

U.S. Department of Justice
United States Attorney
Southern District of Florida

500 South Australian Ave., Suite 400

West Palm Beach, FL 33401
[REDACTED]

Facsimile: [REDACTED]
June 6, 2007

VIA FACSIMILE

Robert I. Targ, Esq.
Diaz Reus Rolff & Targ LLP
100 S.E. Second Street, Suite 2600
Miami, FL 33131

Re: Subpoena to Paul Lavery

Dear Mr. Targ:

Thank you for your letter of June 4, 2007. Following receipt of your letter, I conducted some additional research regarding your blanket assertion of the attorney-client and work product privileges prior to the appearance before the grand jury. My research shows that the person asserting the privilege bears the burden of establishing its applicability. *See, e.g., United States v. Schaltenbrand*, 930 F.2d 1554 (11th Cir. 1991); *United States v. Muñoz*, 233 F.3d 1117 (9th Cir. 2000); *Hawkins v. Stables*, 148 F.3d 379 (4th Cir. 1998); *Motley v. Marathon Oil Co.*, 71 F.3d 1547 (10th Cir. 1995); *Christman v. Brauvin Realty Advisors, Inc.*, 185 F.R.D. 251 (N.D. Ill. 1999). Furthermore, blanket assertions are not proper, and the assertion must be made on a question-by-question and document-by-document basis. *See, e.g., Nguyen v. Excel Corp.*, 197 F.3d 200 (5th Cir. 1999); *Clarke v. American Commerce Nat. Bank*, 974 F.2d 127 (9th Cir. 1992); *United States v. White*, 950 F.2d 426, 430 (7th Cir. 1991). I do not intend to ask questions that fall within these privileges and the documents requested also do not fall within either of these privileges.

Accordingly, I have enclosed a revised grand jury subpoena that provides, in greater detail, the list of documents requested. I have asked for Mr. Lavery to appear on June 19, 2006, so that, if you believe that you have a basis for a pre-appearance motion for protective order or motion to quash, you will have time to prepare and file that motion. In case you decide to file such a motion, United States District Judge Middlebrooks is assigned to handle matters related to the relevant grand jury. Pursuant to Fed. R. Crim. P. 6(e)(6), any such motion must be filed under seal.

If you elect not to file such a motion, I will expect Mr. Lavery's appearance before the grand jury on June 19, 2006. Please contact myself or Special Agent [REDACTED] on June 18, 2006, to confirm the time for appearance. If a motion is not filed and Mr. Lavery does not appear, I will proceed in accordance with Fed. R. Crim. P. 17(g).

If you have any questions, please do not hesitate to call me.

Sincerely,
R. Alexander Acosta
United States Attorney

By: [REDACTED]

Assistant United States Attorney

cc: [REDACTED] FBI (with enclosure)