

EXHIBIT 3

Brown, Laura J.S. (ENRD)

From: Brown, Laura J.S. (ENRD)
Sent: Wednesday, March 22, 2017 11:34 AM
To: 'Devlin, Neal'
Cc: lkogan@koganlawgroup.com; Uholik, Brian (ENRD); Kolman, Chloe (ENRD)
Subject: RE: US v Brace
Attachments: Brace - February 27 2017_email chain_Redacted.pdf

Neal:

We are very disappointed that Defendants have refused to withdraw their frivolous motions for sanctions. Your e-mail, however, fails to address the fact that Defendants have violated both Section 6(C)(1) of the Court's ADR Policies and Procedures and paragraph 9(b) of the parties' Mediation Process Agreement by quoting the Agreement in Defendants' publicly filed motion, as I previously explained. The current ECF filed motion for sanctions must be removed and replaced with a version removing the quotation and discussion of the substance of the Agreement, or at the very least, redacted from public disclosure, and the parties can include that portion of the Mediation Process Agreement in the joint motion for leave to file seal. Additionally, reference to the parties' settlement communications in your motion (such as on p. 1, the sentence beginning "Despite repeated requests . . ." and the entirety of paragraph 6) should also be removed or redacted. And to the extent you or your clients have published the motion elsewhere (including on Mr. Kogan's law firm's website), the quotation and discussion of the Mediation Process Agreement and confidential settlement communications must be immediately removed or redacted.

Regarding the joint motion to seal, section 6.C of the Court's ADR Policies and Procedures requires that the parties "agree in writing that such specifically identified information may be disclosed" and Local Civil Rule 5.2.H, requires that the parties specifically identify the documents that they seek to seal. As such, the documents we seek to disclose to the Court, under seal, are the emails and portions of the Mediation Process Agreement listed below. The only e-mail that we intend to redact is my 2/27/17 e-mail to Mr. Cook, redacting the portions of my e-mail that relate to issues beyond the United States' attendance and authority at the mediation (a redacted copy is attached for your review). Also, we intend to disclose only the relevant sections of the mediation process agreement identified below.

- E-mail from Laura Brown, Esq., Counsel for United States, to Neal Devlin, Esq., Counsel for Defendants (Feb. 24, 2017, 11:33 A.M. EST).
- Redacted e-mail from Laura Brown, Esq., Counsel for the United States, to David L. Cook, Esq., Mediator; Neal Devlin, Esq., Counsel for Defendants; Lawrence Kogan, Esq., Counsel for Defendants (Feb. 27, 2017, 1:25 PM EST).
- E-mail from Neal Devlin, Esq., Counsel for Defendants, to Laura Brown, Esq., Counsel for the United States; David L. Cook, Esq., Mediator; Lawrence Kogan, Esq., Counsel for Defendants (Mar. 6, 2017, 12:10 PM EST).
- E-mail from Laura Brown, Esq., Counsel for the United States, to Neal Devlin, Esq., Counsel for Defendants; David L. Cook, Esq., Mediator; Lawrence Kogan, Esq., Counsel for Defendants (Mar. 6, 2017, 5:48 P.M. EST).
- E-mail from Lawrence Kogan, Esq., Counsel for Defendants, to Laura Brown, Esq., Counsel for the United States; Neal Devlin, Esq. Counsel for Defendants; David L. Cook, Esq., Mediator (Mar. 7, 2017, 10:09 A.M. EST).
- E-mail from Laura Brown, Esq., Counsel for the United States, to Lawrence Kogan, Esq., Counsel for Defendants, Neal Devlin, Esq., Counsel for Defendants, David L. Cook, Esq., Mediator (Mar. 7, 2017, 2:09 P.M. EST).
- E-mail from Lawrence Kogan, Esq., Counsel for Defendants, to Laura Brown, Esq., Counsel for the United States; Neal Devlin, Esq. Counsel for Defendants; David L. Cook, Esq. Mediator (Mar. 7, 2017, 2:55 P.M. EST).
- E-mail from Laura Brown, Esq., Counsel for the United States, to Lawrence Kogan, Esq., Counsel for Defendants; Neal Devlin, Esq., Counsel for Defendants; David L. Cook, Esq., Mediator (Mar. 7, 2017, 6:44 P.M. EST).
- Sections 8(c) and 9(a)-(b) of the Mediation Process Agreement

We also intend to seek leave to file under seal the portions of our opposition brief that discuss these documents (and redact them from the public filing). I will circulate a draft of the joint motion to seal for your review.

Also, in anticipation of the Court's status conference, we intend to file a motion for entry of a final briefing schedule on our motion to enforce, requesting that Defendants' final response on the motion to enforce be due on April 21, 2017 and the United States' final reply be due on May 1, 2017. Please let me know if you will oppose that motion.

Laura

From: Devlin, Neal [mailto:ndevlin@kmgslaw.com]
Sent: Monday, March 20, 2017 2:31 PM
To: Brown, Laura J.S. (ENRD) <LBrown@ENRD.USDOJ.GOV>
Cc: lkogan@koganlawgroup.com; Uholik, Brian (ENRD) <BUholik@ENRD.USDOJ.GOV>; Kolman, Chloe (ENRD) <CKolman@ENRD.USDOJ.GOV>
Subject: RE: US v Brace

Laura:

You filed your Motion to Strike on Friday, the Judge scheduled a status conference on the 7th, and we will be addressing the allegations contained in your Motion to Strike in our Amended Answer.

Regarding our Motion for Sanctions, we are not withdrawing it, because we fundamentally disagree with your comments about it. As we indicated in the footnote contained in our Motion for Sanctions, we anticipated that some of the confidential information discussed in connection with the mediation process (including the mediation session) may be relevant and needs to be filed under seal. Therefore, we are agreeable to a joint motion to file information related to this motion under seal. By doing so, both sides can include information in their filings which they deem is relevant without risking any public disclosure of confidential mediation information."

In light of the above, we're not sure what open issues remain to meet and confer about; but we are happy to speak with you.

Neal

From: Brown, Laura J.S. (ENRD) [mailto:Laura.J.S.Brown@usdoj.gov]
Sent: Friday, March 17, 2017 2:20 PM
To: Devlin, Neal
Cc: lkogan@koganlawgroup.com; Uholik, Brian (ENRD); Kolman, Chloe (ENRD)
Subject: RE: US v Brace

Hi Neal:

We are available to have a call on Tuesday anytime between 11-2. Please let me know what works for you.

Because Defendants haven't identified a date-certain by which the motion for leave to amend the answer will be filed, we will be filing our motion to strike today to reserve our rights. We can discuss access to the 1990 record on our call.

Also, in advance of the call next week, I would appreciate a response to my questions regarding whether you will agree to withdraw the sanctions motion, or if not, whether you agree to waive confidentiality over our communications regarding authority.