

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

AB ELECTROLUX,

ELECTROLUX NORTH AMERICA, INC.,

and

GENERAL ELECTRIC COMPANY,

Defendants.

Case No. 1:15-cv-01039-EGS

**UNITED STATES' MOTION FOR
A PROTECTIVE ORDER AND ADDITIONAL DISCOVERY**

On September 25, the United States received documents subpoenaed from non-party Jack Truong (the former head of Electrolux's North American business) suggesting that his investigative deposition testimony might have been affected by Electrolux's delay of certain financial obligations to Mr. Truong until after he testified and Electrolux could assess the impact of his testimony on the United States' investigation of the proposed acquisition. These documents had not been produced by Electrolux in discovery (presumably Electrolux withheld them under its work product claims), so the United States was not aware of these issues until it was able to review and digest Mr. Truong's subpoena production from Friday.

Pursuant to Local Rule 7(m), the United States has conferred with counsel for Electrolux. The United States notes that Electrolux has been cooperative since the United States raised these issues. However, the United States files this motion now in light of the short time frame, the

September 30 status conference, and the Court's September 25 Minute Order instructing that the parties advise the Court "regarding the need, if any, for additional time for fact discovery, and any other issues of concern to the parties at this time." The parties have raised other discovery scheduling issues in the Joint Status Report (Dkt. No. 128).

Dated: September 28, 2015

/s/ Ethan C. Glass
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

AB ELECTROLUX,

ELECTROLUX NORTH AMERICA, INC.,

and

GENERAL ELECTRIC COMPANY,

Defendants.

Case No. 1:15-cv-01039-EGS

**MEMORANDUM IN SUPPORT OF THE UNITED STATES’
MOTION FOR A PROTECTIVE ORDER AND ADDITIONAL DISCOVERY**

On September 25, the United States received documents subpoenaed from non-party Jack Truong (the former head of Electrolux’s North American business) suggesting that his investigative deposition testimony might have been affected by Electrolux’s delay of certain financial obligations to Mr. Truong until after he testified and Electrolux could assess the impact of his testimony on the United States’ investigation of the proposed acquisition.¹ These documents had not been produced by Electrolux in discovery (presumably Electrolux withheld them under its work product claims), so the United States was not aware of these issues until it was able to review and digest Mr. Truong’s subpoena production from Friday.

¹ The United States notes that Electrolux has been cooperative since the United States raised these issues. However, the United States files this motion now in light of the short time frame, the September 30 status conference, and the Court’s September 25 Minute Order instructing that the parties advise the Court “regarding the need, if any, for additional time for fact discovery, and any other issues of concern to the parties at this time.” The parties have raised other discovery scheduling issues in the Joint Status Report (Dkt. No. 128).

In these newly produced documents, Electrolux wrote that it was delaying certain financial obligations “until such time that it can be in an [sic] position to evaluate Mr. Truong’s upcoming deposition testimony before the DOJ in terms of its impact on the merger case before the DOJ.” Ex. C at JT-DOJ-0012. On its face, this communication suggests that Mr. Truong’s testimony may have been biased by the fact that, although he was then a former employee and did not have the normal bias that a current employee typically has in favor of his employer, Electrolux told Mr. Truong that financial obligations were being delayed until Electrolux could assess whether his testimony helped or hurt its effort to complete the proposed acquisition.

The United States respectfully requests an order protecting Mr. Truong from further influence along these lines, compelling document production by Electrolux regarding any non-parties who may have been similarly affected by Electrolux’s practices, and extending the discovery deadline for this limited purpose.

BACKGROUND

I. Electrolux Told Mr. Truong that It Was Delaying Certain “Financial Obligations” Until Electrolux Could “Evaluate” His Deposition Testimony.

From August 2011 to April 2015, Mr. Truong was the Chief Executive Officer of Electrolux’s North American business. In that role, he was the top Electrolux executive for the United States, he had broad responsibilities over the operations of the organization, he oversaw Electrolux’s competition with General Electric in the sale of ranges, cooktops, and wall ovens, and he was involved in the proposed acquisition of General Electric’s appliances business (which was announced in September 2014, during Mr. Truong’s tenure). In April 2015, Mr. Truong left Electrolux.

