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Briefs and Other Related Documents

United States District Court.S.D. Florida.
 SECURITIES AND EXCHANGE COMMISSION
 v.
 UZZI, et al.
 No. 01-8437-CIV.

Jan. 21, 2003.

Opinion

MIDDLEBROOKS, J.

OMNIBUS ORDER

*1 THIS CAUSE comes before the Court upon the notice by the parties of settlement with regard to two of the three remaining defendants (Robert J. Gluck and Phillip E. Harlow) as well as the following motions:

1. Defendant Gluck's Motion *in limine* to Exclude Evidence of the Restatement (DE 211), filed December 13, 2002;
2. Defendant Harlow's Motion *in limine* to Exclude Evidence of the Restatement (DE 213), filed December 16, 2002;
3. Defendant Uzzi's Motion *in limine* to Exclude Evidence of the Restatement (DE 214), filed December 16, 2002;
4. Plaintiff Security and Exchange Commission's Motion for Partial Summary Judgment Against Defendant Harlow (DE 215), filed December 16, 2002;
5. Plaintiff's Motion for Sanctions Against Defendant Harlow (DE 222), filed December 20, 2002;
6. Defendants Gluck and Uzzi's Motion to Compel Production of Notes of Untranscribed Meeting with David Fannin (DE 225), filed December 27, 2002;
7. Defendants Harlow and Uzzi's Emergency Motion for Clarification of Trial Procedure (DE

227), filed January 2, 2003;

8. Plaintiff's Motion to Bring Electronic Equipment in Courtroom (DE 248), filed January 15, 2003;

9. Defendant Uzzi's Motion to Use Computer Equipment During Trial, filed January 16, 2003;

10. Defendant Uzzi's Emergency Motion to Compel Plaintiff to Disclose Basic Trial Information, filed January 17, 2003.

The Court has reviewed the record and is fully advised in the premises.

Noting that Defendants Gluck and Harlow have reached settlement with Plaintiff SEC, and being advised that the settlement has been approved by the Commission, the Court denies as moot all motions not bearing upon the lone remaining defendant, Donald Uzzi.

The motion to exclude evidence of the restatement and restatement report are without merit. Uzzi offers multiple bases in support of his motion *in limine*, and this Court addresses each in turn. The Court concludes that the arguments advanced by Uzzi go more properly to the weight that should be given this material than to its admissibility.

Uzzi claims the Restatement and Report ^{FN1} are not relevant to the SEC's case. Not with standing the fact Federal Rule of Evidence 401 provides an expansive definition of relevance, this evidence is highly relevant to the SEC's claim that misstatements or omission of material fact were made by Defendant. Further, Uzzi claims the Restatement and Report are substantially more prejudicial than probative. The Court finds this not to be a case warranting exclusion under this exceptional remedy especially given the fact this matter is set for bench trial. The Court remains confident it can accord the appropriate weight to this evidence. Contrary to Uzzi's claims, Federal Rule of Evidence 407 barring admission of subsequent remedial measures does not serve to exclude the material at issue here. The Restatement

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and Report were not at all voluntary, and thus, neither the intent nor the policy underlying Rule 407 support exclusion of this material. Finally, the Restatement and Report are admissible against Uzzi under Federal Rule of Evidence 803(6) as business records and are not excludable hearsay. These types of reports are filed by companies as a matter of course when such occurrences arise and fit squarely within the language of the exception in Rule 803(6).

FN1. The term "Restatement and Report" applies here to the restated financial statements filed by Sunbeam, Sunbeam's form 10-K/A, the Andersen Restatement Report to Sunbeam's Board of Directors, and the work underlying that report.

*2 The motion to compel production of notes is likewise denied. FN2 Uzzi is attempting to discover material that is conceded to be attorney work product. Although that protection is not immune to challenge, Uzzi has failed to establish a basis on which to override the protection. Uzzi has not satisfied the substantial need/undue hardship standard of Federal Rule of Civil Procedure 26(b)(3). The information that may exist in the notes sought by Uzzi is readily available both from Mr. Fannin himself and from the numerous statements made by him in the course of this case and the investigation preceding it. As such, the Court does not find it appropriate to mandate production of the SEC attorney's notes.

FN2. The Court does note that the motion is untimely and could be denied solely on that basis, however, the motion is herein denied on the merits.

