JUDGMENT CREDITOR: MOTION TO COMPEL- SAMPLE OF AUTHORITIES

A. The Scope Of Judgment Creditor Discovery.

The scope of post-judgment discovery is quite broad. As was explained by the U.S. Court of Appeals for the Eighth Circuit:

> The rules for depositions and discovery "are to be accorded a broad and liberal treatment." Hickman v. Taylor, 329 U.S. 495, 507, 67 S.Ct. 385, 91 L.Ed. 451 (1947). The right to conduct discovery applies both before and after judgment. *See* United States v. McWhirter, 376 F.2d 102, 106 (5th Cir. 1967). Rule 69(a) of the Federal Rules of Civil Procedure specifically provides the right to post-judgment discovery "in aid of the judgment."
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> [A judgment creditor] "is entitled to a very thorough examination of the judgment debtor." Caisson Corp. v. County West Building Corp., 62 F.R.D. 331, 335 (E.D. Pa. 1974).
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> The law allows judgment creditors to conduct full post-judgment discovery to aid in executing judgment. ***
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> [While a] District Court can, however, limit the scope of the material about which [the judgment creditor] may depose [the judgment debtor and a third party], if it has good reason to do so[,] *** we stress that the presumption should be in favor of full discovery of any matters arguably related to [the judgment creditor's] efforts to trace [the judgment debtor's] assets and otherwise enforce its judgment.

Credit Lyonnais, S.A. v. SGC Int'l, Inc., 160 F.3d 428, 430, 431 (8th Cir. 1998) (reversing

an order denying a motion to compel post-judgment discovery); *See also* FDIC v. LeGrand, 43 F.3d 163, 172 (5th Cir. 1995) ("The scope of post judgment discovery is very broad to permit a judgment creditor to discover assets upon which execution may be made."); Baker v. Limber, 647 F.2d 912, 920 (9th Cir. 1981) ("The purpose of a Rule 69 proceeding is to identify assets from which a judgment might be satisfied.").

Several other courts have also recognized that the "scope of post-judgment discovery [under the Federal Rules of Civil Procedure] is broad, enabling a judgment creditor to obtain discovery not only of the debtor's current assets, but also of past financial transactions which could lead to the existence of ... concealed or fraudulently conveyed assets." *See* Dering v. Pitassi, 1988 WL 115806 at * 1 (E.D. Pa. 1988); First Fidelity Bank, N.A. v. Nissenbaum, 1991 WL 46456 at * 1 (E.D. Pa. 1991); accord OHM Resource Recovery Corp. v. Industrial Fuels & Resources, Inc., 1991 WL 146234 at * 2 (N.D. Ind. 1991) (A judgment creditor is "clearly entitled to inquire into past financial records and transactions in order to determine the existence of concealed and fraudulently transferred assets."); United States v. Neumann, 1999 WL 156151 at * 1 (D. Mass. 1999) (following Credit Lyonnais, S.A., supra, and granting United States' motion to compel third party to comply with subpoena seeking financial records of dental practice served under Fed.R.Civ.P. 45 and 69, because information may lead to the discovery of judgment debtor's concealed assets).

Furthermore, there is no territorial limit to post-judgment discovery: "[a] judgment creditor is entitled to discover the identity and location of any of the judgment debtor's assets, wherever located." Nat'l Service Indus., Inc. v. Valfla Corp., 694 F.2d 246, 250 (11th Cir. 1982); accord Minpeco, S.A. v. Hunt, 1989 WL 57704 at * 1 (S.D.N.Y. 1989) (rejecting

argument that discovery of assets restricted to state in which action is pending).

Even discovery requests that might be burdensome do not outweigh a judgment creditor's right for the information "to secure its judgment." Minpeco, S.A. v. Hunt, 1989 WL 57704 at * 2.

