

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

UNITED STATES OF AMERICA

Department of Justice, Antitrust Division
325 Seventh Street, NW, Suite 500
Washington, DC 20530

Plaintiff,

v.

SMITHFIELD FOODS, INC

200 Commerce Street
Smithfield, Virginia 23420

Defendant.

Case Number 1:03CV00434

**GWALTNEY OF SMITHFIELD, LTD.'S OBJECTIONS TO PLAINTIFF'S
SUBPOENA PURSUANT TO RULE 45 TO GWALTNEY OF SMITHFIELD, LTD. FOR
THE PRODUCTION OF DOCUMENTS RELATING TO JURISDICTIONAL
DISCOVERY**

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Counsel for Gwaltney of Smithfield, Ltd.

Pursuant to Rule 45 of the Federal Rules of Civil Procedure Gwaltney of Smithfield, Ltd. (“Gwaltney”) states its objections to Plaintiff’s Subpoena pursuant to Rule 45 to Gwaltney of Smithfield, Ltd. for the Production of Documents Relating to Jurisdictional Discovery (“Document Requests”) as follows:

GENERAL OBJECTIONS

1. Gwaltney objects to the Document Requests to the extent they require the production of documents prepared, written, sent, dated, or in effect prior to January 1, 1997 or after January 31, 2001. DOJ has alleged that the first causes of action accrued on June 28, 1998 and that Smithfield Foods, Inc. (“SFD”) was in violation of the relevant statute from June 26, 1998 through October 1, 1998. DOJ has alleged the second cause of action accrued on December 8, 1999 and that SFD was in violation of the relevant statute from December 8, 1999 to January 12, 2001. Therefore, requests for documents prepared, written, sent, dated, or in effect prior to January 1, 1997 or after January 31, 2001 seek documents that are irrelevant and such requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in determining whether or not SFD is amenable to jurisdiction in this district.

2. Gwaltney objects to the Document Requests to the extent they relate to companies other than Gwaltney, The Smithfield Packing Company, Incorporated (“Packing”), and the Smithfield Companies, Inc., and the subsidiaries, or SFD. The Department of Justice (“DOJ”) has not alleged that other companies are amenable to personal jurisdiction in the District of Columbia. Therefore, to the extent Document Requests relate to companies other than Packing, Gwaltney, and The Smithfield Companies, Inc. and their subsidiaries, or SFD, such Document Requests seek documents that are irrelevant and such requests are overly broad, unduly

burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in determining whether or not SFD is amenable to jurisdiction in this district. Further, Gwaltney objects to the Document Requests to the extent they relate to The Smithfield Companies, Inc., which was acquired by SFD on July 31, 2002, after the alleged causes of action accrued and after the periods DOJ has alleged SFD was in violation of the relevant statute. To the extent Documents Requests relate to the Smithfield Companies, Inc., such Document Requests seek documents that are irrelevant and such requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in determining whether or not SFD is amenable to jurisdiction in this district.

3. This response is being provided in advance of Gwaltney's review and production of documents. By stating that it will produce responsive documents, Gwaltney does not indicate that those documents in fact exist, have been located, are available for production, or are within Gwaltney's possession, custody, or control. Rather, Gwaltney indicates only that, subject to these General Objections and any additional specific objections asserted with respect to an individual specification, it will produce any non-privileged responsive documents that may be located. In addition, Gwaltney reserves the right to identify and withhold documents that it determines to be privileged, notwithstanding any failure to state, in response to each request below, that responsive documents are privileged.

4. Gwaltney objects to the Document Requests, and any implied or express instruction or direction in the Document Requests, that imposes or seeks to impose burdens greater than those imposed by the Federal Rules of Civil Procedure.

5. Gwaltney objects to the Document Requests to the extent they seek disclosure of information protected under the attorney-client privilege, the work-product doctrine, or any other applicable privilege or immunity.

6. Gwaltney objects to the Document Requests to the extent they seek disclosure of proprietary and/or confidential business information of Gwaltney. To the extent the Document Requests do seek such information, Gwaltney will respond only pursuant to a Protective Order pursuant to Fed. R. Civ. P.26(c).

7. Gwaltney objects to the Document Requests to the extent they are overly broad, unduly burdensome, and/or not reasonably calculated to lead to the discovery of admissible evidence.

8. Gwaltney reserves all objections as to the competence, relevance, materiality, admissibility, or privileged status of any information provided in response to these Document Requests, unless Gwaltney specifically states otherwise.

9. Gwaltney objects to the Document Requests to the extent they require production of documents in the possession, custody, or control of former directors, officers, employees, agents, partners, representatives, and attorneys of Gwaltney or its subsidiaries. Documents such persons might possess are not within the possession, custody, or control of Gwaltney.

