

Pickholz, Marvin

From: Pickholz, Marvin
Sent: Friday, November 16, 2007 8:57 AM
To: Hughes, L J.; John H. Hutchings Esq. (jhutchings@dillanddill.com)
Cc: Pickholz, Jason
Subject: FW: Meet and Confer Re Leslie Hughes as Witness

All:

In re-reading the below email I observed a typo. I inadvertently omitted the word "only" after the word "not" in the first full sentence in numbered paragraph 1, line 5. That sentence should read: "He has not only chosen...."

-----Original Message-----

From: Pickholz, Marvin
Sent: Friday, November 16, 2007 6:44 AM
To: Hughes, L J.; John H. Hutchings Esq.
(jhutchings@dillanddill.com)
Cc: Pickholz, Jason
Subject: RE: Meet and Confer Re Leslie Hughes as Witness

Leslie:

I will call you later this morning.

In the interim our position is that:

1. Mendiratta has listed you as a witness. We are entitled to cross that witness if she is called to the stand. Also, he is entitled to waive his right to keep the settlement and the settlement process confidential--but only if he chooses to do so. He has not chosen to do so but has referenced his cooperation and assistance to the SEC and the USAO throughout his papers in seeking a favorable order from Judge Lynch notwithstanding his admitted violations. That is his right. It also opens the door to our rights to cross examine him in these areas.

2. The SEC staff has selectively harvested "facts" and picked and chosen which of those to offer its own staff to testify about. Putting aside our other positions on this point, if any SEC staff person testifies and either has spoken to, discussed, or received information from the lawyer to be included in an affidavit now before the COURT as that person's direct testimony, or directions about what to testify about, we believe we are entitled to examine on that topic--unless you choose to

withdraw these witnesses. Also see paragraph 4 below.

3. As for Mr. Mendiratta, the SEC has itself referred to much of what his settlement is in its own pretrial papers, it has championed that settlement, it has publicly disclosed it and informed Judge Lynch at the October 12th Hearing about it and that it has recommended it be accepted by the Commission. You have made it a matter of public record.

4. We believe that the settlement process as well as TM1 and TM2 are highly relevant and to cut us off from examining about it and then when Mr Mendiratta (or you) testifies violates my client's fundamental right of confrontation and effective cross examination since it goes to motive, bias, interest and prejudice. Moreover, the SEC has said in its papers that if the Commission does not approve the settlement by the time trial starts it will seek the MOST SEVERE sanctions and penalties against Mr. Mendiratta. Think about that!! After he is induced to waive his Fifth Amendment right and admits at his deposition to numerous acts that can lead to criminal charges against him, and against various members of his family on multiple charges, and at a point in time when you apparently are not certain that the Commission will accept the settlement you negotiated, he has been publicly threatened with much more horrific Sanctions if the settlement is not approved.

Our view is that this is tantamount to the SEC telling him to "play ball with us or else" We believe that the settlement, the settlement process, the negotiations, this threat to a witness, and your testimony, are therefore fair game at trial.

I will call you later as promised, but since you indicated below that you may wish to file a motion I wanted to give you our position so that you had adequate time to prepare and file it today.

Since you have asked for a meet and confer with Jack too, let me know what time is good for both of you.

Marvin

-----Original Message-----

From: Pickholz, Jason

Sent: Thursday, November 15, 2007 4:04 PM

To: Pickholz, Marvin

Subject: Fw: Meet and Confer Re Leslie Hughes as Witness

----- Original Message -----

From: Hughes, L J. <HughesLJ@SEC.GOV>
To: Pickholz, Jason; jhutchings@dillanddill.com
<jhutchings@dillanddill.com>
Cc: Lutz, Julie K. <LutzJ@SEC.GOV>
Sent: Thu Nov 15 15:31:55 2007
Subject: Meet and Confer Re Leslie Hughes as Witness

Dear Jack and Jason,

I see in your designations of witnesses for cross examination that you list me as a witness. Please call me today to discuss why I am listed as a witness. To the extent it is to address settlement discussions, I believe any testimony or documents on that subject are inadmissible under Fed. R. Evid. 408.

Please consider this email my request for you to call me to meet and confer on why you should not remove my name as a witness and withdraw Mendiratta's Exhibits TM1 and TM-2, which are inadmissible on the same grounds and which issue was address at the hearing on October 15, 2007. I plan to file a motion in limine if I do not hear from you to resolve this issue.

Leslie Hughes

303-844-1086