B. The Objection Was Untimely.

The judgment debtor's failure to timely assert his Fifth Amendment objection to the United States' discovery requests constitutes a waiver of that objection to each and every question set forth in the interrogatories and to each and every request for production of documents:

> Generally, in the absence of an extension of time or good cause, the failure to object to interrogatories within the time frame fixed by Rule 33, FRCivP, constitutes a waiver of any objection. This is true even if an objection that the information sought is privileged. *** Clearly, the Fifth Amendment is not a self executing mechanism. It can be affirmatively waived or lost by not asserting it in a timely fashion. Manness v. Meyers, 419 U.S. 449, 466, 95 S. Ct. 584, 595, 42 L.Ed.2d 574 (1975).

Davis v. Fendler, 650 F.2d 1154, 1160 (9th Cir. 1981) (citation omitted).

C. The Judgment Debtor Has Made No Showing That The Fifth Amendment Privilege Properly Applies.

If the Court, nevertheless, holds that the judgment debtor's assertion of the Fifth Amendment privilege is timely, his bald objection is invalid: the judgment debtor has failed to make any showing that answering the interrogatories and document requests, and producing the requested documents would incriminate him under the Fifth Amendment.

The Fifth Amendment to the U.S. Constitution provides that "[n]o person ... shall be compelled in any criminal case to be a witness against himself." "This protection applies only when the testimony furnished would incriminate the witness." In re Grand Jury Proceedings

(Marsoner), 40 F.3d 959, 961 (9th Cir. 1994) (citing Doe v. United States, 487 U.S. 201, 207 (1988) (citing Fisher v. United States, 425 U.S. 291, 409 (1976)). "The protection also applies only to a communication that is of 'testimonial or communicative nature.'" In re Grand Jury Proceedings (Marsoner), 40 F.3d at 961 (quoting Doe v. United States, 487 U.S. at 210). Accord United States v. Doe, 465 U.S. 605, 611 (1984).

Concomitantly, the act of producing records might implicate the Fifth Amendment, but this, like the objection to giving testimony, is a question that must be determined by the District Court in the first instance. United States v. Doe, 465 U.S. at 613-614; Capitol Products Corp. v. Hernon, 457 F.2d 541, 542 (8th Cir. 1972) (the court determines the validity of the Fifth Amendment claim). "[A]n individual may claim an act of production privilege to decline to produce documents, the contents of which are not privileged, where the act of production is, itself (1) compelled, (2) testimonial, and (3) incriminating." In re Three Grand Jury Subpoenas Duces Tecum, 191 F.3d 173, 178 (2d Cir. 1999) (citing United States v. Doe, 465 U.S. at 612-614)); S*ee also* United States v. McLaughlin, 126 F.3d 130, 133 (3d Cir. 1996) ("'[B]ecause the act of complying with [a] government [subpoena] testifies to the existence, possession, or authenticity of the things produced,' such production might implicate Fifth Amendment rights.") (citations omitted), cert, denied, 524 U.S. 951 (1998). Accord United States v. Hubbell, 530 U.S. 27, 36-37 (2000).1/

1/The act of production "may require incriminating testimony in two situations: (1) 'if the existence and location of the subpoenaed papers are unknown to the government'; or (2) where the production would 'implicitly authenticate' the documents." In re Grand Jury Subpoena Duces Tecum, 1 F.3d 87, 93 (2d Cir. 1993) (quoting United States v. Fox, 721 F.2d 32, 36 (2d Cir. 1983)), cert. denied, 510 U.S. 1091 (1994); cf. United States v. Hubbell, 167 F.3d 552, 567-68 & n. 21 (D.C. Cir. 1999) (listing four similar factors), aff'd, 530 U.S. at 36-38, 44-45.

