

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

In re:)	Chapter 11
)	
Zohar III, Corp., ¹)	Case No. 18-10512 (KBO)
)	
Debtor.)	(Jointly Administered)
<hr/>)	
)	
DAVID DUNN, AS LITIGATION)	
TRUSTEE FOR ZOHAR LITIGATION)	
TRUST-A,)	
)	
Plaintiff,)	
)	
v.)	Adv. Proc. No. 20-50534 (KBO)
)	
Patriarch Partners, LLC;)	
Patriarch Partners VIII, LLC;)	
Patriarch Partners XIV, LLC;)	
Patriarch Partners XV, LLC;)	
Phoenix VIII, LLC; Octaluna LLC;)	
Octaluna II LLC; Octaluna III)	
LLC; Ark II CLO 2001-1, Limited;)	
Ark Investment Partners II, LP;)	
Ark Angels VIII, LLC; Patriarch)	
Partners Management)	
Group, LLC; Patriarch Partners)	
Agency Services, LLC; and Lynn)	
Tilton,)	
)	
Defendants, and)	
)	
180S, Inc.; Black Mountain)	
Doors, LLC; Croskill Home, LLC;)	

¹ The Debtor in this chapter 11 case, along with the last four digits of its federal tax identification number, is Zohar III, Corp. (9612). The Debtor’s address is c/o Province, LLC 70 Canal Street, Suite 12E, Stamford, CT 06902. In addition to Zohar III, Corp., the Debtor’s affiliates include the following debtors whose bankruptcy cases have been closed prior to the date hereof, along with the last four digits of their respective federal tax identification numbers and chapter 11 case numbers: Zohar II 2005-1, Corp. (4059) (Case No. 18-10513); Zohar CDO 2003-1, Corp. (3724) (Case No. 18-10514); Zohar III, Limited (9261) (Case No. 18-10515); Zohar II 2005-1, Limited (8297) (Case No. 18-10516); Zohar CDO 2003-1, Limited (5119) (Case No. 18-10517). All motions, contested matters, and adversary proceedings that remained open as of the closing of such cases, or that are opened after the date thereof, with respect to such closed-case debtors, are administered in this remaining chapter 11 case.

DURO TEXTILES, LLC; GLOBAL
AUTOMOTIVE SYSTEMS, LLC;
HERITAGE AVIATION, LTD.; INTREPID
U.S.A., INC.; IMG HOLDINGS, INC.;
JEWEL OF JANE, LLC; MOBILE
ARMORED VEHICLES, LLC; SCAN-
OPTICS, LLC; SILVERACK, LLC; STILA
STYLES, LLC; SNELLING STAFFING,
LLC; VULCAN ENGINEERING, INC; and
XPIENT SOLUTIONS, LLC,

Nominal Defendants.

PATRIARCH PARTNERS VIII, LLC;
PATRIARCH PARTNERS XIV, LLC;
PATRIARCH PARTNER XV, LLC;
OCTALUNA LLC; OCTALUNA II LLC;
OCTALUNA III LLC; PATRIARCH
PARTNERS AGENCY SERVICES, LLC;
and PATRIARCH PARTNERS, LLC,

Counterclaim and Third-
Party Claimants,

v.

ZOHAR CDO 2003-1, LIMITED; ZOHAR
CDO 2003-1, CORP.; ZOHAR II 2005-1,
LIMITED; ZOHAR II 2005-1, CORP.;
ZOHAR III, LIMITED; ZOHAR III,
CORP.,

Counterclaim and Third-
Party Defendants.

DAVID DUNN, as Litigation Trustee for
Zohar Litigation Trust-A,

Plaintiff,

v.

Adv. Pro. No. 20-50776 (KBO)

LYNN TILTON, PATRIARCH)
 PARTNERS, LLC, PATRIARCH)
 PARTNERS VIII, LLC, PATRIARCH)
 PARTNERS XIV, LLC, PATRIARCH)
 PARTNERS XV, LLC, PATRIARCH)
 PARTNERS AGENCY SERVICES, LLC,)
 PATRIARCH PARTNERS)
 MANAGEMENT GROUP, LLC,)
 OCTALUNA LLC, OCTALUNA II LLC,)
 ARK II CLO-2001-1 LIMITED, ARK)
 INVESTMENT PARTNERS II, L.P., LD)
 INVESTMENTS, LLC, ZOHAR)
 HOLDING LLC, AND ZOHAR)
 HOLDINGS, LLC,)
)
)
 Defendants.)

**MEMORANDUM ORDER ON PATRIARCH’S MOTION TO COMPEL ZOHAR
LITIGATION TRUST-A TO PRODUCE MBIA DOCUMENTS**

1. On January 26, 2024, Patriarch² filed *Patriarch’s Motion to Compel Zohar Litigation Trust-A to Produce MBIA Documents* [D.I. 536] (the “Motion”). The Trust opposes the Motion. Briefing is complete. See D.I. 537, 538, 556, 557, 567, 572. Oral argument is set for May 6, 2024. Following review and consideration of the briefing and the various documents submitted by the parties in support of their respective positions, the Court cancels argument³ and hereby sets forth its findings, conclusions, and rulings on the Motion.

