

ORIGINAL UNREDACTED LODGED PURSUANT TO MOTION TO SEAL

DOCKET NO: HHD-CV-18-6088970-S : SUPERIOR COURT
GLORIA FARBER, as Executor of the : J.D. OF HARTFORD
Estate of HILLIARD FARBER
VS. : AT HARTFORD
FORE GROUP, INC., and FOTIS : October 22, 2019
DULOS

**DEPONENT MICHELLE TROCONIS'S REDACTED MEMORANDUM
IN OPPOSITION TO PLAINTIFF'S MOTION TO
COMPEL ANSWERS TO QUESTIONS PROPOUNDED IN
HER DEPOSITION TAKEN ON SEPTEMBER 25, 2019
AT THE OFFICES OF WEINSTEIN & WISSER, PC**

This REDACTED memorandum is submitted in opposition to the plaintiff's motion to compel answers to questions propounded by the plaintiff Farber Estate's attorney in response to which deponent Michelle Troconis, on the advice of counsel, asserted her privilege against self-incrimination pursuant to the Fifth Amendment and Article 1 Sec. 8 of the Connecticut Constitution. (See Redacted Affidavit of Attorney Bowman submitted herewith). The attorney questioning Ms. Troconis represents the estate of the alleged victim's father. Jennifer Dulos was last seen on May 24, 2019, and is the alleged victim of the offenses for which Fotis Dulos and Michelle Troconis have been charged.

**I. The Answers to Each and Every Question [are privileged under]
Hoffman vs. United States and State vs. Biller which are Controlling Precedent**

[REDACTED]

In *Hoffman v. United States*, the United States Supreme Court held that a witness could refuse to answer questions as to **whether he had seen, talked to or knew the whereabouts of a certain person** upon whom a subpoena had been issued but not served requiring that fugitive to appear before a grand jury on the ground that *Hoffman's* answers might incriminate him in a federal offense, since "[a]ll of them could easily have required answers that would forge links in a chain of facts imperiling petitioner with conviction of a federal crime". *Hoffman*, 341 U.S. 488, 71 S.Ct. 814, 819.

[REDACTED]

In fact, the Supreme Court in *Hoffman* held that a witness could refuse to answer questions whether he had seen, talked to or knew the whereabouts of a certain person on the ground that his answers could have forged links in a chain of facts imperiling the defendant with conviction of a crime. [REDACTED]

The grand jury investigation in *Hoffman* was investigating frauds including narcotics, internal revenue laws, white slave traffic, perjury, bribery, other federal criminal laws and conspiracy to commit all such offenses. Justice Clark held in *Hoffman* that "the immediate and potential evils of compulsory self-disclosure transcend any difficulties that the exercise of the

privilege may impose on society and the detection and prosecution of crime". *Id.*, 341 U.S. at 489-90, 71 S.Ct. 814 at 819-820. –

The Connecticut Supreme Court's view of the Fifth Amendment privilege is completely consistent with the United States Supreme Court view as expressed in *Hoffman*. In *State v. Biller*, the Connecticut Supreme Court held "[T]he Fifth Amendment can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory; and it protects against any disclosure that *the witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used*. *State v. Biller*, 190 Conn. 594, 600, 462 A.2d 987, 991 (1983). In *Biller*, our Supreme Court held that the Fifth Amendment protects any disclosure that the witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used citing *Kastigar v. United States*, 406 U.S. 441, 444-45, 92 S.Ct. 1653, 1656 (1972).

[REDACTED]

Plaintiff's counsel, representing the alleged victim's family, questions Ms. Troconis as a prosecutor would, and his questions are the mirror image of those questions a prosecutor would ask. It is unreasonable and contrary to both constitutional holdings in *Hoffman* and *Biller* to compel Ms. Troconis to give answers to these questions that ...**[REDACTED]** There is no question that is **[REDACTED]** This is not a close question.

[REDACTED]

The Fifth Amendment exists for the protection of [REDACTED]; *United States vs. Doyle*, 130 F3d. 523 (2nd Cir. 1997)(fundamental rights including presumption of innocence and reasonable doubt standard are for the protection [REDACTED] reversing jury charge to the contrary). The Constitution makes no distinction. [REDACTED]

While it is respectfully submitted that this portion of the Memorandum in Opposition contains compelling factual and legal arguments and precedent upon which the Court may rely in denying the Motion to Compel, the subject matter of the questioning is set forth below so the record is complete.

II. The Questioning

[REDACTED]

CONCLUSION

For these reasons, the plaintiff's motion to compel should be denied.

THE DEPONENT,
MICHELLE TROCONIS

BY/s/ Andrew B. Bowman .
ANDREW B. BOWMAN
Juris No: 101507
1804 Post Road East
Westport, CT 06880
(203) 259-0599
(203) 255-2570 (Fax)
e-mail: andrew@andrewbowmanlaw.com

CERTIFICATION

This is to certify that a copy of the foregoing was sent by electronic communication on this

22nd day of October, 2019 to:

Richard P. Weinstein, Esq.
Weinstein & Wisser, P.C.
29 South Main Street, Suite 207
West Hartford, CT 06107
rpw@weinsteinwisser.com

William E. Murray, Esq.
Law Offices of William E. Murray, LLC
998 Farming Avenue, Suite 102LL
West Hartford, CT 06107
bill@billmurraylegal.com

/s/ Andrew B. Bowman
ANDREW B. BOWMAN