SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 60

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SEMSYSCO GMBH, GRUNWALD EQUITY INDUSTRIES & SERVICES GMBH, and GRUNWALD EQUITY SEMSYSCO GMBH,

Plaintiffs,

- v -

GLOBALFOUNDRIES INC. and GLOBALFOUNDRIES DRESDEN MODULE ONE LLC & CO. KG,

Defendants.

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INDEX NO. 652719/2016

MOTION DATE

MOTION SEQ. NO. 003

DECISION AND ORDER

HON. MARCY S. FRIEDMAN:

The following e-filed documents, listed by NYSCEF document number (Motion Seq. No. 003) 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132

were read on this motion to COMPEL DISCLOSURE.

This breach of contract action arises out of the development of a tool to be used in cleaning silicon wafers, a step in the semiconductor manufacturing process. Defendants GLOBALFOUNDRIES, INC., and GLOBALFOUNDRIES Dresden Module One LLC & Co. KG (collectively, GlobalFoundries) move, pursuant to CPLR 3124, for an order compelling plaintiffs Semsysco GMBH (Semsysco), Grunwald Equity Industries & Services GMBH, and Grunwald Equity Semsysco GMBH (collectively, Grunwald) "to make additional disclosure," based on plaintiffs' alleged waiver of the attorney-client privilege as a result of the forwarding of an email chain containing communications between plaintiffs and their counsel. Plaintiffs, albeit without a formal notice of cross-motion, move for a protective order prohibiting defendants from using or revealing, and directing defendants to destroy or return, information contained in the

forwarded email chain. In their respective motions, the parties also seek additional relief regarding discovery.

It is undisputed that Herbert Otzlinger, the chief executive officer (CEO) of Semsysco, sent to Hans Peter Ehweiner, one of defendants' employees, an email dated June 6 or June 9, 2015, to which a series of emails was attached (the email chain).[1] It is also undisputed that this email chain contained a series of communications between plaintiffs and their counsel, and that these communications were privileged. (Defs.' Memo. In Supp., at 2; Pls.' Memo. In Opp., at 3; Defs.' Reply Memo., at 1.)

Defendants contend that Mr. Otzlinger intentionally forwarded the email chain, and that plaintiffs have accordingly waived the attorney-client privilege with respect to every subject matter "touched upon" in the chain. (Defs.' Memo. In Supp., at 1.) Plaintiffs contend that Mr. Otzlinger only intended to forward the top email in the chain to Mr. Ehweiner, in order to obtain Mr. Ehweiner's views on a contact at GlobalFoundries with whom to conduct settlement discussions before commencing litigation. (See Aff. of Herbert Otzlinger, sworn to on July 24, 2018 [Otzlinger Aff.], ¶¶ 3-5 [Rose Aff., Ex. G]; Pls.' Memo. In Opp., at 2-3.)

CPLR 4503 (a) (1) provides that "[u]nless the client waives the privilege," confidential attorney-client communications shall be protected from disclosure. As the Court of Appeals has explained, "[g]enerally, communications between an attorney and a client that are made in the

[1] A number of the emails in the chain were written in German. The parties have provided three translations of these emails. Two were translated by Xiaohua Fu, translation project manager at Linguistic Systems, Inc., dated June 13, 2018 and August 23, 2018, respectively. (Aff. of Andrew C. Rose [Defs.' Atty.] In Supp., Exs. A, D.) These translations give different dates for the email sent by Mr. Otzlinger to Mr. Ehweiner, which attached the chain. The June translation states that the date of this email was "Tuesday, June 9, 2015 8:27 PM," while the August translation states that the date of this email was "June 06, 2015 02:27 AM." A third translation by Bradley Shrum, project manager, legal translations at United Language Group, dated June 1, 2018, gives the date for the email as "Tuesday, 9 June 2015, 8:27 PM." (Otzlinger Aff., Ex. A.) The dates of the emails in the chain below Mr. Otzlinger's email to Mr. Ehweiner are the same in all three translations. Although there are differences in the texts of the translations, the parties have not pointed to any material substantive differences.

