



**Plaintiff-Assignee Of Claims Against Trustee Escapes Sanctions For Failure To Produce Assignor's Documents**

By: David Rabinowitz

Hard on the heels of our recent alert about the duties of an assignee of claims against a trustee comes another decision in a similar case that substantially undermines the practical effect of those duties.

We reported a decision in [Royal Park Investments SA/NV, v. Deutsche Bank Trust Company](#) that held that an assignee of a claim is obligated to produce documents demanded in litigation that are held by the assignor as if the assignee has the documents itself, whether it has them or not. Sanctions in federal court for failure to produce documents can range up to dismissal of the case.

The plaintiff assignee of claims in another Royal Park case, [Royal Park Investments SA/NV v. U.S. Bank National Association](#), did not, despite a previous decision mandating production of assignor’s documents, produce the documents demanded. Defendant trustee accordingly moved for sanctions: for dismissal of plaintiff as the class representative and for an order precluding proof by plaintiff on related issues.

Despite plaintiff assignee’s failure to produce, the motion for sanctions was denied. The Court ruled that, under the facts in the case, defendant trustee had to prove prejudice from its inability to get the documents in order to justify sanctions. The Court found that the missing documents would not be relevant or helpful to the trustee even if produced. The Court said that the trustee could return and seek sanctions again if it could prove prejudice.

**Practice Point:** Although this decision removes some of the teeth from the assignee’s duty to obtain from assignor all documents that might be relevant to a litigation over the assigned rights, it remains true that assignees are well-advised to obtain all of their assignors’ documents at the time of assignment and the assignors’ agreement to cooperate in enforcing the assigned rights. While the plaintiff, Royal Park, has at least temporarily escaped any sanctions from its failure to produce, it will not be so lucky if the trustee can later show the Court that any missing documents might help the trustee in the litigation. Obviously, the trustee need not show that the documents would definitely help trustee – that would require the trustee to know the content of documents it has not seen. It would be enough for the trustee to show that the documents might be relevant to a contested issue (and would not, by their nature, help the plaintiff assignee rather than the trustee).

[Royal Park Investments SA/NV, v. U.S. Bank National Association](#), 2016 WL 6705773 (S.D.N.Y. 11/9/16)

# MOSES & SINGER LLP

Since 1919, Moses & Singer has provided legal services to diverse types of businesses and high-net-worth individuals. Among the firm's broad array of U.S. and international clients are leaders in banking and finance, entertainment, media, real estate, healthcare, advertising, and the hotel and hospitality industries.

In a world of giant, multi-office law businesses assembled by mergers, built on associate leverage and driven by billable hour quotas, the needs of clients can get lost. Moses & Singer offers a difference. That difference is the attention of leading practitioners-partners in the firm-with the experience and knowledge to provide our clients creative, cost effective, result-oriented representation. The direct involvement of our partners means aggressive, focused problem solving. The firm's attorneys concentrate their practices in the following areas:

- Accounting Law Practice
- Advertising
- Asset Protection
- Banking and Finance
- Business Reorganization, Bankruptcy and Creditors' Rights
- Corporate/M&A
- Employment and Labor
- Entertainment
- Family Office
- Global Outsourcing and Procurement
- Healthcare
- Hospitality, Food Service and Restaurants
- Income Tax
- Intellectual Property
- Internet/Technology
- Legal Ethics and Law Firm Practice
- Litigation
- Matrimonial and Family Law
- Privacy
- Private Funds
- Promotions
- Real Estate
- Securities and Capital Markets
- Securities Litigation
- Trusts and Estates
- White Collar Criminal Defense and Government Investigations

## Disclaimer

Viewing this or contacting Moses & Singer LLP does not create an attorney-client relationship.

This is intended as a general comment on certain developments in the law. It does not contain a complete legal analysis or constitute an opinion of Moses & Singer LLP or any member of the firm on the legal issues herein described. This contains information that may be modified or rendered incorrect by future legislative or judicial developments. It is recommended that readers not rely on this general guide in structuring or analyzing individual transactions or matters but that professional advice be sought in connection with any such transaction or matter.

## Attorney Advertising

It is possible that under the laws, rules or regulations of certain jurisdictions, this may be construed as an advertisement or solicitation.

Copyright © 2016 Moses & Singer LLP  
All Rights Reserved