An objection based on the Fifth Amendment privilege must, however, be grounded in a substantial likelihood of criminal prosecution. The objector bears the burden of demonstrating a substantial likelihood of incrimination. *See* Hoffman v. United States, 341 U.S. 479, 486-87 (1951); Marchetti v. United States, 390 U.S. 39, 53 (1968) (the likelihood of a criminal prosecution must be more than "merely trifling or imaginary."); Zicarelli v. N.J. State Comm'n Of Investigation, 406 U.S. 472, 478 (1972); accord United States v. Raniere, 895 F. Supp. 699, 704-705 (D. N.J. 1995) (taxpayer must provide more "than mere speculative, generalized allegations of possible tax-related prosecution .... The taxpayer must be faced with substantial and real hazards of self-incrimination.") (quoting United States v. Argomaniz, 925 F.2d 1349, 1353 (11th Cir. 1991)); United States v. Kowalik, 809 F. Supp. 1571, 1577 (S.D. Fla. 1992) ("a claimant must show specifically and concretely that she has a legitimate fear of criminal indictment if she complies with an IRS summons, and that the particular question or request for production of documents would 'furnish a link in the chain of evidence needed to prosecute the claimant for a federal crime.'" (quoting Hoffman v. United States, 341 U.S. at 486), aff'd, 12 F.3d 218 (11th Cir. 1993). "When the danger [of self-incrimination] is not readily apparent from the implications of the question asked or the circumstances surrounding the inquiry, the burden of establishing its existence rests on the person claiming the privilege." Estate of Fisher v. Commissioner, 905 F.2d 645, 649 (2d Cir. 1990) (citations omitted).

The blanket or general assertion of a Fifth Amendment privilege to resist discovery is insufficient as a matter of law. *See* Nat'l Life Ins. Co. v. Hartford Accident & Indemnity Co., 615 F.2d 595 (3d Cir. 1980); United States v. Allshouse, 622 F.2d 53, 56 (3d Cir.

1980); ICC v. Gould, 629 F.2d 847, 861 (3d Cir. 1980), cert. denied, 449 U.S. 1077 (1981)). Instead, the Fifth Amendment privilege must be asserted on a question-by-question, document-by document basis. Nat'l Life Ins. Co., 615 F.2d at 597-599; Allshouse, supra, at 56. That requirement "serves a dual purpose: 'First, it helps the court in making an assessment of whether the privilege is justified with respect to the particular question being asked. Additionally it prevents the taxpayer from using a blanket claim of privilege as a shield for unprivileged evidence of wrongdoing.'" United States v. Burgess, 1999 WL 46625 at *1 (E.D. Pa. 1999) (quoting United States v. Allshouse, 622 F.2d at 56). And, it is for the Court, and not the taxpayer, to determine whether the Fifth Amendment privilege has been validly invoked. Rogers v. United States, 340 U.S. 367, 374 (1951); United States v. Argomaniz, 925 F.2d 1349, 1355 & n. 13 (11th Cir. 1991); United States v. Fox, 721 F.2d 32, 40 (2d Cir. 1983) ("'The witness is not exonerated from answering [or producing documents] merely because he declares that in so doing he would incriminate himself--his say-so does not of itself establish the hazard of incrimination. It is for the court to say whether his silence is justified ....'") (quoting Hoffman v. United States, 341 U.S. at 486); accord Steinbrecher v. Commissioner, 712 F.2d 195, 197, 198 (5th Cir. 1983) (Taxpayers' bald assertions that if they answered any questions or produced any evidence, the information thereby revealed might be used against them "gave absolutely no indication about the issues with respect to which they feared prosecution."); Davis v. Fendler, 650 F.2d at 1160 ("It is for the trial judge to determine if silence is justified; a clamant's own 'say so' does not of itself establish the hazard of incrimination").

In this case, the judgment debtor's blanket Fifth Amendment objection to the interrogatories and document requests through his attorney's untimely letter is insufficient,2/ and makes no showing that answering the discovery and producing documents will incriminate him. Accordingly, the judgment debtor must demonstrate to the Court how each interrogatory and each document request presents a real danger of incrimination, and it is for the Court to determine whether the Fifth Amendment objection is validly invoked under the authorities cited above.

