

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IN RE WILMINGTON TRUST SECURITIES LITIGATION,)))))	Master Civ. No. 10-990-SLR-SRF (Consolidated Securities Class Action) UNDER SEAL
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MEMORANDUM ORDER

At Wilmington this 19th day of September, 2017, the court having considered the parties' submissions and oral argument regarding defendant Wilmington Trust Corporation's ("Wilmington Trust") motion to compel the deposition testimony of non-party Joseph Terranova ("Terranova") (D.I. 678), IT IS HEREBY ORDERED that Wilmington Trust's motion is denied without prejudice for the reasons set forth below.

1. Background. Plaintiffs¹ are institutional investors who purchased the common stock of WTC between January 18, 2008 and November 1, 2010 ("the class period"). (D.I. 149 at ¶¶ 25-30) Plaintiffs claim that WTC's lending practices were part of a "massive criminal conspiracy that 'fraudulently conceal[ed] the Bank's true financial condition' and 'deceive[d] regulators and the public.'" (*Id.* at ¶ 1) Plaintiffs commenced the instant civil action on November 18, 2010 (D.I. 1), and filed their fourth amended complaint on June 13, 2013 (D.I. 149).

2. Terranova was employed by Wilmington Trust Company (the "Bank") as a Relationship Manager until his promotion to Vice President / Division Manager of the Delaware

¹ Plaintiffs in this action are the Merced County Employees' Retirement Association, the Coral Springs Police Pension Fund, the St. Petersburg Firefighters' Retirement System, the Pompano Beach General Employees Retirement System, and the Automotive Industries Pension Trust.

Commercial Real Estate Division on January 22, 2008. (D.I. 678, Ex. C at ¶ 3) On April 10, 2013, Terranova was charged as a criminal defendant with conspiracy to commit bank fraud. (*Id.*) On May 8, 2013, Terranova entered into a guilty plea to the charge of conspiracy to commit bank fraud. (*Id.*, Ex. B) Terranova's sentencing was originally scheduled for September 9, 2013. (Crim. No. 13-39-GMS, D.I. 10) The sentencing was postponed until after September 26, 2016. No status report has been filed regarding the status of sentencing since that time.

3. On April 18, 2017, Terranova gave a videotaped deposition in the present action. (D.I. 679) During the course of the deposition, Terranova invoked his Fifth Amendment privilege in response to questions about the details described in his plea agreement, as well as questions about whether he entered a guilty plea. (*Id.*)

4. **Analysis.** Wilmington Trust's motion to compel Terranova's deposition testimony is denied without prejudice. Wilmington Trust seeks to depose Terranova regarding the facts admitted in Terranova's guilty plea, which would be duplicative. (D.I. 678) To the extent that Wilmington Trust seeks information beyond the scope of the guilty plea, Terranova's rights are protected by the Fifth Amendment, which provides that no person "shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. The scope of the questioning during Terranova's April 18, 2017 deposition supports the conclusion that the information being sought could support charges for additional crimes beyond those identified in the guilty plea. (D.I. 679 at 280-84) (asking whether Terranova obstructed justice, committed perjury, or accepted financial incentives from bank clients)

5. Despite the plea agreement, Terranova could face criminal prosecution for possible other crimes revealed by the deposition testimony which were not the subject of the plea agreement. Given that Terranova's deposition answers could subject him to prosecution for

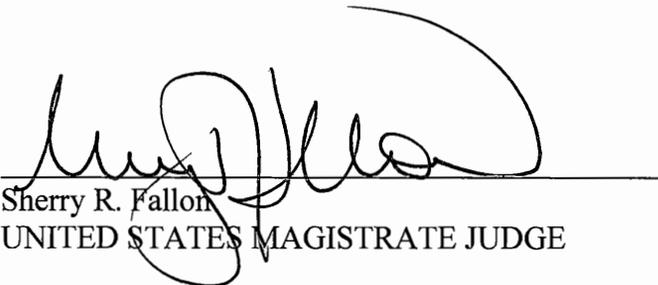
other crimes, the court will uphold Terranova's invocation of his Fifth Amendment rights. *See Malloy v. Hogan*, 378 U.S. 1, 13 (1964) (holding that a defendant's refusal to answer seemingly innocuous questions regarding a gambling investigation was protected by the Fifth Amendment, even though he could not have been prosecuted again and there was no evidence of another crime, because he could potentially be linked to a more recent crime for which he might face prosecution); *see also United States v. Yurasovich*, 580 F.3d 1212, 1218 (3d Cir. 1978).

6. Moreover, Terranova has not yet been sentenced in the criminal proceeding, and his guilty plea does not prohibit the sentencing judge from taking into account his deposition testimony when determining an appropriate sentence for the existing criminal charges. *See Mitchell v. U.S.*, 526 U.S. 314, 326 (1999) ("Where the sentence has not yet been imposed a defendant may have a legitimate fear of adverse consequences from further testimony.").

7. **Conclusion.** In view of the foregoing analysis, the motion to compel Terranova's deposition testimony (D.I. 678) is denied without prejudice.

8. This Memorandum Order is filed pursuant to 28 U.S.C. § 636(b)(1)(A), Fed. R. Civ. P. 72(a), and D. Del. LR 72.1(a)(2). The parties may serve and file specific written objections within fourteen (14) days after being served with a copy of this Memorandum Order. Fed. R. Civ. P. 72(a). The objections and responses to the objections are limited to ten (10) pages each.

9. The parties are directed to the court's Standing Order For Objections Filed Under Fed. R. Civ. P. 72, dated October 9, 2013, a copy of which is available on the court's website, www.ded.uscourts.gov.


Sherry R. Fallon
UNITED STATES MAGISTRATE JUDGE