Cel. 787-567-1234  
Tel. 787-620-5300  
Fax 787-620-5305



Monserrate, Simonet & Gierbolini  
Maramar Plaza – Suite 1120  
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---

**From:** Marco Gonzalez [<mailto:mgonzalez@ndslaw.com>]  
**Sent:** Friday, January 29, 2016 2:20 PM  
**To:** Rivera-Soto, Roberto A. <[RiveraSotoR@ballardspahr.com](mailto:RiveraSotoR@ballardspahr.com)>  
**Cc:** Antonio Valiente <[avaliente@msglawpr.com](mailto:avaliente@msglawpr.com)>; Guillermo Mena <[guillermo75@gmail.com](mailto:guillermo75@gmail.com)>  
**Subject:** RE: ABIM v. Salas Rushford

Dear Mr. Rivera-Soto,

I will relay your response to my client. We will get back to you regarding rescheduling.

On a personal note, I appreciate your concern and offer of best wishes for my mother. Thank you.

Best Regards,

Marco Gonzalez



**Marco A. Gonzalez Jr.**  
Nicoll Davis & Spinella LLP  
95 Route 17 South, Suite 316 | Paramus, NJ 07652  
office (201) 712-1616  
mobile (201) 317-3047 | fax (201) 712-9444

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---

**From:** Rivera-Soto, Roberto A. [<mailto:RiveraSotoR@ballardspahr.com>]  
**Sent:** Friday, January 29, 2016 1:00 PM  
**To:** Marco Gonzalez  
**Subject:** ABIM v. Salas Rushford

Dear Mr. Gonzalez:

As we discussed earlier today, you have advised that – due to an emergent medical matter with your mother, over whom you have a medical power of attorney – you will not be able to attend the meet-and-confer scheduled for

Tuesday, February 2, 2016; as you will recall, we agreed on that date immediately following the January 22, 2016 hearing before Magistrate Judge Waldor and we already have changed the site for that meet-and-confer from our Cherry Hill, NJ offices to our Philadelphia, PA offices in order to accommodate your co-counsel, Guillermo Mena, who you asked to be allowed to attend, to which we also agreed. You advised that, given your unavailability on February 2<sup>nd</sup>, your client wanted you to propose that we nonetheless retain the February 2, 2016 meet-and-confer date and that Mr. Antonio Valiente would take your place. I advised that, while my initial inclination was to reject that proposal and simply reschedule the meet-and-confer to a date when you could attend, I wanted to think about it a bit more.

I have done so; I also have consulted with my colleagues. In the end, it simply makes more sense – and is more consistent with Magistrate Judge Waldor's January 25, 2016 order (to which defendant consented) – to reschedule the meet-and-confer to a date when you are able attend and play the role that order commands.

Therefore, please check your calendar and let me know what alternate dates you propose for the meet-and-confer; I will check those against our schedules and get back to you.

On a personal note, please accept my most heartfelt wishes that your mother's health condition improves; she will be in my thoughts and prayers.

Sincerely,

**Roberto A. Rivera-Soto**  
Ballard Spahr LLP  
210 Lake Drive East - Suite 200  
Cherry Hill, New Jersey 08002  
Direct: 856.761.3416  
Fax: 856.761.1020  
[riverasotor@ballardspahr.com](mailto:riverasotor@ballardspahr.com)

# **EXHIBIT “F”**

**Rivera-Soto, Roberto A. (NJ)**

---

**From:** Rivera-Soto, Roberto A. (NJ)  
**Sent:** Tuesday, February 09, 2016 11:03 PM  
**To:** Marco Gonzalez, Esq.  
**Subject:** ABIM v. Salas Rushford

Dear Mr. Gonzalez:

I hope that your mother's health issue has been resolved and that she is well.

If you are back at work, please let me know when we can reschedule the cancelled "meet-and-confer." If you are still preoccupied tending to your mother, then that goes first; you can reach out after your mother is better.

Sincerely,

Sincerely,

**Roberto A. Rivera-Soto**  
Ballard Spahr LLP  
210 Lake Drive East - Suite 200  
Cherry Hill, New Jersey 08002  
Tel. 856.761.3416  
Fax 856.761.1020  
[riverasotor@ballardspahr.com](mailto:riverasotor@ballardspahr.com)

# **EXHIBIT “G”**

**Rivera-Soto, Roberto A. (NJ)**

---

**From:** Marco Gonzalez <mgonzalez@ndslaw.com>  
**Sent:** Tuesday, February 09, 2016 11:03 PM  
**To:** Rivera-Soto, Roberto A. (NJ)  
**Subject:** Automatic reply: ABIM v. Salas Rushford

I am currently traveling on business and will not have regular access to VM and email. If this is urgent please call the receptionist at 201-712-1616 and leave a message. Thank you.