The emergency motions filed by Defendants have been neither emergencies nor matters which this Court finds it appropriate to resolve by issuing orders to compel. Uzzi has presented no issues that cannot and should not be resolved by the parties independently in anticipation of trial.

Accordingly and for the foregoing reasons, it is hereby

ORDERED AND ADJUDGED as follows:

1. Defendants' Motions *in limine* (DE 211, 213, & 214) are DENIED.
 2. Plaintiff's Motion for Summary Judgment (DE 215) is DENIED AS MOOT.
 3. Plaintiff's Motion for Sanctions (DE 222) is DENIED AS MOOT.
 4. Defendants' Motion to Compel Production of Notes (DE 225) is DENIED.
 5. Defendants' Emergency Motion for Clarification (DE 227) is DENIED.
 6. Plaintiff's Motion to Bring Electronic Equipment in Courtroom (DE 248) is GRANTED.
 7. Defendant Uzzi's Motion to Use Computer Equipment, filed January 16, 2003, is GRANTED.
 8. Defendant Uzzi's Emergency Motion to Compel Plaintiff to Disclose Basic Trial Information, filed January 17, 2003, is DENIED.
- DONE AND ORDERED in Chambers in West Palm Beach, Florida, this 21 day of January, 2003.

S.D.Fla.,2003.

S.E.C. v. Uzzi

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Briefs and Other Related Documents (Back to top)

- 2003 WL 23926123 (Trial Pleading) Second Amended Complaint (Jan. 27, 2003)
- 2003 WL 23926121 (Trial Motion, Memorandum and Affidavit) Plaintiff Securities and Exchange Commission's Response to Defendant Donald Uzzi's Emergency Motion to Compel Plaintiff to Disclose Trial Information (Jan. 17, 2003)
- 2003 WL 23926122 (Trial Motion, Memorandum and Affidavit) Plaintiff Securities and Exchange Commission's Response to Defendant Donald Uzzi's Emergency Motion to Compel Plaintiff to Disclose Trial Information (Jan. 17, 2003)
- 2003 WL 23926120 (Trial Motion, Memorandum and Affidavit) Plaintiff Sec's Memorandum in Opposition to the Motion of Defendants Gluck and Uzzi to Compel Production of Notes of Untranscribed Meeting with David Fannin (Jan. 14, 2003)
- 2003 WL 23926119 (Trial Motion, Memorandum and Affidavit) Reply Memorandum of Phillip E.

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Harlow in Support of His Motion in Limine to Exclude Evidence of the Restatement (Jan. 10, 2003)

- 2003 WL 23926116 (Trial Motion, Memorandum and Affidavit) Reply of Defendant Donald R. Uzzi in Further Support of Motion in Limine to Exclude the Restatement Material from Introduction at Trial (Jan. 08, 2003)
- 2003 WL 23926117 (Trial Motion, Memorandum and Affidavit) Memorandum of Phillip E. Harlow in Opposition to the Sec's Motion for Additional Sanctions (Jan. 08, 2003)
- 2003 WL 23926118 (Trial Motion, Memorandum and Affidavit) Plaintiff Securities and Exchange Commission's Response to Defendant Phillip Harlow's Motion for Clarification of Trial Procedures (Jan. 08, 2003)
- 2003 WL 23926115 (Trial Motion, Memorandum and Affidavit) Phillip E. Harlow's Memorandum of Law in Opposition to the Sec's Motion for Partial Summary Judgment (Jan. 06, 2003)
- 2002 WL 32753911 (Trial Motion, Memorandum and Affidavit) Reply Memorandum of Phillip Harlow in Support of His Motion for an Emergency Status Conference with the Court (Dec. 20, 2002)
- 2002 WL 32753899 (Trial Motion, Memorandum and Affidavit) Phillip E. Harlow's Motion in Limine to Exclude Evidence of the Restatement, and Incorporated Memorandum of Law (Dec. 16, 2002)
- 2002 WL 32753889 (Trial Motion, Memorandum and Affidavit) Memorandum of Law in Support of Robert J. Gluck's Motion in Limine (Dec. 13, 2002)
- 2002 WL 32753904 (Trial Motion, Memorandum and Affidavit) Memorandum of Law in Support of Securities and Exchange Commission's Motion for Partial Summary Judgment on Defendant Harlow's Affirmative Defense of Equitable Estoppel (Dec. 01, 2002)
- 2002 WL 32753881 (Trial Motion, Memorandum and Affidavit) Phillip E. Harlow's Memorandum in Opposition to Plaintiff Securities and Exchange Commission's Motion to Compel Documents from Defendant Harlow (Nov. 25, 2002)
- 2002 WL 32753884 (Trial Motion, Memorandum and Affidavit) Phillip E. Harlow's Memorandum in Opposition to Plaintiff Securities and Exchange Commission's Motion for Sanctions (Nov. 25, 2002)
- 2002 WL 32753874 (Trial Motion, Memorandum and Affidavit) Securities and Exchange

