

Orrick, Herrington & Sutcliffe LLP
1000 Marsh Road
Menlo Park, CA 94025
United States
tel 650-614-7400

Orrick, Herrington & Sutcliffe
Tower 42, Level 35
25 Old Broad Street
London EC2N 1HQ
United Kingdom
tel 020 7562 5000

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT
OF CALIFORNIA, SAN JOSE DIVISION

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
-v-)
)
MARK LESLIE, ET AL.,)
)
Defendants.)
)

LETTER OF REQUEST FOR INTERNATIONAL JUDICIAL
ASSISTANCE PURSUANT TO THE HAGUE CONVENTION
ON THE TAKING OF EVIDENCE ABROAD IN CIVIL OR
COMMERCIAL MATTERS

TO: The Senior Master of the Queen’s Bench Division
Room 120
Royal Courts of Justice
Strand
London WC2 2LL
England

FROM: Honorable Jeremy Fogel, United States District Judge
Honorable Judge Patricia Trumbull, United States Magistrate Judge

In accordance with Article 3 of The Hague Convention of 18th March 1970 on the Taking
of Evidence Abroad in Civil or Commercial Matters (“The Hague Convention”), the

undersigned hereby respectfully requests an order requiring the testimonies of the following named individuals: John Francis Brigden and Geoffrey William Squire, who are resident within your jurisdiction and whose respective testimonies are intended to be given and used in the trial of this action. This Request is made for the purposes of the trial of the above cause of action, which is presently pending before the United States District Court for the Northern District of California, San Jose Division, and is necessary in the interests of justice and for the purpose of a full and fair determination at trial of the matters in issue amongst the parties in the pending proceedings.

1. Persons to whom the executed request is to be returned and requesting judicial authority:

HONORABLE JEREMY FOGEL

United States District Court, Northern District of California
2112 Robert F. Peckham Federal Building and United States Courthouse
Courtroom 3, 4th Floor
280 South First Street
San Jose, CA 95113-3002
United States

MAGISTRATE JUDGE PATRICIA TRUMBULL

United States District Court, Northern District of California
2112 Robert F. Peckham Federal Building and United States Courthouse
Courtroom 5, 4th Floor
280 South First Street
San Jose, CA 95113-3002
United States

SIMON COCKSHUTT/KARIE TWINEM, SOLICITORS

Orrick, Herrington & Sutcliffe
Tower 42, Level 35
25 Old Broad Street
London EC2N 1HQ

EDWARD P. DAVIS/SUSAN D. RESLEY

Orrick, Herrington & Sutcliffe LLP
1000 Marsh Road
Menlo Park, CA 94025
United States

2. Identity and address of the individuals to be examined, having personal knowledge of the subject matter areas identified:

JOHN FRANCIS BRIGDEN

Inwood House
Gorse Hill Road
Virginia Water, Surrey
United Kingdom
GU25 4AS

Copied to: Christian Word, Esq.
Latham & Watkins LLP
Two Freedom Square
11955 Freedom Drive, Suite 500
Reston VA 20190-5651
United States

GEOFFREY WILLIAM SQUIRE

Home Farm House
Home Farm
Hursley, Winchester
SO21 2JL

3. The Parties and their Attorneys:

(a) Plaintiff: Securities and Exchange Commission (“SEC”) is a federal agency of the United States government responsible for the enforcement of the federal securities laws. The SEC is headquartered in Washington, D.C., United States of America. The SEC may be contacted through attorney Richard Hong at the Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549-4010-A

(b) Defendants: The defendants are Mark Leslie, Kenneth E. Lonchar, and Paul A. Sallaberry.

Defendant Mark Leslie may be contacted through his attorney William P. Keane of Farella Braun + Martell LLP, 235 Montgomery Street, 17th Floor, San Francisco, CA 94104, United States of America.

Defendant Kenneth E. Lonchar may be contacted through his attorneys Edward P. Davis and Susan D. Resley of Orrick, Herrington & Sutcliffe LLP, 1000 Marsh Road, Menlo Park, CA, 94025, United States of America. Mr. Lonchar’s attorneys have initiated this letter rogatory process.

