MEMO ENDORSED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re

CUSTOMS AND TAX ADMINISTRATION OF THE KINGDOM OF DENMARK (SKATTEFORVALTNINGEN) TAX REFUND SCHEME LITIGATION	MASTER DOCKET 18-md-02865-LAK

This document relates to: All cases.

MOTION FOR THE ISSUANCE OF AN ORDER PROHIBITING THE DEPOSITION OF NIGEL RACKHAM

PLEASE TAKE NOTICE that the undersigned Lead Counsel for the defendants in the above-captioned matter (collectively, "Defendants"), will apply before the Honorable Lewis A. Kaplan of the Southern District of New York at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York, Courtroom 21B, at a time and date to be determined by the Court, for an order pursuant to Rules 16, 26, and 37 of the Federal Rules of Civil Procedure, as well as pursuant to the Court's inherent authority, for the issuance of an order prohibiting Plaintiff Skatteforvaltningen from deposing Nigel Rackham, or, in the alternative, excluding from evidence in this matter any testimony from such a deposition. In support of this motion, Defendants rely upon the accompanying Memorandum of Law and Declaration of Nicholas S. Bahnsen dated August 5, 2021, and the exhibits attached thereto.

Memorandum Endorsement *In re Customs, etc.*, 18-md-2865 (LAK) This applies to all cases.

Certain defendants move to preclude the deposition of Nigel Rackham on the ground that plaintiff proposes to take it after the discovery deadline. Dkt 856. Their argument hinges on the premise that the Rackham deposition was not "pending" as of the close of discovery on December 3, 2021, and that there is no justification for creating an exception for plaintiff's benefit, especially given what movants characterize as plaintiff's lack of due diligence.

Movants' interpretation of the word "pending" is not implausible. But it is not the only plausible interpretation. For example, the Oxford English Dictionary gives, as one definition, this: "While awaiting; until the occurrence or appearance of; until." In that sense, the Rackham deposition remained pending as of December 3, 2021 for the simple reason that it had not yet occurred.

Accordingly, the motion is denied.

SO ORDERED.

Dated: August 23, 2022

/s/ Lewis A. Kaplan

Lewis A. Kaplan
United States District Judge