Commission's Motion and Memorandum for Sanctions Against Defendant Phillip Harlow (Nov. 07, 2002)

- 2002 WL 32753876 (Trial Motion, Memorandum and Affidavit) Securities and Exchange Commission's Motion and Memorandum to Compel Documents from Defendant Harlow (Nov. 07, 2002)
- 2002 WL 32753871 (Trial Motion, Memorandum and Affidavit) Phillip E. Harlow's Reply Memorandum in Support of His Motion to Compel Answers to His First and Second Requests for Admissions, and to Compel Production of Documents from Plaintiff (Oct. 21, 2002)
- 2002 WL 32753868 (Trial Motion, Memorandum and Affidavit) Defendant Phillip E. Harlow's Motion to Compel Answers to Harlow's First and Second Requests for Admissions, and to Compel Production of Documents from Plaintiff (Memorandum of Law Included) (Sep. 26, 2002)
- 2002 WL 32753866 (Trial Motion, Memorandum and Affidavit) Plaintiff's Reply to Defendant Harlow's Opposition to Motion to Compel Production of Documents and Answers to Interrogatories (Jul. 25, 2002)
- 2002 WL 32753863 (Trial Motion, Memorandum and Affidavit) Phillip E. Harlow's Memorandum in Opposition to Plaintiff Securities and Exchange Commission's Motion to Compel Answers to Interrogatories and Document Requests (Jul. 22, 2002)
- 2002 WL 32753859 (Trial Motion, Memorandum and Affidavit) Plaintiff's Reply to Various Defendants' Oppositions to Its Joint Motion and Memorandum for Relief from Rule 30(d)(2) and for Protective Order Suspending Scheduled Depositions (Jul. 08, 2002)
- 2002 WL 32753854 (Trial Motion, Memorandum and Affidavit) Securities and Exchange Commission's Motion and Memorandum to Compel Answers to Interrogatories and Documents from the Defendant Phillip E. Harlow (Jul. 03, 2002)
- 2002 WL 32753851 (Trial Motion, Memorandum and Affidavit) Defendant Phillip E. Harlow's Reply Memorandum in Support of his Motion to Compel Production of Documents (Jul. 02, 2002)
- 2002 WL 32753847 (Trial Motion, Memorandum and Affidavit) Defendant Robert J. Gluck's Opposition to Plaintiff Securities and Exchange Commission's Joint Motion and Memorandum for

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- 2002 WL 32753826 (Trial Motion, Memorandum and Affidavit) Defendant Russell A. Kersh's Response in Opposition to Plaintiff's Motion for Relief from Rule 30(d)(2) and for Protective Order (Jun. 27, 2002)
- 2002 WL 32753832 (Trial Motion, Memorandum and Affidavit) Phillip Harlow's Opposition to the Securities and Exchange Commission's Motion for Relief from Rule 30(d)(2) and for a Protective Order Suspending Scheduled Depositions (Jun. 27, 2002)
- 2002 WL 32753814 (Trial Motion, Memorandum and Affidavit) Defendant Dunlap's Response to Plaintiff Securities and Exchange Commission's Opposition to Defendant Harlow's Motion for a Second Scheduling Order (Jun. 24, 2002)
- 2002 WL 32753820 (Trial Motion, Memorandum and Affidavit) Defendant Robert J. Gluck's Response to Harlow's Motion for Second Scheduling Order and Plaintiff's Response Thereto (Jun. 24, 2002)
- 2002 WL 32753809 (Trial Motion, Memorandum and Affidavit) Response of Plaintiff Securities and Exchange Commission to Defendant Harlow's Motion for a Second Scheduling Order (Jun. 20, 2002)
- 2002 WL 32753798 (Trial Motion, Memorandum and Affidavit) Plaintiff Securities and Exchange Commission's Opposition to Defendant Phillip E. Harlow's Motion to Compel Production of Documents (Jun. 17, 2002)
- 2002 WL 32753802 (Trial Motion, Memorandum and Affidavit) Reply Memorandum of Plaintiff Sec in Support of its Motion to Compel Discovery from Defendant Albert J. Dunlap (Jun. 01, 2002)
- 2002 WL 32753794 (Trial Pleading) Answer to Amended Complaint (May. 10, 2002)
- 2002 WL 32753790 (Trial Motion, Memorandum and Affidavit) Phillip E. Harlow's Motion to Compel Production of Documents from Plaintiff Securities and Exchange Commission (Memorandum of Law Included) (May. 06, 2002)
- 2002 WL 32753777 (Trial Motion, Memorandum and Affidavit) Plaintiff Securities and Exchange Commission's Reply to Defendant Dunlap's Opposition to Motion to Compel Production of Videotapes and Discs (Apr. 29, 2002)

