PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

1285 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10019-6064
TELEPHONE (212) 373 3000

LLOYD K GARRISON (1946-1991)
RANDOLPH E PAUL (1946-1956)
SIMON H RIFKIND (1950-1995)
LOUIS S WEISS (1927-1950)
JOHN F WHARTON (1927-1977)

WRITER'S DIRECT DIAL NUMBER

WRITER'S DIRECT FACSIMILE
(212) 373-3086
WRITER'S DIRECT E-MAIL ADDRESS
(212) 373-2818

rkaplan@paulweiss.com

UNIT 3601, FORTUNE PLAZA OFFICE TOWER A
NO 7 DONG SANHUAN ZHONGLU
CHAO YANG DISTRICT
BEIJING 100020
PEOPLE'S REPUBLIC OF CHINA
TELEPHONE (86-10) 5828-6300

12TH FLOOR HONG KONG CLUB BUILDING
3A CHATER ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2846-0300

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU U K
TELEPHONE (44 20) 7367 1600

FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2 CHOME
CHIYODA-KU TOKYO 100-0011 JAPAN
TELEPHONE (81-3) 3597-8101

TORONTO-DOMINION CENTRE
77 KING STREET WEST SUITE 3100
PO BOX 226
TORONTO ONTARIO M5K 1J3
TELEPHONE (416) 504-0520

2001 K STREET NW
WASHINGTON DC 20006 1047
TELEPHONE (202) 223 7300

500 DELAWARE AVENUE SUITE 200
POST OFFICE BOX 32
WILMINGTON DE 19899 0032
TELEPHONE (302) 655 4410

MATTHEW W ABBOTT
ALLAN J ARFFA
ROBERT A ATKINS
DAVID J BALL
JOHN F BAUGHMAN
LYNN B BAYARD
DANIEL J BELLER
CRAIG A BENSON*
MITCHELL L BERG
MARK S BERGMAN
BRUCE BIRENBOIM
H CHRISTOPHER BOEHNING
ANGELO BONVINO
HENK BRANDS
JAMES L BROCHIN
RICHARD J BRONSTEIN
DAVID W BROWN
SUSANNA M BUERGEL
PATRICK S CAMPBELL*
JEANETTE K CHAN
YVONNE Y F CHAN
LEWIS R CLAYTON
JAY COHEN
KELLEY A CORNISH
CHRISTOPHER J CUMMINGS
CHARLES E DAVIDOW
DOUGLAS R DAVIS
THOMAS V DE LA BASTIDE III
ARIEL J DECHELBAUM
JAMES M DUBIN
ALICE BELISLE EATON
ANDREW J EHRLICH
GREGORY A EZRING
LESLIE GORDON FAGEN
MARC FALCONE
ANDREW C FINCH
BRAD J FINKELSTEIN
ROBERTO FINZI
PETER E FISCH
ROBERT C FLEDER
MARTIN FLUMENBAUM
ANDREW J FOLEY
HARRIS B FREIDUS
MANUEL S FREY
KENNETH A GALLO
MICHAEL E GERTZMAN
PAUL D GINSBERG
ADAM M GIVERTZ
ROBERT D GOLDBAUM
NEIL GOLDMAN
ERIC S GOLDSTEIN
ERIC GOODISON
CHARLES H GOOGE JR
ANDREW G GORDON
NICHOLAS GROOMBRIDGE
BRUCE A GUTENPLAN
GAINES GWATHMEY, III
ALAN S HALPERIN
CLAUDIA HAMMERMAN
GERARD E HARPER
BRIAN S HERMANN
ROBERT M HIRSH
MICHELE HIRSHMAN
JOYCE S HUANG
DAVID S HUNTINGTON
MEREDITH J KANE
ROBERTA A KAPLAN
BRAD S KARP
JOHN C KENNEDY

ALAN W KORNBERG
DANIEL J KRAMER
DAVID K LAKHDHIR
STEPHEN P LAMB*
JOHN E LANGE
DANIEL LEFFELL
XIAOYU GREG LIU
JEFFREY D MARELL
MARCO V MASOTTI
EDWIN S MAYNARD
DAVID W MAYO
ELIZABETH R MCCOLM
MARK F MENDELSOHN
TOBY S MYERSON
JOHN E NATHAN
CATHERINE NYARADY
JOHN J O'NEIL*
ALEX YOUNG K OH
BRAD R OKUN
KELLEY D PARKER
ROBERT P PARKER*
MARC E PERLMUTTER
MARK F POMERANTZ
VALERIE E RADWANER
CARL L REISNER
WALTER G RICCIARDI
WALTER RIEMAN
RICHARD A ROSEN
ANDREW N ROSENBERG
PETER J ROTHENBERG
JACQUELINE P RUBIN
RAPHAEL M RUSSO
JEFFREY D SAFERSTEIN
JEFFREY B SAMUELS
DALE M SARRO
TERRY E SCHIMEK
KENNETH M SCHNEIDER
ROBERT B SCHUMER
JAMES H SCHWAB
JOHN M SCOTT
STEPHEN J SHIMSHAK
DAVID R SICULAR
MOSES SILVERMAN
STEVEN SIMKIN
JOSEPH J SIMONS
MARILYN SOBEL
AUDRA J SOLOWAY
TARUN M STEWART
ERIC ALAN STONE
AIDAN SYNNOTT
ROBYN F TARNOFSKY
MONICA K THURMOND
DANIEL TOAL
MARK A UNDERBERG
LIZA M VELAZQUEZ
MARIA T VULLO
LAWRENCE G WEE
THEODORE V WELLS JR
BETH A WILKINSON
STEVEN J WILLIAMS
LAWRENCE I WITDORCHIC
MARK B WLAZLO
JULIA M WOOD
JORDAN E YARETT
KAYE N YOSHINO
TONG YU
TRACEY A ZACCONE
T ROBERT ZOCHOWSKI JR