Defendant Paul A. Sallaberry may be contacted through his attorney Jahan P. Raissi of Shartsis Friese LLP, One Maritime Plaza, Eighteenth Floor, San Francisco, CA 94111, United States of America.

4. Nature and Purpose of the Proceedings

The proceeding for which the requested evidence is required is a civil action filed by the SEC in the United States District Court for the Northern District of California, San Jose Division. The SEC has brought an action for securities fraud against former executives of Veritas Software Corporation (“Veritas”), including Mark Leslie (former CEO and Chairman); Kenneth Lonchar (former CFO), and Paul Sallaberry (former Executive Vice President, Sales). Mr. Lonchar served as Veritas’ CFO from April 1997 until October 2002.

In summary, the SEC alleges the following in its Amended Complaint filed in the U.S. proceedings:

1. That this is a financial fraud case against former senior managers and finance managers of Veritas Software Corporation (“Veritas”), a California software maker. Defendants Mark Leslie, Kenneth E. Lonchar, and Paul A. Sallaberry knowingly participated in a fraudulent scheme by artificially inflating Veritas’ publicly reported revenues and earnings through a round-trip transaction with America Online, Inc. (“AOL”) in 2000 and by lying to Veritas’ independent auditors. In addition, Defendant Lonchar, with the participation and assistance of others, intentionally manipulated and distorted Veritas’ reported earnings through “smoothing” its financial results from at least 2000 through 2002. Defendant Lonchar also lied to and/or failed to disclose to Veritas’ independent auditors their fraudulent conduct. (Amended Complaint (“AC”) ¶ 1, attached to the Witness Statement of Karalyn Twinem at KT1, pp. 1 to 29);

2. That in 2000, Veritas artificially inflated reported revenues by approximately \$20 million in connection with a software sale to AOL. Defendant Leslie, Veritas’ Chief Executive Officer (“CEO”) and Chairman of the Board of Directors, authorized the transaction and directed defendant Sallaberry, Veritas’ head of sales, to negotiate the terms and execute the transaction documents. Defendant Lonchar, Veritas’ Chief Financial Officer (“CFO”), applied an accounting treatment to the transaction that did not comply with generally accepted accounting principles (“GAAP”). All three defendants concealed the true nature of the transaction with AOL,

which allowed Veritas to artificially inflate its reported revenue, from Veritas' independent auditors. (AC ¶ 2);

3. That from at least 2000 until his termination in 2002, Defendant Lonchar also applied a number of non-GAAP accounting practices to produce "museum quality" (albeit false) financial results. Defendant Lonchar and others concealed the accounting manipulations and distortions from Veritas' independent auditors. (AC ¶ 3);

4. That as a result of the defendants' actions, Veritas reported materially false and misleading financial results in periodic reports filed with the Commission and other public statements from at least 2000 through 2003 and in its January 28, 2004 earnings release of fourth quarter and annual results for 2003. (AC ¶ 4); and

5. That by engaging in the foregoing conduct, Defendants Leslie, Lonchar and Sallaberry violated the U.S. securities laws. (AC ¶ 5).

Mr. Lonchar strongly disputes the veracity of all of these allegations.

5. Evidence to be Obtained

The United States District Court for the Northern District of California respectfully requests that, in the interest of justice, you cause to be taken, by your proper and usual process, the testimony of John Francis Brigden and Geoffrey William Squire.

The testimony sought by Mr. Lonchar is relevant to the defence in the trial of this action and is necessary for the just and proper resolution of the proceedings before this Court.

(a) Relevant Time Period

All testimony relates to the period from 2000 to 2004.

(b) Testimony Subject Matter

John Brigden served as Veritas' General Counsel beginning in June 2001, throughout the entire relevant time period set forth in the SEC's amended complaint. As former General Counsel, Mr. Brigden can provide relevant information regarding Veritas' internal investigation of the AOL transactions, the certification of Veritas' financial statements in August 2002, and the restatements of Veritas' financial statements in 2003 and 2004, all of which form the basis of several of the SEC's allegations.