On April 22, 2015, the United States issued a Civil Investigative Demand requiring Mr. Truong to give oral testimony about the proposed acquisition. Mr. Truong engaged counsel

independent of Electrolux for that investigative deposition. Ex. F at JT-DOJ-0001. According to the documents that Mr. Truong just produced, and unbeknownst to the United States, on May 28, Electrolux's in-house counsel wrote to Mr. Truong, telling him that Electrolux called Mr. Truong's counsel "and we agreed to talk today regarding your DOJ deposition." *Id.* In a June 3 email, a week before Mr. Truong's investigative deposition, Electrolux's in-house counsel told Mr. Truong's counsel that Electrolux wanted its outside counsel to be at the deposition "to assist Mr. Truong in preparing him to testify accurately, without surprise and under circumstances where [Electrolux] knowingly could evaluate the impact of Mr. Truong's testimony on the merger case before the DOJ." Ex. B at JT-DOJ-0005. Electrolux's counsel then tied the delay in its ability to evaluate Mr. Truong's testimony to a delay in Electrolux "performing its potential obligations under any prospective separation and release agreement with Mr. Truong," which "could take some time to resolve." *Id.*

On June 4, still prior to Mr. Truong's deposition, Electrolux's counsel confirmed the connection between Electrolux's evaluation of Mr. Truong's testimony and the delay of certain financial obligations to Mr. Truong. This June 4 email read, in whole:

I understand Mr. Truong has informed Electrolux that he has signed the Separation and Release Agreement and sent it back to Electrolux.

Notwithstanding the foregoing, and with the exception of his ongoing salary and benefits continuation under the agreement, please be advised that Electrolux intends to delay all other of its executory financial obligations until such time that it can be in an [sic] position to evaluate Mr. Truong's upcoming deposition testimony before the DOJ in terms of Its impact on the merger case before the DOJ.

Again, as you know, because of the confidentiality of a DOJ investigation, this delay could take some time to resolve.

Ex. C at JT-DOJ-0012 (emphasis added).

Mr. Truong and his counsel challenged the propriety of Electrolux's conditioning certain financial obligations on Mr. Truong's testimony:

We have shared your below email with our client, but we were rather surprised that you would appear to be directly tying the financial benefits to which he is entitled to the substance of his testimony before the Department of Justice. We assume you did not intend to convey some sort of financial quid pro quo, which would obviously not be appropriate. Setting that aside, while Mr. Truong is not willing to be represented by Jones Day, he is willing to make himself available for a call with Tom Smith on Monday morning to discuss any information that Tom believes will be helpful in preparing him for his deposition.

Id. at JT-DOJ-0011 (emphasis added). Mr. Truong's counsel also rejected, for the second time, Electrolux's demand that Electrolux's outside counsel represent Mr. Truong at his investigative deposition. *Id.* Mr. Truong did offer "to make himself available for a call with [Electrolux's outside counsel] on Monday morning to discuss any information that [Electrolux outside counsel] believes will be helpful in preparing him for his deposition." *Id.*

Electrolux's in-house counsel responded on June 7. *Id.* at JT-DOJ-0010. Although he insisted that Mr. Truong's "testimony before the DOJ has nothing to do with Electrolux's decision to delay the financial executory parts of his separation agreement," he reiterated that certain financial obligations to Mr. Truong were being delayed "for the purpose of Electrolux gaining knowledge of such testimony, irrespective of its substance." *Id.* at JT-DOJ-0011. Electrolux's counsel then suggested that "there are several ways for Electrolux to get such knowledge," including that Mr. Truong (1) "wait to see if the DOJ will approve the merger (and thereby make his testimony a moot point)" or (2) "provide Electrolux with a transcript subsequent to the deposition in the context of litigation or otherwise." *Id.* On June 9, one day before Mr. Truong's investigative deposition, his counsel asked Electrolux to identify the financial obligations Electrolux was delaying and to explain the basis for the delay. *Id.* at JT-DOJ-0010. In his response the night before the deposition, Electrolux's in-house counsel refused

to identify the financial obligations or explain the basis for the delay, and instead wrote, “I suggest we discuss sometime after Mr. Truong’s deposition at your convenience.” *Id.*