presence of or subsequently disclosed to third parties are not protected by the attorney-client privilege." (Ambac Assur. Corp. v Countrywide Home Loans, Inc., 27 NY3d 616, 620, 624 [2016].) Thus, when a litigant or counsel voluntarily discloses privileged communications, by email or otherwise, a waiver will be found.[2] (See e.g. Siras Partners LLC v Activity Kuafu Hudson Yards LLC, 157 AD3d 445, 446 [1st Dept 2018], affg 2017 NY Slip Op 31216 [U], 2017 WL 2444798, * 1-2 [Sup Ct, NY County 2017] [finding a waiver where defendant sent an email to a third-party, the contents of which disclosed advice given to him by counsel]; Matter of Sheikh [v Sheikh], 2017 WL 6451277, * 1-2 [Sup Ct, Suffolk County 2017] [finding that petitioner waived the attorney-client privilege as to one communication that petitioner's counsel intentionally attached to an email sent to defendant's counsel].)

The general rule that a disclosure of a privileged communication will operate as a waiver of the attorney-client privilege is subject to an exception where "it is shown that the client intended to maintain the confidentiality of the document, that reasonable steps were taken to prevent disclosure, that the party asserting the privilege acted promptly after discovering the disclosure to remedy the situation, and that the parties who received the documents will not suffer undue prejudice if a protective order against use of the document is issued." (New York Times Newspaper Div. of the NY Times Co. v Lehrer McGovern Bovis, Inc., 300 AD2d 169, 172 [1st Dept 2002] [NY Times]; accord Oakwood Realty Corp v HRH Constr. Corp., 51 AD3d 747, 749 [2d Dept 2008].)

Although this rule has been articulated by the Appellate Division in the context of disclosures by attorneys, it has been persuasively applied by New York trial courts, and a

[2] A communication does not "lose its privileged character for the sole reason that it is communicated by electronic means. . . ." (CPLR 4548.)

substantially similar rule has been applied by federal courts, in the context of inadvertent disclosures by clients. (See Gipe v Monaco Reps. LLC, 2013 NY Slip Op 31435 [U], 2013 WL 3389345, * 5 [Sup Ct, NY County 2013]; Broxmeyer v United Capital Corp., 2012 NY Slip Op 33739 [U], 2012 WL 12045242, * 3-4 [Sup Ct, Nassau County 2012]; Apionishev v Columbia Univ. in the City of NY, 2012 WL 208998, * 5, 11 [SD NY, No. 09 Civ 6471 (SAS), Jan. 23, 2012]; Hollis v O'Driscoll, 2013 WL 2896860, * 3-5 [SD NY, No. 13 Civ 01955 (AJN), June 11, 2013].) The court follows this authority here.

It is further settled that the party who asserts the privilege has the burden of establishing that it has not waived the privilege. (See generally Ambac Assur. Corp., 27 NY3d at 624; Matter of New York City Asbestos Litig. [v Amchem Prods., Inc.], 151 AD3d 550, 551 [1st Dept 2017], lv dismissed 30 NY3d 1055 [2018], rearg denied 31 NY3d 946.)

Applying these standards, the court holds that plaintiffs have not met their burden of establishing that Mr. Otzlinger's forwarding of the email chain did not result in a waiver of the attorney-client privilege. As a threshold matter, plaintiffs fail to meet their burden of showing that the disclosure of the email chain was inadvertent.

Mr. Otzlinger's email to Mr. Ehweiner inquired: "how do you see this?" (Aff. of Andrew C. Rose [Defs.' Atty.] In Supp. [Rose Aff.], Ex. A.) The first email in the chain, beneath this email to Mr. Ehweiner, was an email from Mr. Otzlinger to, among others, Dr. Petra Wibbe, plaintiffs' in-house counsel, agreeing that a settlement dialogue with GlobalFoundries should be undertaken and making suggestions about whom he could contact. Earlier emails in the chain by Dr. Wibbe and Richard Hegger, Semsysco's outside counsel, were also focused on the desirability of initiating settlement discussions before litigation was commenced. However, a still earlier email dated June 8, 2015, from Dr. Wibbe to Semsysco's litigation counsel and

others, on which Mr. Otzlinger was copied, discussed litigation strategy at length, including proposed changes to a draft "notice of breach" letter and possible damages claims.

Mr. Ehweiner responded to Mr. Otzlinger's email by suggesting a GlobalFoundries' contact. His email stated: "I think Rutger would be an alternative." (Rose Aff., Ex. D.)[3] Mr. Ehweiner's responsive email also included the entire email chain.

