



KOHN, KOHN & COLAPINTO, LLP

May 7, 2014

Mark Langer
Clerk
U.S. Court of Appeals
for the D.C. Circuit
333 Constitution Ave., N.W.
Washington, D.C. 20001

Re: *In Re Kellogg Brown & Root, Inc., et al.*, No. 14-5055 (D.C. Cir.)
Oral Argument Held on May 7, 2014

Dear Mr. Langer:

On behalf of the Respondent-Relator, Harry Barko, we hereby submit this letter pursuant to Fed. R. App. P. 28(j) to notify the panel of a factual error made during Petitioner's reply argument.

In response to a question by the panel Petitioner's counsel stated that the attorney-client privilege legend appeared on the interview statements at the time of the employee interviews. There is nothing in the record to support this assertion. The declaration of Harry Barko states that during the interview there was "no indication that the purpose of their investigation was to obtain legal advice." Respondent's Addendum, A-70-71, Declaration of Harry Barko, ¶¶ 6-8.

Also contrary to Petitioner's assertion, the "Confidentiality Statement" in the record does not contain any privileged or attorney-client privilege legend. Respondent's Addendum, A. 28. The record does not establish that written interview statements were prepared or signed during the COBC interviews.

Respectfully submitted,

/s/ Stephen M. Kohn
Stephen M. Kohn

/s/ Michael D. Kohn
Michael D. Kohn

/s/ David K. Colapinto
David K. Colapinto
Attorneys for Respondent-Relator

cc (via ECF):
All Counsel of Record
Certificate of Service

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Rule 28(j) letter was served on this 7th day of May, 2014, by U.S Mail, postage prepaid, on:

Beverly M. Russell
Assistant U.S. Attorney
U.S. Attorney's Office
Civil Division
555 Fourth Street, N.W.
Washington, D.C. 20530

The Honorable James S. Gwin
U.S. District Judge
Carl B. Stokes United States Court House
801 West Superior Avenue, Courtroom 18A
Cleveland, OH 44113-1838

and electronically via the Court's ECF system on:

John P. Elwood
Tirzah Lollar
Jeremy C Marwell
Joshua S. Johnson
VINSON & ELKINS LLP
2200 Pennsylvania Ave., N.W., Suite 500 West
Washington, D.C. 20037

John M. Faust
Law Office of John M. Faust, PLLC
1325 G Street, N.W., Suite 500
Washington, D.C. 20005

Elisabeth Collins Cook
Wilmer Hale
1875 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Daniel H. Bromberg
Christine H. Chung
Christopher Tayback
Scott L. Watson
Quinn Emanuel Urquhart & Sullivan LLP
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017-3211

By: /s/ David K. Colapinto
David K. Colapinto