After Mr. Truong’s investigative deposition, Electrolux continued to insist that Mr. Truong provide it with the transcript so it could evaluate the impact of his testimony on the proposed acquisition. For example, Electrolux’s counsel emailed Mr. Truong’s counsel, “[s]ince I have not heard anything, I assume that the payment issue was resolved. As I said on our call, it was unfortunate that communications on the issue went awry. Certainly, there was never an intention to interfere with Mr. Truong’s ability to respond to the DOJ’s request for his testimony at an Investigational Hearing.” Ex. D at JT-DOJ-0014. Despite the United States’ agreement on July 16 that it would promptly produce Mr. Truong’s deposition transcript (which it did on July 21), Electrolux’s counsel continued asking Mr. Truong’s counsel for it: “I would really appreciate hearing back from you about Jack’s transcript. I had convinced ELX to resolve the issues with Jack quickly because I would be able to work with you, and I’m getting some pressure on the transcript.” Ex. E at JT-DOJ-0023.

II. The Communications Between Electrolux’s In-House Counsel and Mr. Truong’s Counsel Were the Exact Type of Documents that Electrolux Withheld and the United States Moved to Compel.

Despite agreeing in the Stipulated Trial Setting and Case Management Order (“CMO”) that Electrolux would produce non-party documents like those between Electrolux’s counsel and Mr. Truong’s counsel, Dkt. No. 28 at ¶ 4 (entered by July 31, 2015 Minute Order), and the United States’ document requests asking for the same, Electrolux apparently withheld the communications at issue here. *See* Dkt. No. 122 at 7 (September 25, 2015 Memorandum

Opinion).² Electrolux also did not identify these communications on any privilege log. Consequently, the United States did not know about the communications at issue here until *Mr. Truong* produced them on September 25 in response to the United States' September 11 non-party subpoena. Ex. A (producing documents under an over-night letter dated September 24). Now that the United States has seen these documents, it is even more confused about the basis for Electrolux's work product doctrine claims over the non-party communications.

ARGUMENT

I. The Communications Between Electrolux and Mr. Truong's Counsel Raise Concerns.

First, the newly produced documents show that Electrolux held up financial obligations until Electrolux could assess the impact of Mr. Truong's testimony on the proposed acquisition, and Electrolux was explicit with Mr. Truong that it was doing so. Mr. Truong's counsel expressed concern about this and, although the United States is not currently privy to all of the communications between Electrolux's counsel and Mr. Truong (particularly the oral ones), Mr. Truong's concern is supported by the plain language of the June 3 and June 4 emails.

Courts have addressed with seriousness situations where a party has used financial incentives, even vaguely stated, to potentially influence a witness's testimony. *See Massachusetts Institute of Tech. v. ImClone Systems Inc.*, 490 F. Supp. 2d 119 (D. Mass. 2007) (imposing sanctions where the defendant used vague pecuniary threats to discourage an expert witness from testifying). Not only is using financial considerations to influence a witness's

² On September 8, the United States moved to compel Electrolux to produce communications between its counsel and non-parties, among other things. *See* Dkt. No. 121. On September 25, the Court granted that motion and ordered Electrolux to produce such communications either to the United States or to the Court for in camera review. Dkt. No. 122 at 16.

testimony forbidden, it shows that the interfering party fears the impact of the witness's complete, unimpeded, and truthful testimony.

It is generally held that, in a civil case, evidence that a litigant, or his agent, has attempted to influence or suppress a witness is receivable as an admission or as an indication of the litigant's consciousness that his case is weak or unfounded or that his claim is false or fraudulent.

Catipovic v. Turley, 68 F. Supp. 3d 983, 1005 (N.D. Iowa. 2014) (quoting *Great American Insurance Co. v. Horab*, 309 F.2d 262, 264 (8th Cir. 1962)); see also *Synergetics, Inc. v. Hurst*, 2007 WL 2422871, at *1 (E.D. Mo. Aug. 21, 2007) (“An attempt to convince a witness not to testify may be proof that the party seeking to suppress the testimony has something to hide.”).