*NOT ADMITTED TO THE NEW YORK BAR

August 12, 2011

BY HAND

Judge Barbara S. Jones
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Magistrate Judge James C. Francis
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Windsor v. *United States*, 10 Civ. 8435 (BSJ) (JCF)

Dear Judge Jones and Judge Francis:

We submit this letter on behalf of plaintiff, Edith Schlain Windsor, in response to the letter that the Bipartisan Legal Advisory Group of the House of Representatives ("BLAG") sent to the Court last night concerning how best to deal with plaintiff's pending motion for summary judgment, in light of plaintiff's Motion to Strike

Documents Referenced by Defendant-Intervenor in Opposition to Plaintiff's Motion for Summary Judgment (the "motion to strike") filed with the Court earlier this week.

BLAG's August 11 letter misses the point. As set forth in our motion to strike, BLAG submitted twelve books and articles on topics of social science without notice, without discovery, and without providing plaintiff any opportunity to cross-examine any of the declarants in opposition to plaintiff's motion for summary judgment. That procedure was contrary to the Court's Revised Scheduling Order, dated May 11, 2011 (the "Scheduling Order"), which contemplates that there would be expert reports and expert depositions. BLAG's assumption that plaintiff must now, in short order, bear the significant burden and expense of responding to this type of clearly inadmissible evidence regardless of whether or not it is ultimately held to be admissible, violates not only the Court's Scheduling Order, but Rule 26 of the Federal Rules of Civil Procedure ("Rule 26"), as well as the Federal Rules of Evidence.

BLAG's refusal to follow the rules is not without consequences. BLAG has placed plaintiff in a serious and unfair predicament. Without the Court's intervention, plaintiff will be left having to reach out to experts on very short notice in order to respond to a significant amount of completely new and inadmissible evidence. Considering that it is now the middle of August, finding the experts and providing them with the materials (the vast majority of which BLAG *has not even provided* to the Court or to plaintiff) and giving them time to read, analyze and respond meaningfully by August 19 will be next to impossible. And even if it were possible, such a feat would be very costly and an unfair burden, considering that it would defy the very purpose of the Court's Scheduling Order (and, indeed, the purpose of Rule 26), which was intended to prevent precisely this type of unfair and unreasonable "document dump," without notice to a party.

To resolve this problem, as suggested in our previous letter, we would propose that we submit our reply brief on August 19, without responding substantively to the twelve documents at issue on the motion to strike. Alternatively, the Court could expedite plaintiff's motion to strike by requiring BLAG to file its opposition soon enough that a decision could be reached on the motion to strike before August 19, when plaintiff's reply memorandum in support of her motion for summary judgment is due. But that proposal would still place on plaintiff an unfair burden of responding in short order to these previously undisclosed documents.

In its August 11 letter to the Court, BLAG similarly takes the unreasonable position that plaintiff should only be given ten pages to respond to BLAG's opposition to her motion for summary judgment. Mindful of not overtaxing the Court, plaintiff identified only twelve documents in her motion to strike, but the reality is that BLAG's motion papers rely on a host—quite literally dozens—of inadmissible hearsay

documents.[1] It goes without saying that plaintiff had no notice, discovery or any opportunity for cross-examination with respect to any of this purported evidence. Responding meaningfully not only to BLAG's memorandum of law, but also to this raft of new material that was never previously disclosed by BLAG in discovery will unfortunately require additional pages. For this reason, it is not appropriate for BLAG to suggest that the plaintiff's reply brief should be subject to a page limit that is less than half the number of pages that BLAG used in its memorandum of law in opposition to plaintiff's motion for summary judgment.

We would therefore respectfully request permission to file a reply brief of up to 30 pages in connection with our motion for summary judgment; although again, we will make every effort to file a brief under that limit. Should the Court believe it advisable, we are available for a conference with the Court at the Court's convenience. Indeed, as this issue is time sensitive, should the Court request, we could be available for a telephonic conference as early as today.

Respectfully submitted,

Roberta A. Kaplan / JJ

Roberta A. Kaplan

cc: James D. Esseks, Esq.
H. Christopher Bartolomucci, Esq.
Jean Lin, Esq.

[1] For example, in its Local Rule 56.1 Statement, at paragraph 61 alone, BLAG cites six press articles that plaintiff has not moved to strike, but which all constitute inadmissible hearsay.