Mr. Otzlinger acknowledges that he deliberately sent the "top email" (i.e., the first email in the chain beneath his email to Mr. Ehweiner) in order to facilitate settlement discussions. (Otzlinger Aff., ¶¶ 3-4.) He asserts, however, that he "inadvertently forwarded to [Mr. Ehweiner] certain emails involving privileged communications with Grunwald and Semsysco's counsel." (Id., ¶ 5.) Mr. Otzlinger's statement that he inadvertently forwarded the chain is wholly conclusory. He nowhere states that he was unaware that the email chain was attached. Nor does he address the fact that Mr. Ehweiner's response also included the entire email chain, or claim that he was not put on notice by this responsive email that the entire chain had been forwarded. In addition, the top email expressly refers to statements by Dr. Wibbe and Mr. Hegger, and cannot readily be understood without references to their underlying emails in the chain concerning settlement discussions.

In claiming that Mr. Otzlinger did not intentionally forward the entire email chain, plaintiffs argue that Mr. Otzlinger sent the email to Mr. Ehweiner after getting "off a long flight" to Taiwan and only "one minute" after sending the top email to Semsysco and Grunwald

[3] It is undisputed that Rutger referred to Rutger Wijburg, then general manager of GlobalFoundries Dresden plant. (Pls.' Memo. In Opp., at 3.)

The court notes that the email from Mr. Ehweiner to Mr. Otzlinger was apparently written in both German and English. The date is stated as "Wed 6/10/2015 8:01:02 AM" and the subject matter of the email is also partly in English. (Rose Aff., Ex D.) The translation makes an obvious error as to the date, stating that the date is "Wed October 6, 2015 8:01:02 AM." (Id.) Given that the Otzlinger email was sent in June 2015, defendants' claim that the response was sent on October 6 (the European date format as opposed to the U.S. domestic format) is unpersuasive. (See Nov. 15, 2018 Tr., at 4.) Moreover, the calendar, of which the court takes notice, reflects that October 6, 2015 fell on a Tuesday, while June 10, 2015 fell on a Wednesday.

personnel and their counsel. (Pls.' Memo. In Opp., at 3, 6; Nov 15. 2018 Tr., at 30.) Plaintiffs do not provide a meaningful explanation for the time difference between these emails.[4] More important, Mr. Otzlinger himself does not make any claim that the circumstances under which he sent the email to Mr. Ehweiner caused him to inadvertently or unintentionally forward the entire email chain. For example, he does not claim in his affidavit that he erred in forwarding the chain because he acted so quickly—within one minute of his email to Dr. Wibbe—in sending the email to Mr. Ehweiner. Nor does he claim that the long flight caused him to inadvertently forward the chain.

Under these circumstances, the court does not find that plaintiffs have shown that the forwarding of the chain was inadvertent. Plaintiffs also fail to meet their burden of showing that they acted promptly after discovering the disclosure to remedy the situation. In claiming that they acted promptly, plaintiffs point to their counsel's request for the return of the email chain in June 2018, within 48 hours of a letter from defendants' counsel to plaintiffs' counsel advising them that their "client" had "waived its attorney-client privilege" by disclosing the email chain to Mr. Ehweiner when he was an employee of GlobalFoundries. (Pls.' Memo. In Opp., at 4, 7; Pls.' Email dated June 2, 2018 [Aff. of M. Jonathan Seibald (Pls.' Atty.), In Opp. (Seibald Aff.), Ex. 6]; Defs.' Letter dated May 31, 2018 [Rose Aff., Ex. E].) Plaintiffs do not, however, make any showing that they were unaware, prior to receipt of defendants' counsel's letter, that Mr. Otzlinger had forwarded the email chain. Mr. Otzlinger's affidavit fails to address when he realized that he had forwarded the email chain. Plaintiffs also fail to clarify apparently

[4] According to the June 13, 2018 translation, Mr. Otzlinger's email to Mr. Ehweiner was sent on "Tuesday, June 9, 2015 8:27 PM," while Mr. Otzlinger's email to Dr. Wibbe and others was sent on "Wednesday, June 10, 2015 02:26." (Rose Aff., Ex. A [emphasis supplied].) Presumably, the date and time of the email from Mr. Otzlinger to Mr. Ehweiner reflects the date and time at which Mr. Ehweiner received the email and not at which Mr. Otzlinger sent it. If so, the one minute difference (accounting for the time change) may be shown. This point is not, however, made by plaintiffs.