The subsequent efforts by Electrolux's counsel to avoid disclosure of these non-party communications only heighten the concern here. Moreover, the efforts by Electrolux to correct the record after the fact do not eliminate the serious question of whether Mr. Truong's testimony was affected by Electrolux's insistence that financial obligations to Mr. Truong would be delayed until after it could evaluate the impact of his testimony on the proposed acquisition. Although Electrolux's counsel denied the reading by Mr. Truong and his counsel that Electrolux was directly tying financial obligations to Mr. Truong's testimony, he still reaffirmed that certain financial obligations to Mr. Truong were being delayed – on what authority he would only explain after Mr. Truong's deposition – “for the purpose of Electrolux gaining knowledge of such testimony, irrespective of its substance.” Ex. C at JT-DOJ-0011. Then, weeks later and well after Mr. Truong's investigative deposition, Electrolux's counsel wrote, “it was unfortunate that communications on the issue went awry. Certainly, there was never an intention to interfere with Mr. Truong's ability to respond to the DOJ's request for his testimony at an Investigational Hearing.” Ex. D at JT-DOJ-0014. While these statements recognize that the June 3, June 4, and June 7 emails were “unfortunate,” they came after Mr. Truong's investigative deposition and

consequently could have done nothing to dispel the impression that if Mr. Truong provided testimony at odds with Electrolux's position it could carry financial consequences for him.

Electrolux also maintained the pressure on Mr. Truong in other ways. Electrolux continued to insist that Electrolux's counsel be present at his deposition, that Mr. Truong provide Electrolux with a copy of his investigative deposition transcript, and that the payment delay would go away if the United States approved Electrolux's purchase of General Electric's appliances business. Ex. C at JT-DOJ-0011. If Electrolux merely wanted to receive a copy of Mr. Truong's investigative deposition transcript, it did not need delay financial obligations to Mr. Truong "for the purpose of Electrolux gaining knowledge of such testimony" or have Electrolux's counsel attend his investigative deposition. In fact, Mr. Truong offered to talk with Electrolux's counsel before his deposition, which Electrolux rejected. *Id.* at JT-DOJ-0010.³

Parties like Electrolux are prohibited from being present at non-party investigative depositions to ensure that non-parties are comfortable giving complete and candid testimony. *See* 15 U.S.C. § 1312(i)(2). The ability to obtain such candor is particularly important with a former executive like Mr. Truong, who is knowledgeable about the company under investigation but does not have the usual biases held by current executives, who are trying to further the financial interests of their companies. Insisting to such a witness that the company be involved in the deposition, that it review the transcript for impact on the case, and that its financial obligations will be delayed until after it does so, undermines the truth-seeking function of the deposition by creating a new bias in the witness. This is so regardless of the explanation for why

³ It bears noting that Electrolux rejected the pre-deposition meeting with Mr. Truong because it recognized that those non-party communications would not be privileged, Ex. C at JT-DOJ-0011, a position Electrolux later contradicted when it claimed that its communications with Mr. Truong were not discoverable.

the company decided to proceed in this manner. And the problem was exacerbated here by the fact that this arrangement was not disclosed to the United States.

Without further discovery, the United States has no way of knowing the full extent of the discussions that took place with respect to this issue (*see, e.g.*, Ex. C at JT-DOJ-0010 (“I suggest we discuss sometime after Mr. Truong’s deposition. . . .”), Ex. D at JT-DOJ-0014 (“As I said on our call. . . .”), Ex. F at JT-DOJ-0001 (“we agreed to talk today regarding your DOJ deposition”)), whether there is other evidence of similar conduct regarding Mr. Truong, or whether similar communications were made to other non-parties.

II. The United States Respectfully Requests Relief Necessary to Ensure It Has a Fair Trial on the Merits.

Because Electrolux has hidden its communications with all non-parties (including Mr. Truong’s counsel) under the veil of work product, the United States has had no way of knowing the extent to which Electrolux has tried to influence Mr. Truong or any other non-parties’ testimony. While Electrolux’s compliance with this Court’s September 25 Order should help, it will not provide complete insight into the conduct, in part because it is not clear that Electrolux intends to search all inside and outside counsel (rather than just a subset involved in “outreach,” as discussed between the parties in the meet-and-confer discussions that preceded the work product doctrine motion), search for pre-complaint communications, or search business and personal files in response to the United States’ document requests.⁴ Accordingly, the United States respectfully requests the tools and time to discover the facts concerning these communications and to determine whether similar efforts were made to influence the testimony of other non-parties.

⁴ Electrolux’s counsel appears to use personal email to conduct Electrolux business. For example, Electrolux’s General Counsel used an “aol.com” email address to communicate with Mr. Truong. Ex. F at JT-DOJ-0001.