10. Gwaltney objects to the Document Requests to the extent they require production of documents in the possession, custody, or control of companies in which Gwaltney does not have a controlling interest, as documents are not in the possession, custody, or control of Gwaltney.

11. Gwaltney objects to the Plaintiff's Requests to the extent they call for information which "concerns" or "relates to" a particular topic on the ground that gathering all documents containing any reference or relationship to a particular topic is unduly burdensome and out of proportion to the documents' potential relevance. Without waiving any objection, Gwaltney will use appropriate efforts to ensure production of all documents reasonably "concerning" or "relating to" a particular topic.

12. Gwaltney's general objections are applicable to, and included in, Gwaltney's specific objections and answers set forth below.

SPECIFIC OBJECTIONS

Request 1:

All documents relating to each meeting of Smithfield's board of directors or any of its committees, including minutes of each such meeting, notes taken in preparation for, at, or after each such meeting, written presentations prepared for or made at each such meeting, and resolutions passed.

Response:

See General Objections. Without waiving any objections, Gwaltney will produce documents responsive to this request, if any.

Request 2:

All documents relating to the Management Board of Smithfield, including minutes of each meeting of the Management Board, notes taken in preparation for, at, or after each such meeting, written presentations prepared for or made at each such meeting, resolutions passed, and any other documents that discuss its purpose, authority, functions, or activities.

Response:

See General Objections. Without waiving any objections, Gwaltney will produce document responsive to this request, if any.

Request 3:

All documents relating to meetings of the boards of directors of each DC Subsidiary or any of their committees, including minutes of each such meeting, notes taken in preparation for, at, or after each such meeting, written presentations prepared for or made at each such meeting, and resolutions passed.

Response:

See General Objections. Subject to these objections and without waiving any objections, Gwaltney will produce documents responsive to this request, if any.

Request 4:

All documents relating to meetings of the board of directors of SF Investments, Inc., or any of its committees, including minutes of each meeting, notes taken in preparation for, at, or after each such meeting, written presentations prepared for or made at each such meeting, and resolutions passed.

Response:

See General Objections.

Request 5:

All organizational charts and similar documents that discuss lines of authority or personnel reporting requirements within Smithfield.

Response:

See General Objections. Subject to and without waiving any objections, Gwaltney will produce documents responsive to this request, if any.

Request 6:

All organizational charts and similar documents that discuss lines of authority or reporting requirements between Smithfield and the Smithfield subsidiaries.

Response:

See General Objections. Subject to these objections and without waiving any objections, Gwaltney will produce documents responsive to this request, if any.

Request 7:

The corporate by-laws or similar governing documents for each DC Subsidiary.

Response:

See General Objections. Subject to these objections and without waiving any objections, Gwaltney will produce documents responsive to this request, if any.

Request 8:

The corporate by-laws or similar governing documents for Smithfield.

Response:

See General Objections. Further, Gwaltney objects to the term “similar governing documents” as vague and ambiguous. Subject to these objections and without waiving any additional objections, Gwaltney will produce corporate by-laws of SFD if any such documents are in its possession, custody, or control.

Request 9:

The corporate by-laws or similar governing documents for SF Investments, Inc.

Response:

See General Objections.

Request 10:

All powers of attorney or similar written authorization executed by or on behalf of any Smithfield subsidiary granting authority to Smithfield to act for, or on behalf of, such Smithfield subsidiary.

Response:

See General Objections. Subject to these objections and without waiving any objections, Gwaltney will produce documents responsive to this request, if any.

Request 11:

All manuals or other documents that discuss procedures to be followed by Smithfield subsidiaries regarding annual budgets, capital expenditures, marketing, pricing, financing or other business transactions, or employment matters such as salaries, bonuses, employee performance standards, retirement plans, and insurance coverage.

Response:

See General Objections. Subject to these objections and without waiving any objections, Gwaltney will produce documents responsive to this request, if any.

Request 12:

All press releases issued by Smithfield or any DC Subsidiary.

Response:

See General Objections. Subject to these objections and without waiving any objections, Gwaltney will produce documents responsive to this request, if any.

Request 13:

All studies, evaluations, reviews, analyses, reports or similar documents discussing coordination of operations among any or all Smithfield subsidiaries prepared by, or at the direction of, Lawrence Shipp, in connection with his position as Smithfield's Vice President of Logistics.

Response:

See General Objections. Further, Lawrence Shipp joined SFD as Vice President of Logistics on January 3, 2002. This was well after alleged the causes of action accrued and after the time DOJ alleged SFD was in violation of the relevant statute. Therefore, Gwaltney further objects to this request as seeking documents that are irrelevant and this request is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

Request 14:

All studies, evaluations, reviews, analyses, reports or similar documents discussing changes in or improvements to information technology policies, practices, or procedures at any Smithfield subsidiary prepared by, or at the direction of, Mansour Zadeh, in connection with his position as Smithfield's Chief Information Officer.