In a similar case in which the United States sought discovery in aid of execution of a judgment, the U.S. Court of Appeals for the Sixth Circuit held:

> [I]t is not self-evident that every disclosure of a disposition of [the judgment debtor's] assets would form a link in the chain of evidence of some crime. Hatchett concededly did not pay his taxes, but he had filed his returns, and the Government already has obtained a judgment against him. The interrogatory is apparently aimed at enforcing the judgment, and it is unclear from the record why appellant believes answering the interrogatory might further incriminate him. On remand, Hatchett must explain how the interrogatory raises a reasonable fear of incrimination. A mere blanket assertion of the privilege will not suffice.

United States v. Hatchett, 862 F.2d 1249, 1251 (6th Cir. 1989) (affirming order finding

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2/ An attorney's letter asserting a blanket Fifth Amendment privilege is not a proper vehicle for a taxpayer to assert a Fifth Amendment objection. Only the client may assert the Fifth Amendment privilege, because the privilege is a personal one. *See* United States v. Schmidt, 816 F.2d 1477, 1481 & n.3 (10th Cir. 1987) (IRS summons enforcement proceeding against taxpayer as sole proprietor; attorney's Fifth Amendment objection for taxpayer was improper) (citing Kastigar v. United States, 406 U.S. 441, 445 (1972)). *See also* Torres v. Kuzniasz, 936 F. Supp. 1201, 1211 (D.N.J. 1996) (non-IRS case) (citing United States v. O'Neill, 619 F.2d 222, 226 (3d Cir. 1980) (citing Rogers v. United States, 340 U.S. 367, 371 (1951)). *See also* United States v. Haddad, 527 F.2d 537, 539 (6th Cir. 1975) (tax case) (citing, among other cases, Couch v. United States, 409 U.S. 322, 328 (1973)), cert. denied, 425 U.S. 974 (1976); United States v. Mayers, 512 F.2d 637, 639 (6th Cir. 1975).

judgment debtor in contempt).

Indeed, in another similar case, the U.S. Court of Appeals for the Eighth Circuit further explained:

> In the present case, nothing either inherent in the questions or in the setting in which they were asked suggests that the [judgment debtor] was confronted by a substantial and real hazard of incrimination. The questions themselves were innocuous. There was nothing to link the defendant with any criminal investigation or proceeding. The defendant has not alleged that the purpose of the examination was anything other than an ordinary search of his assets in order to satisfy the judgment against him. *** Furthermore, we do not perceive, in statutory provisions for disclosure in aid of execution of judgment, any inherent dangers of self-incrimination such as are present in some statutory disclosure schemes.

Capitol Products Corp. v. Hernon, 457 F.2d at 543.

And, as was stated by the U.S. Court of Appeals for the Ninth Circuit:

> Interrogatories 30, 32 and 37 were directed specifically at what assets, if any, were owned by Doff. His initial answers left much to be desired in terms of specificity and made reasonable the district court's order that additional answers be provided. The invocation of the [Fifth Amendment] privilege ... with respect to providing additional answers was accompanied by nothing other than a bald assertion of the privilege. In no way does it appear that more responsive answers would incriminate Doff. That such answers might assist Brunswick in collecting the amount of its debt does not amount to incrimination within the scope of the privilege. A debtor such as Doff cannot conceal such assets as he might own merely by uttering the incantation, "I hereby invoke the Fifth Amendment to the United States Constitution and thus refuse to answer this interrogatory on the grounds that the answer may tend to incriminate me." *** It is not evident in which the questions were asked that responsive answers or explanations would incriminate.

Brunswick Corp. v. Doff, 638 F.2d 108, 110 (9th Cir.), cert. denied, 454 U.S. 862 (1981).