- 2002 WL 32753770 (Trial Motion, Memorandum and Affidavit) Defendant Dunlap's Opposition to Plaintiff Securities and Exchange Commission's Motion to Compel Production of Videotapes and Discs (Apr. 24, 2002)
- 2001 WL 34716995 (Trial Motion, Memorandum and Affidavit) Defendant's Reply Memorandum of Law in Further Support of the Motion for Clarification (Nov. 13, 2001)
- 2001 WL 34716998 (Trial Motion, Memorandum and Affidavit) Corrected Defendant's Reply Memorandum of Law in Further Support of the Motion for Clarification (Nov. 13, 2001)
- 2001 WL 34716989 (Trial Motion, Memorandum and Affidavit) Defendants' Motion for Clarification and Memorandum of Law in Support Thereof (Oct. 19, 2001)
- 2001 WL 34716975 (Trial Motion, Memorandum and Affidavit) Defendant Lee B. Griffith's Reply Memorandum in Support of His Motion to Dismiss the Complaint (Sep. 26, 2001)
- 2001 WL 34716972 (Trial Motion, Memorandum and Affidavit) Securities and Exchange Commission's Motion to Vacate the Court's Order of Referral to Mediation and Memorandum in Support (Sep. 21, 2001)
- 2001 WL 34716967 (Trial Motion, Memorandum and Affidavit) Securities and Exchange Commission's Reply Memorandum in Support of Motion to Strike Certain Affirmative Defenses Asserted by Defendant Phillip E. Harlow (Sep. 20, 2001)
- 2001 WL 34716963 (Trial Motion, Memorandum and Affidavit) Memorandum of Law of Defendant Phillip E. Harlow in Opposition to Plaintiff's Motion to Strike Affirmative Defenses (Sep. 04, 2001)
- 2001 WL 34716956 (Trial Motion, Memorandum and Affidavit) Memorandum of Law in Opposition to Defendant Griffith's Motion to Dismiss (Aug. 23, 2001)
- 2001 WL 34716948 (Trial Motion, Memorandum and Affidavit) Securities and Exchange Commission's Memorandum of Law in Support of Motion to Strike Certain Affirmative Defenses Asserted by Defendant Phillip E. Harlow (Aug. 17, 2001)
- 2001 WL 34716940 (Trial Motion, Memorandum and Affidavit) Plaintiff's Memorandum in

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- 2001 WL 34716933 (Trial Pleading) Answer of Defendant Donald R. Uzzi to Plaintiff's Complaint (Aug. 06, 2001)
- 2001 WL 34716916 (Trial Pleading) Answer to Amended Complaint (Aug. 01, 2001)
- 2001 WL 34716908 (Trial Pleading) Answer (Jul. 27, 2001)
- 2001 WL 34716888 (Trial Motion, Memorandum and Affidavit) Motion to Dismiss and Supporting Memorandum of Law by Defendant Lee B. Griffith (Jul. 26, 2001)
- 2001 WL 34716897 (Trial Pleading) Answer of Robert J. Gluck to Securities and Exchange Commission's Complaint (Jul. 26, 2001)
- 2001 WL 34716868 (Trial Pleading) Answer to Amended Complaint (Jul. 24, 2001)
- 2001 WL 34716859 (Trial Pleading) Amended Complaint for Civil Injunction and Civil Penalties (Jul. 11, 2001)
- 2001 WL 34716841 (Trial Pleading) Complaint for Civil Injunction and Civil Penalties (May. 15, 2001)
- 9:01CV08437 (Docket) (May. 15, 2001)

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