Geoffrey Squire served on Veritas' Board of Directors from approximately April 1997 to 2005, including as Vice-Chairman of the Board. This covers all of the relevant period of the SEC's amended complaint. As a former member of the Board, he can provide relevant information regarding (1) Veritas' internal investigation of the AOL software licensing and advertising transactions and the restatement of Veritas' financial statements in 2003; and (2) the investigation of certain accounting practices and restatement of Veritas' financial statements in 2004. In addition, Mr. Squire served as an Executive Vice President of Veritas. As such, he may have relevant information about Veritas' strategic marketing and forecasting/budgeting, including Veritas' advertising goals.

6. Procedure Requested

It has been explained to this Court that the powers of the English High Court of Justice to assist this Court's endeavours to obtain evidence in the United Kingdom are listed in Section 2 of the Evidence (Proceedings under Other Jurisdictions) Act of 1975, and that such assistance may not be provided, *inter alia*, when the evidence sought is to be used for pre-trial purposes leading to a train of inquiry which might produce direct evidence for the trial. In consideration of the evidence and arguments presented to this Court by the parties, this Court finds that the evidence

requested is not being sought for reasons of mere pre-trial discovery, but is rather being sought to be used as proof in the actual trial in these proceedings.

After reviewing the papers submitted in support of the motion for issuance of this Letter of Request, this Court is satisfied that this Request is necessary and convenient to produce evidence that will assist this Court in the resolution of certain of the issues to be decided at the trial of this matter.

It is hereby requested that Messrs. Brigden and Squire be compelled to appear for depositions to be taken in the period from 27 April -1 May 2009 in London at the London offices of Orrick at Tower 42, Level 35, 25 Old Broad Street, London EC2N 1HQ. The depositions will also be conducted under the auspices of an examiner appointed by the Defendant's lawyers.

In order to assist the Mr. Lonchar in the process of securing the depositions of John Francis Brigden and Geoffrey William Squire as well as in the deposition itself, Mr. Lonchar has retained the following counsel from your jurisdiction:

Simon Cockshutt/Karie Twinem, Solicitors
Orrick, Herrington & Sutcliffe
Tower 42, Level 35
25 Old Broad Street
London EC2N 1HQ

Mr. Lonchar's United States counsel, Edward Davis, Esq. or Susan Resley, Esq., intend to conduct the questioning of the witness, with assistance as needed from local counsel.

In addition, pursuant to the United States Federal Rules of Civil Procedure and this Court's May 6, 2008 Order Establishing Discovery Protocol, counsel for Mr. Lonchar's co-defendants, Messrs. Sallaberry and Leslie, as well as counsel for the SEC, shall be permitted to conduct examination of the witnesses as well.

Accordingly, this Court requests that each of the following named individuals: John Francis Brigden and Geoffrey William Squire, appear before a duly appointed

examiner, then and there to make answer on his oath or affirmation, the questions put to him, the subject matter of which is identified above and that John Snider be appointed Examiner in relation to the above mentioned depositions, who is authorised to administer oaths or their equivalent by the laws of the United Kingdom.

Finally, this Court requests that you will cause the evidence of the said witnesses to be reduced into writing and recorded by video tape, and that you will be pleased to authenticate such examinations by the seal of your court or in such way as is in accordance with your procedure and return the written evidence to this Court addressed as follows:

Honorable Patricia V. Trumbull
United States Magistrate Judge
United States District Court, Northern District of California
2112 Robert F. Peckham Federal Building and United States Courthouse
Courtroom 5, 4th Floor
280 South First Street
San Jose, CA 95113
United States of America

ENTERED at San Jose, California, United States, the 25th day of March,
2009.



HONORABLE PATRICIA V. TRUMBULL
UNITED STATES MAGISTRATE JUDGE