There is no Fifth Amendment privilege regarding the contents of voluntarily prepared documents. *See* Baltimore City Dep't of Social Services v. Bouknight, 493 U.S. 549, 555 (1990); United States v. Hubbell, 530 U.S. 27, 35-36 (2000) ("[A] person may be required to produce specific documents even though they contain incriminating assertions of fact or belief because the creation of those documents was not "compelled" within the meaning of the privilege. *** It is clear, therefore, that respondent ... could not avoid compliance with the subpoena served on him merely because the demanded documents contained incriminating evidence, whether written by others or voluntarily prepared by himself.").

Similarly, no Fifth Amendment privilege would apply to documents showing a direct or indirect ownership or control in domestic or foreign corporations, partnerships, or trusts (see document request Nos. 6, 7, 12, and interrogatory No. 4). *See* Braswell v. United States, 487 U.S. 99 (1988) (one-person corporation); Bellis v. United States, 417 U.S. 85 (1974) (law firm); United States v. Raniere, 895 F. Supp. at 706 (one-man corporation, taxpayer who was summonsed in representative capacity could not resist production of corporate records under Fifth Amendment) (following Braswell); Watson v. Commissioner, 690 F.2d 429, 431 (5th Cir. 1982) (Fifth Amendment privilege does not extend to documents of an artificial entity such as a trust, held by an individual in a representative capacity) (citing, among other cases, Bellis, supra); United States v. Kennedy, 122 F. Supp.2d 1195, 1199 (N.D. Okl. 2000) (IRS summonses enforced against trustee of two trusts over Fifth Amendment objection, because trustee held documents in representative capacity); accord In re Grand Jury Subpoena, 973 F.2d 45, 50 (1st Cir. 1992). And if a

domestic or foreign proprietorship were involved, only the act of production might be a proper objection assuming that the judgment debtor demonstrated real, and not imaginary, hazards of self-incrimination. *See* United States v. Doe, 465 U.S. at 612.

The Supreme Court's decision in Hubbell, supra, does not provide a blanket shield under the act of production doctrine for persons subpoenaed or summoned in their individual capacities where the government has knowledge or information that the person has possession of the requested documents. In United States v. Teeple, 286 F.3d 1047 (8th Cir. 2002), the IRS served a summons on an individual taxpayer, because he had failed to file tax returns. When the taxpayer failed to comply with the summons, the United States filed suit to enforce. The district court ordered the summons enforced over the taxpayer's Fifth Amendment objection under the act of production doctrine. The taxpayer was held in contempt for not complying with the enforcement order and was incarcerated. The Eighth Circuit affirmed, and held that Hubbell was inapposite, because the "act of producing the requested documents in this case falls within what the [Supreme] Court in Fisher [v. United States, 425 U.S. 391, 410-413 (1976)] described as a 'foregone conclusion.' In Fisher, the Court explained that where the 'existence and location of the papers are a foregone conclusion and that taxpayer adds little or nothing to the sum total of the Government's information by conceding that he in fact has the papers,' the Fifth Amendment offers no protection." 286 F.3d at 1050 (citing Fisher, 425 U.S. at 411). Accordingly, the taxpayer's

act of production was "insufficiently testimonial." Id.3/

Applying the foregoing principles to the discovery sought herein, the records sought, such as domestic or foreign bank records or land records (i.e., a deed), are not protected by the Fifth Amendment privilege against self-incrimination. *See* United States v. Hubbell, 530 U.S. at 36 ("respondent ... could not avoid compliance with the subpoena served on him merely because the demanded documents contained incriminating evidence, whether written by others or himself."). 4/ And the application of the act of production doctrine also may not apply. *See* Fisher v. United States, 425 U.S. at 409-411; United States v. Teeple, 286 F.3d at 1050-51; In re Grand Jury Subpoena Duces Tecum, 1 F.3d at