The United States respectfully requests an order with the following relief:

- Prohibiting all contact – other than at depositions or at trial – between Electrolux (or its in-house or outside counsel) and Mr. Truong (or his counsel) about the proposed acquisition or this litigation; prohibiting Electrolux from altering or delaying its obligations to Mr. Truong under his Separation Agreement; and requiring production of all documents, including solely internal documents, related to discussions about altering or delaying financial obligations to Mr. Truong;
- Requiring production of all communications between Electrolux’s counsel (in-house or outside) and Mr. Truong (or his counsel) since Mr. Truong’s separation from Electrolux, including all such documents that are in the business or personal files of Electrolux’s senior executives, any member of the Electrolux Board of Directors, and any other persons involved in setting or delaying Electrolux’s financial obligations to Mr. Truong;
- Confirming that the Court’s September 25 Order requires Electrolux to produce all communications between Electrolux counsel (in-house or outside) and non-parties (or their related entities or counsel) that are in the business or personal files of any Electrolux counsel (in-house or outside), their staff, or other Electrolux employees acting at counsels’ direction, whether created before or after the filing of the Complaint;
- Requiring preparation and production of a written memorialization of all oral communications between Electrolux’s counsel (in-house and outside) and non-parties (or their related entities or counsel) about their testimony or participation in the investigation or litigation (subject to the exclusion in CMO Paragraph 4 of interview notes, interview memoranda, or a recitation of facts contained in such notes or memoranda);

- Requiring a privilege log and *in camera* review of any of the above documents that Electrolux withholds or redacts; and
- Relieving the United States from the discovery deadline so that the above discovery may be completed well before trial.

CONCLUSION

The United States respectfully requests that the Court order the relief above.

Dated: September 28, 2015

/s/ Ethan C. Glass
Ethan C. Glass (D.D.C. Bar #MI0018)
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*Counsel for Plaintiff United States of
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CERTIFICATE OF SERVICE

I certify that on September 28, 2015, the foregoing was served on all counsel of record via ECF.

Dated: September 28, 2015

/s/ Ethan C. Glass
Ethan C. Glass (D.D.C. Bar #MI0018)
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FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

AB ELECTROLUX,

ELECTROLUX NORTH AMERICA, INC.,

and

GENERAL ELECTRIC COMPANY,

Defendants.

Case No. 1:15-cv-01039-EGS

**[PROPOSED] ORDER GRANTING PLAINTIFF UNITED STATES'
MOTION FOR A PROTECTIVE ORDER AND ADDITIONAL DISCOVERY**

Upon consideration of the United States' Motion for a Protective Order and Additional Discovery, and all papers filed in connection therewith, and for good cause shown,

IT IS HEREBY ORDERED that the motion is **GRANTED**, and hereby enters an order:

1. Prohibiting all contact – other than at depositions or at trial – between Electrolux (or its in-house or outside counsel) and Mr. Truong (or his counsel) about the proposed acquisition or this litigation; prohibiting Electrolux from altering or delaying its obligations to Mr. Truong under his Separation Agreement; and requiring production of all documents, including solely internal documents, related to discussions about altering or delaying financial obligations to Mr. Truong;
2. Requiring production of all communications between Electrolux's counsel (in-house or outside) and Mr. Truong (or his counsel) since Mr. Truong's separation from

Electrolux, including all such documents that are in the business or personal files of Electrolux's senior executives, any member of the Electrolux Board of Directors, and any other persons involved in setting or delaying Electrolux's financial obligations to Mr. Truong;

3. Confirming that the Court's September 25 Order requires Electrolux to produce all communications between Electrolux counsel (in-house or outside) and non-parties (or their related entities or counsel) that are in the business or personal files of any Electrolux counsel (in-house or outside), their staff, or other Electrolux employees acting at counsels' direction, whether created before or after the filing of the Complaint;

4. Requiring preparation and production of a written memorialization of all oral communications between Electrolux's counsel (in-house and outside) and non-parties (or their related entities or counsel) about their testimony or participation in the investigation or litigation (subject to the exclusion in CMO Paragraph 4 of interview notes, interview memoranda, or a recitation of facts contained in such notes or memoranda);

5. Requiring a privilege log and *in camera* review of any of the above documents that Electrolux withholds or redacts; and

6. Relieving the United States from the discovery deadline so that the above discovery may be completed well before trial.

All documents this Order requires Electrolux to produce must be produced no later than three days after this Order issues.

