



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

_____)	
INDIANA ELECTRICAL WORKERS)		
PENSION TRUST FUND IBEW,)		
)		
)	Plaintiff,	
)		
v.)		C.A. No. 7779-CS
)		
WAL-MART STORES, INC.,)		
)		
)	Defendant.	
_____)	

FINAL ORDER AND JUDGMENT

WHEREAS, Plaintiff Indiana Electrical Workers Pension Trust Fund IBEW (“Plaintiff”) filed the above-captioned action (the “Action”) against defendant Wal-Mart Stores, Inc. (“Defendant” or the “Company,” and with Plaintiff, the “Parties”) under 8 *Del. C.* § 220 seeking production of certain books and records of Defendant relating to allegations of bribery involving Wal-Mart de Mexico and the Company’s conduct in connection therewith, which were discussed in an April 21, 2012 *New York Times* article (the “WalMex Investigation”);

WHEREAS, the Parties agreed to conduct a trial on the basis of a paper record and submitted the matter to the Court for decision at a trial conducted on May 20, 2013;

WHEREAS, on February 28, 2013, Defendant filed a Motion to Strike Privileged Material from Plaintiff’s Opening Trial Brief (the “Motion to Strike”);

WHEREAS, on May 16, 2013 the Court held a hearing on the Motion to Strike and issued an oral ruling granting the motion in part and denying it in part;

WHEREAS, on May 20, 2013, the Court issued an oral ruling on the issues litigated in the paper trial;

WHEREAS, following its oral ruling on May 20, 2013, the Court held a hearing on June 4, 2013 regarding competing forms of order submitted by the Parties, in which the Court directed Defendant to submit an affidavit describing the process by which potentially responsive documents had been collected by Defendant; and

WHEREAS, on June 18, 2013, Defendant submitted the Affidavit of Stephen C. Norman, Esquire, under seal, which described the steps Defendant has taken to collect potentially responsive documents and the steps it intends to take to complete the document collection process.

WHEREFORE, with the Court having considered the Parties' briefs and arguments presented during an in-person hearing on May 20, 2013, and for the reasons stated in the Court's oral ruling during the hearings on May 16, 2013, May 20, 2013 and June 4, 2013,

IT IS HEREBY ORDERED, the ____ day of _____, 2013, as follows:

1. The following defined terms shall have the meanings identified below:
 - a. "Custodians" means the following twelve individuals: F. Scott Draper, Michael Fung, Roland Hernandez, Thomas Hyde, Thomas Mars, Alberto Mora, Lee Stucky, JP Suarez, Sam Guess, Michael T. Duke, H. Lee Scott, Jr., and Jose Villarreal;

b. The “Demand” means the demand for inspection pursuant to 8 *Del. C.* § 220 made by Plaintiff;

c. “Identified Sources” means 1) the data sources of the Custodians and their relevant administrative assistants that a) have been collected and identified in Paragraph 37 of the Affidavit of Stephen C. Norman, Esquire, dated June 18, 2013, and b) may be collected pursuant to the efforts contemplated by this Order; and 2) the hard-copy and electronic documents previously searched by Defendant or Litigation Counsel with respect to this Action;

d. “Litigation Counsel” means the attorneys of Gibson, Dunn & Crutcher LLP and Potter Anderson & Corroon LLP involved with this Action;

e. “Order” means this Final Order and Judgment;

f. “Relevant Period” means the period from September 1, 2005 through June 6, 2012;

g. “Responsive Documents” means any hard-copy or electronic documents from the Relevant Period relating to any of the Responsive Topics, located within the Identified Sources or known to exist by any of the Custodians or the Office of the General Counsel of Defendant; and

h. “Responsive Topics” means 1) any aspect of the WalMex Investigation; 2) Defendant’s FCPA general compliance policies and procedures; and 3) Defendant’s internal investigation policies, procedures, and/or protocols.

