

EXHIBIT 5

Brown, Laura J.S. (ENRD)

From: Devlin, Neal <ndevlin@kmgslaw.com>
Sent: Monday, March 27, 2017 8:53 AM
To: Brown, Laura J.S. (ENRD); lkogan@koganlawgroup.com
Cc: Uholik, Brian (ENRD); Kolman, Chloe (ENRD)
Subject: RE: US v Brace
Attachments: RE - Mediation Communication Exchanges Spanning 2-28 thru 3-10.docx;
ENV_DEFENSE-#800570-v4-Brace_-_Draft_Joint_Motion_for_Leave_to_File_Under_Seal_(4).docx

Laura:

Attached are our revisions to the joint motion to seal. As you will see, we have added some additional email correspondence that is relevant to the motion and that we would like to include in this motion and removed the references to the mediation agreement (per our explanation below). A copy of those additional emails are also attached. I suggest that we simply file an appendix with all sealed exhibits, that includes everything listed in the revised joint motion. With those revisions, we are fine with the joint motion and you can /s/ our names.

Regarding your previous email:

1. We fundamentally disagree that any part of our motion for sanctions filing violated the confidentiality rules or protective order. To the contrary, the only information we included was from the mediation agreement, which did not include any information relevant to this case or substantive settlement discussions. Like the mediator's report and the ADR stipulation, the information we included discussed the mediation structure, not the mediation itself. Further, the precise language to which you are referring is publically available on www.justice.gov in a January 2017 guideline publication (<https://www.justice.gov/file/928531/download>). If you continue to press this issue, please explain how the language to which you are referring is confidential when it is available on the government's website.
2. We do oppose your proposed briefing schedule for the reasons we discussed in our last meet and confer session.
3. Despite the government's agreement shortly after we were before Judge Schwab more than a month ago, the United States has still not filed a consent to the magistrate judge in the 17 case. This has not resulted in different chambers rules applying the two cases. Please file that ASAP. If you need us to sign the same consent, please email it to me and we will do that.
4. Finally, we will be attending the status conference on April 7th in person. We checked with the Court's chambers and they indicated that would be fine. Therefore, you do not need to worry about setting up a call for us to be involved, as was indicated in the order scheduling that conference.

Neal

From: Brown, Laura J.S. (ENRD) [mailto:Laura.J.S.Brown@usdoj.gov]
Sent: Friday, March 24, 2017 3:33 PM
To: Devlin, Neal; lkogan@koganlawgroup.com
Cc: Uholik, Brian (ENRD); Kolman, Chloe (ENRD)
Subject: RE: US v Brace

Hi Neal:

I am following up on the e-mail below that I sent you yesterday. Will you be able to send me your comments, if any, on the draft joint motion for leave to seal that I circulated yesterday by the end of the day today? If I do not hear back from you by noon on Monday, I plan to represent in the filing that I contacted you about the motion but did not receive any response.

Thanks,
Laura

From: Brown, Laura J.S. (ENRD)
Sent: Thursday, March 23, 2017 12:30 PM
To: 'Devlin, Neal' <ndevlin@kmgslaw.com>
Cc: 'lkogan@koganlawgroup.com' <lkogan@koganlawgroup.com>; Uholik, Brian (ENRD) <BUholik@ENRD.USDOJ.GOV>; Kolman, Chloe (ENRD) <CKolman@ENRD.USDOJ.GOV>
Subject: RE: US v Brace

Neal:

As discussed, attached is a draft joint motion for leave to seal certain confidential settlement information. We'd like to get this filed as soon as possible, in advance of our opposition brief due day on 3/28/17. So, I request your comments by COB tomorrow.

Thanks,
Laura

From: Brown, Laura J.S. (ENRD)
Sent: Wednesday, March 22, 2017 11:34 AM
To: 'Devlin, Neal' <ndevlin@kmgslaw.com>
Cc: lkogan@koganlawgroup.com; Uholik, Brian (ENRD) <BUholik@ENRD.USDOJ.GOV>; Kolman, Chloe (ENRD) <CKolman@ENRD.USDOJ.GOV>
Subject: RE: US v Brace

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,