Dated: _____, 2015

Hon. Emmet G. Sullivan
United States District Judge

List of Persons to be Notified

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Exhibit A



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September 24, 2015

VIA OVERNIGHT MAIL

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Washington, D.C. 20530

Re: United States v. AB Electrolux North America, Inc., Case No. 1:15-CV-01039

Dear Mr. Bachman:

In response to the subpoena issued on September 11, 2015 in the above-referenced matter, we enclose certain communications between counsel for Mr. Truong and counsel for Electrolux relating to Mr. Truong's testimony provided by Mr. Truong on June 10, 2015, and the transcript of that testimony. Other than the enclosed documents, there are no other responsive documents in Mr. Truong's possession, custody or control.

Very truly yours,

Christopher F. Robertson

cc: John M. Majoras

ATLANTA BOSTON CHICAGO HOUSTON LONDON LOS ANGELES MELBOURNE NEW YORK SACRAMENTO SAN FRANCISCO SHANGHAI SYDNEY WASHINGTON, D.C.

Exhibit B

Robertson, Christopher

From: Richard S Pietch <richard.s.pietch@electrolux.com>
Sent: Wednesday, June 03, 2015 11:40 AM
To: Robertson, Christopher
Cc: tdsmith@jonesday.com
Subject: Jack Truong

Dear Mr. Robertson:

I understand from Attorney Tom Smith that Mr. Truong has decided to deny Electrolux's request to allow Jones Day to represent him as co-counsel with respect to preparing him for his June 10th deposition by the DOJ and appearing at his deposition. Electrolux's request included the offer to pay his reasonable, out-of-pocket expenses for counsel of his choosing to appear as co-counsel with Jones Day.

Electrolux's only interest in making this request was to assist Mr. Truong in preparing him to testify accurately, without surprise and under circumstances where it knowingly could evaluate the impact of Mr. Truong's testimony on the merger case before the DOJ.

If Electrolux is delayed in being able to make such an evaluation, it may have to delay performing its potential obligations under any prospective separation and release agreement with Mr. Truong. As you know, because of the confidentiality of a DOJ investigation, this delay could take some time to resolve.

Very truly yours,

Richard S. Pietch
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This email may contain material that is confidential, privileged and/or attorney work-product for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

Exhibit C

Robertson, Christopher

From: Richard S Pietch <richard.s.pietch@electrolux.com>
Sent: Tuesday, June 09, 2015 10:18 PM
To: Robertson, Christopher
Subject: Re: Jack Truong

Mr. Robertson:

I do not think continuing to exchange emails will serve anyone's purpose. I suggest we discuss sometime after Mr. Truong's deposition at your convenience.

Rick Pietch
Richard S. Pietch

On Jun 9, 2015, at 7:10 PM, Robertson, Christopher <crobertson@seyfarth.com> wrote:

Mr. Pietsch:

Respectfully, we disagree that under the circumstances it is ordinary for a former employee to be represented by the company's attorneys, as opposed to his counsel entering into a joint defense arrangement as we proposed, and making the witness available to speak with the company's counsel with his counsel present. This is apparently not acceptable to the company. If your sole aim is to know what occurs in the deposition, we are willing to speak with the company's counsel to provide a summary of what occurs. Mr. Truong has been and remains willing to cooperate with the company in this manner, but the company apparently is only willing to proceed through some form of co-counsel arrangement that allows them to be present at the deposition. This proposal is not simple or ordinary in the circumstances. With respect to the foregoing, please specify the non-salary and benefits financial obligations to which you refer, and please provide the specific basis upon which you believe Electrolux contends it has the legal right to delay prompt payment of any of those financial obligations.

Chris

Christopher Robertson | Seyfarth Shaw LLP
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From: Richard S Pietch [<mailto:richard.s.pietch@electrolux.com>]
Sent: Sunday, June 07, 2015 11:55 AM
To: Robertson, Christopher

Cc: Tom D Smith
Subject: Re: Jack Truong

Dear Mr. Robertson:

Thanks for your email reply and please know you are correct. The substance of your client's prospective testimony before the DOJ has nothing to do with Electrolux's decision to delay the financial executory parts of his separation agreement (excepting his salary/benefit continuation). Rather, the delay is for the purpose of Electrolux gaining knowledge of such testimony, irrespective of its substance.

