



U.S. Department of Justice

*United States Attorney
Eastern District of Wisconsin*

517 East Wisconsin Avenue
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414 / 297-1700

June 14, 2007

The Honorable Patricia J. Gorence
United States Magistrate Judge
Eastern District of Wisconsin
264 Federal Courthouse
517 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

Re: *United States v. Balsiger, et al.*
Case No. 07-Cr-57

Dear Judge Gorence:

This is to summarize this case from the government's perspective as an aid to the Court, which we hope will assist in making the June 20, 2007 scheduling conference as productive as possible for all parties.

Discovery

documents

Since arraignment in March, discovery has been and is ongoing.

Our office has sent out to the following discovery to defense counsel, including indexes where possible:

On April 9, 2007: two compact discs containing in excess of 15,000 pages of discovery, including reports of interview, and a DVD containing a visual scene;

On May 16, 2007, one compact disc containing in excess of 1,000 pages;

On May 23, 2007, four compact discs containing about 35,000 pages; and

On June 13, 2007, six compact discs containing over 65,000 pages of new materials plus many hundreds of thousands of pages of mainly financial data in electronic format.

Our office is still scanning documents to provide as discovery on compact discs or DVDs. We expect to have all currently available discovery to defense counsel by about the end of July.

electronic evidence

The evidence also consists of a great deal of other electronic evidence stored on computers and similar electronic media. This evidence is being copied and provided as part of the discovery process, and should also be fully distributed by the end of July. Some of the discovery distributed on June 13, 2007 consisted of such evidence.

other physical evidence

There is also a great deal of physical evidence – in excess of 10 tons – currently stored in a local warehouse facility and another such facility in Minnesota. This evidence consists primarily of coupons, some of which have been through processing, and some of which have not. There are also many boxes of business records among this physical evidence. The FBI and GSA are now contracting separate warehouse space in Milwaukee dedicated to this case, and expect to have a lease signed by the end of June. If that timetable holds, the physical evidence can be ready for defense counsel and their clients to review by the middle of July. Although all such evidence will be made available, we will attempt to identify the most relevant items for defense counsel to make their review efficient and helpful.

Current case posture and probable timing of a potential superseding indictment

On May 17, 2007, Judge Clevert granted the government's motion to dismiss the corporate defendant, International Outsourcing Services, as part of an Agreement for full cooperation by the corporation, including full government access to all IOS files. As part of the Agreement, IOS secured promises from its attorneys, including the law firms of Scott, Hulse, Marshall, Feuille, Finger & Thurmond, P.C. of El Paso; Greenberg Traurig, LLP of Chicago; and Mallor Clendening Grodner & Bohrer LLP of Bloomington, IN, to make their case and coupon-related files available to the government for review. The vast majority of such documents would be those of the Scott Hulse firm, which was IOS's corporate counsel for many years. We have been informed by the Scott Hulse firm that attorneys for Messrs. Balsiger and Currey are asserting a common interest privilege over approximately 50% of the documents in the Scott Hulse files. We have asked counsel for these defendants, who have never individually employed Scott Hulse for purposes of this litigation, to promptly move the Court to enjoin production to the government of these allegedly privileged documents, including a detailed privilege log which would facilitate the required document-by-document analysis of the validity of such a claim of privilege. While litigation about these assertions of privilege can be handled promptly, parties have a right to an interlocutory appeal under such circumstances, so these matters may be unsettled for several months. Rather than review these law firm documents piecemeal, the government will delay review until any privilege litigation is final.

This probable privilege litigation also affects the timing of a contemplated superseding indictment. The ongoing investigation has shown that at least some attorneys for IOS were used, perhaps unwittingly in most or all cases, to pass along false information to the government in an attempt to obstruct justice. The investigation also suggests that some attorneys were also deployed to harass one or more government witnesses for the same purpose. Still other witnesses were subjected to coaching before they were interviewed in the government's investigation. An ongoing investigation seeks to determine precisely which individuals were responsible for this apparent additional criminal conduct. When that is determined, we expect to seek a superseding indictment.

The documents of the three aforementioned law firms are highly relevant to this inquiry into possible obstruction. Therefore, the superseding indictment in all probability will not be sought until the privilege litigation is completed, these firms' non-privileged files have been reviewed, and interviews of some of the attorneys have been conducted. The timing for this will surely involve months rather than weeks. The superseding indictment could also include the addition of one or more individual defendants.

After these law firms' files are reviewed, it seems probable that there will be an additional, sizeable amount of discovery – undoubtedly dozens of banker's boxes in volume – to be distributed.

Thank you for considering the impact of these issues on any motions schedule that the Court sets for this case. We will be glad to answer the Court's questions about these and other issues at the scheduling conference.

Sincerely,

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