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3/ The United States had information about the records from the taxpayer's own admissions in Teeple. 286 F.3d at 1050-1051. *See also* In re Grand Jury Subpoena, 1 F.3d at 93 (Government had information about document sought through subpoena and the production would not have implicitly authenticated it, because the production was "not 'a necessary link to incriminating evidence contained in [it].'") (citations omitted); United States v. Schlansky, 709 F.2d 1079, 1083 (6th Cir. 1983) (Summons to taxpayer seeking accountant's binder containing taxpayer's documents, including original cancelled checks and deposit slips prepared by taxpayer, was enforced over Fifth Amendment objection, because the Government knew of the existence of the documents and accountant and other third parties, such as bank employees, can authenticate the records so their production would not involve truthtelling or authentication by the taxpayer.) (citing Fisher, supra), cert. denied, 465 U.S. 1099 (1984).

[*For informational purposes only*: However, if the Government is on a mere fishing expedition, because it has no knowledge about the existence of the records sought from the judgment debtor in his individual capacity, the Fifth Amendment objection based on the act of production doctrine may apply. *See* United States v. Hubbell, 167 F.3d 552, 575-578 (D.C. Cir. 1999), aff'd, 530 U.S. 27, 44-45 (2000); United States v. Cianciulli, 2002 WL 1484396 (S.D.N.Y. 2002) (petition to enforce IRS summons denied).]

4/ In Doe v. United States, 487 U.S. 201, 206 (1988), the Supreme Court held that the contents of foreign bank records are not privileged under the Fifth Amendment. In Doe, the Supreme Court also held that the requiring a target of a grand jury investigation to sign a consent directive addressed to foreign banks did not violate the Fifth Amendment privilege against self-incrimination, because the consent directive was not testimonial in nature. 487 U.S. at 219; accord In re Grand Jury Proceedings (Marsoner), 40 F.3d at 961, 962.

93; *See also* In re Grand Jury Subpoena Duces Tecum, 616 F. Supp. 1159, 1161-62 (E.D.N.Y. 1985) (government's affidavit establishes that "much is known about this petitioner's activities" so no privilege to refuse production exists, and "when government can authenticate the documents [such as bank statements and canceled checks] without relying on any act by petitioner, then production does not implicate the Fifth Amendment."); accord United States v. Schlansky, 709 F.2d at 1083; United States v. Burgess, 1999 WL 46625 at * 1. 5/

The invocation here of the Fifth Amendment to the interrogatories and document requests seeking information regarding the judgment debtor's assets is designed "as a means to avoid execution of [the] judgment." Baker v. Limber, 647 F.2d at 920. As demonstrated above, the judgment debtor has already engaged in conduct of placing assets beyond the reach of the United States by transferring title of his Pennsylvania real property to himself and his spouse. Moreover, the United States has evidence from third parties that reported to the Internal Revenue Service that the judgment debtor earned $_____ from the sale of stocks and bonds in 1999 (Ex. 9). The United States is certainly entitled to

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5/ The Supreme Court in Fisher explained:

> The existence and location of the papers are a foregone conclusion and the taxpayer adds little or nothing to the sum total of the Government's information by conceding that he in fact has the papers. Under these circumstances by enforcement of the summons "no constitutional rights are touched. The question is not of testimony but of surrender." ***

Fisher v. United States, 425 U.S. at 411 (citation omitted); accord In re Grand Jury Proceedings (Marsoner), 40 F.3d at 962; United States v. Teeple, 286 F.3d at 1050, 1051.

know where the earned funds went. Furthermore, the United States is aware that the judgment debtor owns other real property in Florida. He has owned other stock and sold same, has income from wages; and has some mortgage debt. Additional information regarding these assets and income is both relevant and necessary to execute on the judgment. In sum, the burden falls on the judgment debtor to demonstrate how answering the discovery and producing the requested documents regarding his assets will incriminate him. *See* Capitol Products Corp. v. Hernon, 457 F.2d at 544 (District Court should order defendant to answer all questions "unless a real danger of incrimination is specifically established with respect to each question."); Brunswick Corp. v. Doff, 638 F.2d at 110 (Judgment debtor failed to establish that answering questions such as whether he filed tax returns for particular years would incriminate him: "Again a distinction between the unpleasantness of possibly revealing assets to a creditor and the tendency to incriminate within the meaning of the privilege must be drawn."); United States v. Hatchett, 862 F.2d at 1251 ("[I]t is not self-evident that every disclosure of a disposition of appellant's assets would form a link in the chain of evidence of some crime.").