inconsistent statements made on this motion as to when they first acquired knowledge that the email chain had been forwarded. In their memorandum in opposition, plaintiffs state that "Defendants incorrectly suggest that the Email Chain was not collected and that Plaintiffs 'hid' it from Defendants. In fact, the Email Chain was properly collected and later marked as privileged—unsurprising given the ubiquitous presence of attorneys on the Email Chain and the fact that it was forwarded to a personal, non-GlobalFoundries email address." (Pls.' Memo. In Opp., at 7 n 12 [emphasis in original] [internal citation omitted].) In contrast, at oral argument of the motion, plaintiffs' counsel appeared to state that plaintiffs did not know about the email chain. He apparently acknowledged that the computer review system failed to identify the chain, stating: "I freely admit my mistake, it should have been caught and we should have produced only the unredacted, the non-privilege part." (See Nov. 15, 2018 Tr., at 42-43.)

As plaintiffs have not established the date of their discovery of the forwarding of the email chain, the court does not find that they have shown that their request for the return of the chain was prompt. The court accordingly holds, under the NY Times standard, that Mr. Otzlinger's forwarding of the email chain resulted in waiver of the attorney-client privilege.

The court rejects plaintiffs' contention that the waiver cannot extend to the Grunwald plaintiffs because Mr. Otzlinger has never been their officer or employee. (Pls.' Memo. In Opp., at 2 n 2, 9.) The Appellate Division has held that a party who shares a common interest or counsel with another party cannot "unilaterally waive the joint privilege" on behalf of the other party. (21st Century Diamond, LLC v Allfield Trading, LLC, 142 AD3d 913, 914 [1st Dept 2016]; Arkin Kaplan Rice LLP v Kaplan, 107 AD3d 502, 503 [1st Dept 2013]; accord Arkin Kaplan Rice LLP v Kaplan, 118 AD3d 492, 493 [1st Dept 2014].) Plaintiffs fail to cite any authority that a waiver will not occur where the same counsel represents both parties, in this case

related entities, and becomes aware of the disclosure but fails to timely assert the privilege on behalf of its clients.

The court turns to the relief to be awarded as a result of plaintiffs' waiver of the attorney-client privilege. As held by the Appellate Division, when a party intentionally discloses a communication protected by the attorney-client privilege, the privilege is waived as to other documents "pertaining to the subject matter" of that communication. (Arkin Kaplan Rice LLP, 118 AD3d at 493; see Siras Partners LLC, 157 AD3d at 446.)

Defendants claim that, as of a result of the forwarding of the email chain, there has been a waiver of the attorney-client privilege with respect to any documents containing the subject matter of the chain. (Defs.' Memo. In Opp., at 4-5.) Defendants further claim that the subject matter falls into 47 categories. (Id., at 3; Defs.' Letter dated May 31, 2018 [Rose Aff., Ex. E].) Defendants request an order directing plaintiffs to "produce a detailed document-by-document [privilege] log so that Defendants can attempt to determine which of the 1,791 documents withheld involve what subject matters" and whether 947 of those undisclosed documents, which were marked as attorney work-product, "actually involve work product, and on what basis:" (Defs.' Memo. In Supp., at 7.)

Plaintiffs' argue that defendants' request is "extraordinarily broad" and that defendants have "grossly overstat[ed]" the scope of the waiver. (Pls.' Memo. In Opp., at 1, 7.) Plaintiffs also assert that any subject matter waiver does not extend to undisclosed documents withheld as attorney work-product. (Id., at 4 n 7.) In their counsel's email requesting the return of the email chain, plaintiffs also assert that the chain contains attorney work-product and that "disclosure of [attorney] work-product to a third-party does not waive privilege. . . ." (Pls.' Email dated June 2, 2018 [Seibald Aff., Ex. 6].)