Electrolux would have thought the easiest and most ordinary way under the circumstances would have been for your client to consent to Jones Day being co-counsel with a lawyer of his choosing for purposes of this deposition only. There is plenty of precedent for proceeding this way and Electrolux finds it peculiar that Mr. Truong rejects this co-counsel offer. But he is entitled to his decision. And it is Electrolux's decision to make the delay it has described.

Of course, there are several ways for Electrolux to get such knowledge. Apart from being present at the deposition, your client can provide Electrolux a transcript of his deposition, or wait to see if the DOJ will approve the merger (and thereby make his testimony a moot point), or provide Electrolux with a transcript subsequent to the deposition in the context of litigation or otherwise.

With respect to your client's offer to consult with Jones Day on Monday, June 8th, Electrolux believes it is wholly inappropriate for such a non-privileged consultation to take place under circumstances where the firm is not co-counsel to your client for purposes of this deposition.

Regards

Rick Pietch

Sent from my iPad

On Jun 5, 2015, at 5:00 PM, Robertson, Christopher <crobertson@sevfarth.com> wrote:

Mr. Pietch:

We have shared your below email with our client, but we were rather surprised that you would appear to be directly tying the financial benefits to which he is entitled to the substance of his testimony before the Department of Justice. We assume you did not intend to convey some sort of financial quid pro quo, which would obviously not be appropriate. Setting that aside, while Mr. Truong is not willing to be represented by Jones Day, he is willing to make himself available for a call with Tom Smith on Monday morning to discuss any information that Tom believes will be helpful in preparing him for his deposition.

We expect the Company to fully abide under its payment obligations and all other obligations including but not limited to non-disparagement under the fully executed agreement.

Chris

From: Richard S Pietch [<mailto:richard.s.pietch@electrolux.com>]
Sent: Thursday, June 04, 2015 4:03 PM
To: Robertson, Christopher
Subject: Jack Truong

Dear Mr. Robertson:

I understand Mr. Truong has informed Electrolux that he has signed the Separation and Release Agreement and sent it back to Electrolux.

Notwithstanding the foregoing, and with the exception of his ongoing salary and benefits continuation under the agreement, please be advised that Electrolux intends to delay all other of its executory financial obligations until such time that it can be in an position to evaluate Mr. Truong's upcoming deposition testimony before the DOJ in terms of its impact on the merger case before the DOJ.

Again, as you know, because of the confidentiality of a DOJ investigation, this delay could take some time to resolve.

Very truly yours,

Richard S. Pietch
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Exhibit D

Robertson, Christopher

From: John M. Majoras <jmmajoras@JonesDay.com>
Sent: Monday, June 22, 2015 10:40 AM
To: Robertson, Christopher
Subject: ELX

Hi Chris. Since I have not heard anything, I assume that the payment issue was resolved. As I said on our call, it was unfortunate that communications on the issue went awry. Certainly, there was never an intention to interfere with Mr. Truong's ability to respond to the DOJ's request for his testimony at an Investigational Hearing.

I would now like to follow up with you. Do you have a later afternoon window today for a call, or if not then, on Wednesday morning?

Thanks.

John

John M. Majoras
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Exhibit E

Robertson, Christopher

From: John M. Majoras <jmmajoras@JonesDay.com>
Sent: Tuesday, July 21, 2015 12:38 PM
To: Robertson, Christopher
Subject: Transcript

Chris, I would really appreciate hearing back from you about Jack's transcript. I had convinced ELX to resolve the issues with Jack quickly because I would be able to work with you, and I'm getting some pressure on the transcript. Thanks. John

This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.

Exhibit F

Robertson, Christopher

From: Richard <rspietch@aol.com>
Sent: Thursday, May 28, 2015 10:07 AM
To: ca92120@gmail.com
Cc: Robertson, Christopher
Subject: Re: DOJ Depo

Jack - thanks for your email - I called Attorney Robertson and we agreed to talk today regarding your DOJ deposition.

Thanks

Rick

Sent from my iPhone

On May 26, 2015, at 10:57 PM, ca92120@gmail.com wrote:

Hi Rick, please contact Chris on this matter. His contact info are below. Thanks, Jack

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crobertson@seyfarth.com |

On May 26, 2015, at 4:57 PM, Richard <rspietch@aol.com> wrote:

Jack - can you and I discuss asap or if you are represented, please provide me with name and number of your attorney.

Thx

Rick

Sent from my iPhone