2. Rule 26(b)(1) of the Federal Rules of Civil Procedure permits discovery regarding any nonprivileged matter that is (1) “relevant to any party’s claim or defense” and (2) “proportional to the needs of the case”. FED. R. CIV. P. 26(b)(1). To determine proportionality, the rule requires courts to consider “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 issue, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” *Id.* While “the scope of discovery is broad, it is not unlimited. The probative value of the information requests should be balanced against the costs and burdens imposed upon the producing party.” *Inventio AG v. ThyssenKrupp Elevator Americas Corp.*, 662 F. Supp. 2d 375, 381 (D. Del. 2009). Even if requested discovery is relevant, Rule 26(b)(2)(C) empowers courts to impose limits if it is, for example, “unreasonably cumulative or duplicative” or obtainable “from some other source that is more convenient, less burdensome, or less expensive”. See FED. R. CIV. P. 26(b)(2)(C). Similarly, Rule 26(c)(1) permits courts, for good

² Capitalized terms used but undefined herein shall have the meanings ascribed to them in the Motion.

³ For the avoidance of doubt, oral argument on the motions found at docket numbers 523, 529, 533, and 536 remains scheduled to proceed unless cancelled by further order of the Court.

cause, to issue orders to protect a party from “annoyance, embarrassment, oppression, or undue burden or expense”. *See* FED. R. CIV. P. 26(c)(1).

3. Patriarch’s Motion seeks an order compelling the Trust to produce documents in response to 24 pending requests for the production of documents from MBIA Insurance Corporation (“MBIA”).⁴ One disputed request is from *Patriarch’s First Request for the Production of Documents* (the “First RFP”) and the remainder are from Patriarch’s Second Request for the Production of Documents (the “Second RFP”). Patriarch also seeks an order compelling the Trust to re-respond to all requests from the First and Second RFP using an expanded set of search terms (the “September 19 Search Terms”). Finally, the Motion seeks an order compelling the Trust to collect and search documents from three additional MBIA custodians and to enlarge the collection period for three already agreed-upon MBIA custodians. The Trust opposes the relief as either irrelevant, overly broad, or unduly burdensome. The Court’s ruling on each issue is below.

4. The Motion is **DENIED** to the extent that it seeks to compel the Trust to produce documents responsive to Document Requests No. 3, 4, 6, 7, 8, 10, 12, 15, 16, 18, 19, 20, 21, 23, 24, 26, 27, 28, and 30 from the Second RFP. While Patriarch offers an explanation of the relevant information sought by these requests, they are overly broad on their face, not narrowly tailored to obtain only the relevant documents sought, and unduly burdensome. Patriarch had the opportunity to refine the requests to specifically target the topics sought but did not do so. Moreover, Document Request No. 10 is duplicative of Document Request No. 5 to the extent that it seeks documents and communications relating to the valuation of any Portfolio Company.

5. The Motion is **DENIED** to the extent that it seeks to compel the Trust to produce documents responsive to Document Request No. 29 from the Second RFP. Patriarch has failed to show that the request is relevant to any party’s claim or defense in the above-captioned proceedings.

6. The Motion is **GRANTED** to the extent that it seeks to compel the Trust to produce all documents responsive to Document Request No. 27 from the First RFP and Document Requests No. 5, 22, and 25 from the Second RFP. The requests seek discovery relevant to the claims and defenses of this proceeding, and the Trust has failed to sufficiently show that they are overly broad and unduly burdensome.

7. The Motion is **DENIED** to the extent that it seeks to compel the Trust to apply the September 19 Search Terms. Application of these search terms will yield 43,133 documents. Such requests are overly broad on their face, not narrowly tailored, and unduly burdensome. Patriarch has also failed to show the necessity for the application of these search terms in addition to those employed by the Trust to date.

8. The Motion is **GRANTED** to the extent that it seeks to compel the Trust to collect documents from Anthony McKiernan for the years 2007 and 2008 and produce responsive documents from that collection. The documents provided by the parties indicate that this custodian is likely to possess information relevant to the claims and defenses in these proceedings during

⁴ The Trust has agreed to oversee the review and production of MBIA documents.

this time period, and the Trust has failed to show that the collection and production of documents from this period would cause undue burden.

9. The Motion is **GRANTED** to the extent that it seeks to compel the Trust to collect documents from Bill Fallon for the years 2008 through 2011, and produce responsive documents from that collection. The documents provided by the parties indicate that this custodian is likely to possess information relevant to the claims and defenses in these proceedings during this time period, and the Trust has failed to show that the collection and production of documents from this period would cause undue burden.

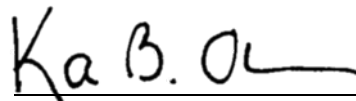
10. The Motion is **GRANTED** to the extent that it seeks to compel the Trust to collect documents from Kenneth Epstein from May 16, 2017 through December 31, 2017, and produce responsive documents from that collection. The documents provided by the parties indicate that this custodian is likely to possess information relevant to the claims and defenses in these proceedings during this time period, and the Trust has failed to show that the collection and production of documents from this period would cause undue burden.

11. The Motion is **GRANTED** to the extent that it seeks to compel the Trust to search for and produce responsive documents from MBIA custodians Amy Mauer-Litos, Una Kearns, and Michael Murtagh according to the parties' agreed-upon search parameters. The documents provided by the parties indicate that these custodians are likely to possess information relevant to the claims and defenses in these proceedings during this time period, and the Trust has failed to show that the collection and production of documents from this period would cause undue burden.

12. All other relief requested in the Motion is **DENIED**.

13. The parties are directed to meet and confer in an effort to reach agreement on the appropriate deadline for the Trust to respond to the requests as required by this Order.

Dated: April 17, 2024
Wilmington, DE



Karen B. Owens
United States Bankruptcy Judge