The parties' arguments as to the scope of relief raise serious issues that cannot be determined on the record as briefed. First, defendants' request, as a result of the waiver of the attorney-client privilege, for documents containing 47 subject matter categories, appears to be grossly excessive. Neither party has comprehensively addressed legal authority governing the scope of the subject matter that must be disclosed upon a waiver of the attorney-client privilege. Second, at least one of the documents in the email chain—the June 8, 2015 email from Dr. Petra Wibbe to litigation counsel—clearly appears to contain attorney work-product. Neither party has addressed whether or to what extent a subject matter waiver occurs where there has been an intentional disclosure of a document that is not only subject to the attorney-client privilege but is also protected as attorney work-product.[5]

Although there are several emails in the chain that do not contain attorney work-product, the interests of judicial economy will not be served by the court's piecemeal review of undisclosed documents for subject matter waiver, based on plaintiffs' waiver of the attorney-client privilege, before it is determined whether or to what extent documents containing attorney work-product are also subject to the subject matter waiver. The court will accordingly require further briefing on these issues and will refer the matter to a Special Referee/JHO for a

[5] Under Federal Rule of Evidence 502 (a), a party's waiver of the attorney-client privilege or "work-product protection," will result in a subject matter waiver only if "(1) the waiver is intentional; (2) the disclosed and undisclosed communications or information concern the same subject matter; and (3) they ought in fairness to be considered together." In a federal proceeding, therefore, subject matter waiver "is reserved for those unusual situations in which fairness requires a further disclosure of related, protected information, in order to prevent a selective and misleading presentation of evidence to the disadvantage of the adversary. Thus, subject matter waiver is limited to situations in which a party intentionally puts protected information into the litigation in a selective, misleading and unfair manner. It follows that an inadvertent disclosure of protected information can never result in a subject matter waiver." (Fed. R. Evid. 502, Advisory Committee Notes, Explanatory Note [Revised 11/28/2007] [citation and parenthetical omitted].)

New York does not have codified rules of evidence and has not adopted an analogue of Federal Rule of Evidence 502 (a). There does not appear to be extensive law on whether a subject matter waiver will be found if a party intentionally discloses attorney work-product. (See John Blair Communications, Inc. v Reliance Capital Group, L.P., 182 AD2d 578, 579 [1st Dept 1992]; Charter One Bank, F.S.B. v Midtown Rochester, LLC, 191 Misc 2d 154, 159 [Sup Ct, Monroe County 2002]; Matter of Estate of Baker, 139 Misc 2d 573, 576 [Sur Ct, Nassau County 1988].) The parties have not discussed these authorities and have not in fact cited any case law on the issue.

recommendation (1) as to the scope of the subject matter waiver applicable to emails or parts of emails containing information that is protected by the attorney-client privilege but is not attorney work-product, and (2) whether the subject matter waiver applies to the emails or parts of emails containing information that is attorney work-product; and, if so, the scope of such subject matter waiver. The reference will also authorize the Special Referee/JHO, if so advised, to direct a detailed privilege log identifying undisclosed documents containing attorney work-product. In addition, the reference will direct the Special Referee/JHO to undertake in camera review, to the extent necessary, to determine the documents or parts of documents that must be disclosed as a result of the subject matter waiver. Defendants' motion will therefore be granted solely to the extent of referring the above matters to a Special Referee/JHO.

Finally, the court considers plaintiffs' motion. Plaintiffs request a protective order "prohibiting Defendants from using or revealing information contained in the privileged email chain that is the subject of Defendants' motion and directing Defendants and their counsel to destroy or return all copies thereof." (Pls.' Memo. In Opp., at 1 n 1 [citation omitted].) Based on the court's finding that the attorney-client privilege has been waived, this branch of plaintiffs' motion will be denied.

Plaintiffs further request leave to file a note of issue "so that summary judgment motion practice can proceed without further delay." (Pls.' Memo. In Opp., at 8 n 14.) Given the court's finding that plaintiffs waived the attorney-client privilege and the magnitude of the remaining discovery issues, this branch of the motion will also be denied.

Plaintiffs also move for an order compelling defendants to produce any of Mr. Ehweiner's personal emails that are "in Defendants' possession, custody, and control" to the extent that they are responsive to plaintiffs' document demand, dated January 9, 2017. (Id., at 10

n 15.) Plaintiffs fail to provide a copy of this demand. This issue will therefore also be referred to the Special Referee/JHO.