Response:

See General Objections. Further, Mansour Zadeh joined SFD as Chief Information Office on January 3, 2002. This was well after alleged the causes of action accrued and after the time DOJ alleged SFD was in violation of the relevant statute. Further, in its complaint and subsequent briefs, DOJ has neither alleged nor asserted that technology practices are relevant to determining personal jurisdiction for purposes of Section 12 of the Clayton Act. Likewise, in its complaint and subsequent brief, DOJ has neither mentioned Mansour Zadeh nor alleged that his conduct was relevant to the issue of jurisdiction. Therefore, Gwaltney further objects to this request as seeking documents that are irrelevant and this request is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

Request 15:

All documents discussing any actions taken by, or at the direction of, Joseph W. Luter, IV, in connection with his responsibilities, which were listed in your press release dated October 19, 2001, as "coordinating corporate sales and marketing programs," as well as "transportation, logistics, and information technology affecting the entire organization."

Response:

See General Objections. Further, DOJ requests documents reflecting conduct that occurred well after alleged the causes of action accrued and after the time DOJ alleged SFD was in violation of the relevant statute. Therefore, Gwaltney further objects to this request as seeking documents that are irrelevant and this request is overly broad, unduly burdensome and not reasonable calculated to lead to the discovery of admissible evidence.

Request 16:

All documents discussing the role of Smithfield or any other Smithfield subsidiary in sales, marketing, customer relations and transportation coordination for the DC Subsidiaries.

Response:

See General Objections. Subject to these objections and without waiving any objections, Gwaltney will produce documents responsive to this request, if any.

Request 17:

All documents discussing any actions taken b (sic), or at the direction of, Robert A. Slavik to “devis[e] a national brand strategy at Smithfield Foods,” his stated intent in your press release dated June 25, 2001.

Response:

See General Objections. DOJ requests documents reflecting conduct that occurred well after allege the causes of action accrued and after the time DOJ alleged SFD was in violation of the relevant statute. Therefore, Gwaltney further objects to this request as overly broad, unduly burdensome and not reasonable calculated to lead to the discovery of admissible evidence.

Request 18:

A representative sample of all sales and marketing materials developed by Smithfield for use by any of the DC Subsidiaries, including customer presentations.

Response:

See General Objections. Subject to these objections and without waiving any objections, Gwaltney will produce documents responsive to this request, if any.

Request 19:

Documents sufficient to identify (1) the officers and directors of each Smithfield subsidiary prior to its acquisition by Smithfield, and (2) any changes in the identity of those officers or directors that occurred after the acquisition.

Response:

See General Objections. Further, Gwaltney objects to this request to the extent it seeks documents reflecting conduct that occurred before or after the alleged causes of action accrued and after the time DOJ alleged SFD was in violation of the relevant statute.

Request 20:

Documents sufficient to show the dollar amount of revenues generated from sales in the District of Columbia by each DC Subsidiary, for each year since January 1, 1997.

Response:

See General Objections. Subject to these objections and without waiving any objections, Gwaltney will produce documents responsive to this request, if any.

Request 21:

For each year starting January 1, 1997, the Consolidating Financial Statements for Smithfield and the Smithfield subsidiaries.

Response:

See General Objections. Subject to these objections and without waiving any objections, Gwaltney will produce documents responsive to this request, if any.

Request 22:

Documents sufficient to show each debt instrument to which Smithfield and any DC Subsidiary were or are jointly obligated.

Response:

See General Objections. Subject to these objections and without waiving any objections, Gwaltney will produce documents responsive to this request, if any.

Request 23:

All employment agreements for any officer or director of Smithfield who also serves or has served as an officer of any DC Subsidiary.

Response:

See General Objections. Subject to these objections and without waiving any objections, Gwaltney will produce documents responsive to this request, if any.

Request 24:

A representative sample of the types of documents created by each DC Subsidiary that Smithfield reviews, approves or authorizes, including budgets, marketing plans, strategic plans, customer presentations, price lists, requests for capital or operating expenditures, customer contracts, employment contracts, or labor contracts.

Response:

See General Objections. Subject to these objections and without waiving any objections, Gwaltney will produce documents responsive to this request, if any.

Request 25:

Transcripts of all Smithfield earnings conference calls.

Response:

See General Objections. Subject to these and without waiving any objections, Gwaltney will produce documents responsive to this request, if any.

Request 26:

Documents sufficient to show the process or procedures by which Smithfield subsidiaries, directly or indirectly, access funds from all debt instruments to which Smithfield is a signatory.

Response:

See General Objections. Subject to these objections and without waiving any objections, Gwaltney will produce documents responsive to this request, if any.

Dated: June 8, 2003

Gwaltney of Smithfield, Ltd.

By “/s/” Thomas G. Slater, Jr.
Counsel

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