And if there were a pending criminal investigation against the judgment debtor, that fact standing alone does not automatically mean that a judgment debtor may properly invoke a Fifth Amendment privilege to shield information regarding his assets from his creditor. *See* Davis v. Fendler, 650 F.2d at 1160 (affirming entry of a default judgment against defendant who asserted claim of Fifth Amendment privilege in response to interrogatories) ("By itself, appellant's claim of privilege on account of the pendency of related criminal proceedings does not appear to be entirely without merit. In assessing the

validity of a claim of privilege, however, [the court] must consider the context in which such a claim is made.").

D. The Fourth Amendment Objection Is Meritless.

The judgment debtor has also asserted an objection based on the Fourth Amendment paralleling his Fifth amendment objections to the same interrogatories and document requests. The invocation of the Fourth Amendment is even more meritless. The United States seeks information regarding the judgment debtor's assets, including his bank accounts (*see, e.g.*, interrogatory Nos. 5, 6, 17; Document Request Nos. 1-5), and the Fourth Amendment is not implicated.

As was explained by the U.S. Court of Appeals for the Ninth Circuit:

> The Fourth Amendment protects against intrusions into an individual's "zone of privacy." United States v. Miller, 425 U.S. 435, 440, 96 S. Ct. 1619, 1623, 48 L.Ed.2d 71 (1976) (citing Hoffa v. United States, 385 U.S. 293, 301-02, 87 S. Ct. 408, 413-14, 17 L.Ed.2d 374 (1966)). In general, an American depositor has no reasonable expectation of privacy in copies of his or her bank records, such as checks, deposit slips, And financial statements maintained by the bank. [Miller] 425 U.S. at 442, 96 S. Ct. at 1623-24. A "depositor takes the risk, in revealing his affairs to another, that the information will be conveyed by that person to the Government." [Miller] 425 U.S. at 443, 96 S. Ct. at 1624. Where an individual's Fourth Amendment rights are not implicated, obtaining the documents does not violate his or her rights, even of the documents lead to indictment. [Miller] at 445, 96 S. Ct. at 1625.
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> The Supreme Court has extended this analysis to the privacy expectations of an individual depositing funds in a foreign bank. In United States v. Payner, 447 U.S. 727, 732 n.4, 100 S. Ct. 2439, 2444 n.4, 65 L.Ed.2d 468 (1980), the Court rejected the claim that the Bahamian law of bank secrecy created an expectation of privacy.
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> United States citizens and residents are required to reveal the existence of foreign bank accounts and to report transactions made with a foreign financial agency. 31 U.S.C. § 5314(a). This information is to be reported to the Commissioner of Internal Revenue for each year in which such relationship or transactions occur. 31 C.F.R. § 301.24 (1984). Thus, Marsoner, as a resident, had an expectation that any transactions with Austrian banks would have to be disclosed. *See* Payner, 447 U.S. at 732 n.4, 100 S. Ct. at 2444 n.4.

In re Grand Jury Proceedings, 40 F.3d at 962-963.

Applying the foregoing principles to the facts of this case, judgment debtor's Fourth Amendment objection to the interrogatories and document requests lacks merit. To the extent that the judgment debtor has control over bank accounts anywhere in the world, he cannot have, as a matter of law, any expectation of privacy that would be protected by the Fourth Amendment under the foregoing authorities.