Plaintiffs seek fees and costs incurred for this motion based on defendants' failure to submit an affidavit that complies with a compliance conference order dated August 2, 2018. (Pls.' Memo. In Opp., at 2.) The conference order provides: "Defendants shall provide an affidavit stating that, to the best of the knowledge and belief of counsel and defendants, no document or presentation as described in items 1-2 of [a] joint letter [dated July 26, 2018] exists (or if it does, it will be produced by August 23, 2018)." (Compliance Conference Order, dated Aug. 2, 2018 [NYSCEF Doc. No. 85]; see Joint Letter, dated July 26, 2018 [Rose Aff., Ex F].) In response, defendants submit the affirmation of their attorney, which states: "To the best of our knowledge and belief as counsel for Defendants, and of Defendants themselves, no document or presentation as described in items 1-2 of the joint letter attached as Exhibit F exists that has not already been produced." (Rose Aff., ¶ 12.) This vague affirmation submitted by defendants is insufficient. Defendants must submit revised affirmation(s) from counsel and affidavit(s) from defendants, made on personal knowledge, specifically stating that a search has been made for the specific documents identified in items 1 and 2 of the joint letter, or if such documents have already been produced, identifying the documents that are responsive to those items. Plaintiffs' request for costs and fees in connection with this motion is denied in the discretion of the court.

ORDER

1. It is hereby ORDERED that the motion of defendants GLOBALFOUNDRIES, INC. and GLOBALFOUNDRIES Dresden Module One LLC & Co. KG for an order compelling plaintiffs Semsysco GMBH, Grunwald Equity Industries & Services GMBH, and Grunwald

Equity Semsysco GMBH to make additional disclosure is granted to the extent of holding that plaintiffs have waived the attorney-client privilege as to an email chain, dated June 9, 2015, annexed as Exhibits A and D to the Rose Affirmation, and Exhibit A to the Otzlinger Affidavit (the email chain), and referring the issue of the scope of such waiver to a Special Referee/JHO in accordance with paragraph 3 below; and it is further

2. ORDERED that plaintiffs' motion is denied except to the extent of (i) directing defendants, within 30 days of the date of entry of this order, to serve revised affirmation(s) from counsel and affidavit(s) from defendants, made on personal knowledge, specifically stating that a search has been made for the specific documents identified in items 1 and 2 of the joint letter, dated July 26, 2018, attached as Exhibit F to the Rose Affirmation, or if such documents have already been produced, identifying the documents that are responsive to those items; and (ii) referring to a Special Referee/JHO, in accordance with paragraph 3 below, the branch of plaintiffs' motion for an order directing defendants to produce Hans Peter Ehweiner's personal emails; and it is further

3. ORDERED that the following issues are referred to a Special Referee/JHO to hear and report with recommendations, except that, in the event of and upon the filing of a stipulation of the parties, as permitted by CPLR 4317, the Special Referee/JHO, or another person designated by the parties to serve as referee, shall determine the foregoing issues:

(a) the scope of plaintiffs' subject matter waiver applicable to the emails or parts of emails which are included in the email chain and contain information that is protected by the attorney-client privilege but is not attorney work-product; and

(b) whether the subject matter waiver applies to the emails or parts of emails which are included in the email chain and contain information that is attorney work-product and, if so, the

scope of such subject matter waiver, and

(c) the documents or parts of documents that must be disclosed as a result of the subject matter waiver; and

(d) whether defendants are in possession, custody, or control of any of Hans Peter Ehweiner's personal emails that are responsive to plaintiffs' document request, dated January 9, 2017; and, if so, whether plaintiffs are entitled to production of such emails; and it is further

4. ORDERED that the Special Referee/JHO is authorized, if so advised, to direct plaintiffs to prepare a detailed privilege log identifying undisclosed documents containing attorney work-product; and it is further

5. ORDERED that the Special Referee/JHO is directed to undertake an in camera review, to the extent necessary, to determine (a) the documents or parts of documents that must be disclosed as a result of the subject matter waiver and (b) whether disclosure of Mr. Ehweiner's emails should be made; and it is further

6. ORDERED that, within 15 days from the date of entry of this decision and order, defendants shall serve a copy of this decision and order with notice of entry upon plaintiffs by NYSCEF and by overnight mail, and shall e-file proof of compliance within 10 days after the aforesaid service; and it is further

7. ORDERED that, within 15 days of the date of entry of this decision and order, defendants shall serve a copy of this decision and order with notice of entry, together with any required forms, on the Clerk of the Special Referee's Office (Room 119); and it is further

8. ORDERED that a motion to confirm or reject the report of the Special Referee/JHO shall be made within 15 days of the filing of the report.

This constitutes the decision and order of the court.

3/15/2019
DATE

MARCY S. FRIEDMAN, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	DENIED	X	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT	X	REFERENCE

Hon. Deborah A. Kaplan
Administrative Judge
Supreme Court, New York County
Civil Branch