2. Within ninety (90) days of the entry of this final Order, the following actions shall be completed to the extent they have not already been completed:

a. Defendant shall:

i. Complete the actions identified in Paragraph 44 of the Affidavit of Stephen C. Norman, Esquire, dated June 18, 2013 and file a detailed affidavit of counsel certifying that these actions have been taken. In certifying compliance, counsel for Defendant shall certify that counsel collected all potentially responsive documents from the required custodians and personal assistants and made the responsiveness and privilege determinations themselves.

ii. Collect and review data from the specified sources of data for the following custodians: F. Scott Draper (disaster recovery tape data, archive data), Michael Fung (hard copies), Sam Guess (hard copies, BES data), Alberto Mora (hard copies, hard drives, Exchange Server data, BES data), H. Lee Scott, Jr. (hard drives, Exchange Server data, BES data, Enterprise Vault data), Lee Stucky (hard copies, hard drives, archive data), and Jose Villarreal (disaster recovery tape data, Exchange Server data, BES data, Enterprise Vault data). If it is not feasible to collect data from these sources for these Custodians, Defendant shall provide a detailed explanation for the inability to collect data. If, for any of the Custodians, BES data, Exchange Server data, or Enterprise Vault data is unavailable, Defendant shall image company-issued Blackberry (or any other relevant) devices for that Custodian.

iii. Collect and review data from the personal computers and devices of all Custodians.

b. Defendant shall produce all Responsive Documents. The production shall include 1) the March 27, 2006 handwritten notes of F. Scott Draper; and 2) the

emails from or to Michael T. Duke or H. Lee Scott, Jr. concerning the WalMex Investigation in 2005 and/or 2006. In order to identify documents that may relate to the Responsive Topics, Defendant shall use the search terms attached as Exhibit A to the Affidavit of Tyler J. Leavengood, Esquire, in Support of Defendant Wal-Mart Stores, Inc.'s Answering Trial Brief and the search terms attached hereto as Exhibit A.

c. Plaintiff is entitled to receive the contents of Responsive Documents that are protected by the attorney-client privilege under the *Garner* doctrine, and the contents that are protected by the attorney work-product doctrine under Court of Chancery Rule 26(b)(3); provided, however, that nothing herein is intended to extend this Court's ruling on the application of the *Garner* doctrine or exceptions to attorney work-product protection to any other documents of Defendant, or to result in a waiver of any of Defendant's applicable privileges. Accordingly, Defendant is ordered to produce to Plaintiff under the *Garner* exception and/or Rule 26(b)(3), the privileged documents referred to in Entry Nos. 14, 16, 19-25, and 27-35 of Defendant's December 4, 2012 Privilege Log (attached as Exhibit 32 to Plaintiff's Opening Brief). Plaintiff's request for documents protected by the attorney-client privilege and/or the attorney work-product doctrine that were created, modified, reviewed or distributed on or after January 1, 2011 is denied. Plaintiff shall take appropriate steps to protect the confidentiality of Defendant's privileged documents, including filing and maintaining any such document as confidential.

d. Defendant shall provide an updated privilege log to Plaintiff. Defendant's privilege log shall identify all Responsive Documents over which Defendant

asserts privilege and/or work-product protection. To the extent that any document(s) on Defendant's privilege log were and remain subject to attorney-client privilege and/or work-product protection, Plaintiff's counsel, and their other Co-Lead Counsel in *In re Wal-Mart Stores, Inc. Delaware Derivative Litigation* (C.A. No. 7455-CS) and the plaintiff in the action captioned *Plumbers & Steamfitters Local Union No. 248 Pension Fund v. Wal-Mart Stores, Inc.* (C.A. No. 7726-CS), shall maintain the privilege and/or work-product protection of any such document(s) produced to Plaintiff by Defendant, and such production shall not prejudice Defendant's ability to assert privilege and/or work-product protection vis-à-vis any third-party.

3. Within thirty (30) days after Defendant's completion of its production of documents required by this Order, Plaintiff may identify for Defendant a reasonable number of documents for Defendant to identify the custodian(s) in whose files the documents reside. Defendant shall provide such identification within twenty (20) days after receipt of Plaintiff's list.

4. Except as otherwise provided herein, all relief requested in Plaintiff's Reply Trial Brief is hereby denied.

5. Defendant's Motion to Strike is granted in part and denied in part. Defendant's Motion to Strike is granted in that Plaintiff shall immediately return to Defendant any of the "Whistleblower Documents" that were not posted on the *New York Times* website or the Congressional website as of the Court's May 16, 2013 ruling on Defendant's Motion to Strike. Plaintiff shall certify that it has destroyed any copies, summaries, notes, memoranda, or other work product that Plaintiff, its counsel, or any

respective representatives have created based on the “Whistleblower Documents” that are subject to return to Defendant pursuant to this Paragraph.

Chancellor Leo E. Strine, Jr.

EXHIBIT A

Exhibit A

“Foreign Corrupt Practices Act” /10 (policy OR policies OR protocol! OR procedure! OR practice! OR report! OR compli! OR comply! OR investigat! OR analy!)

“FCPA” /10 (policy OR policies OR protocol! OR procedure! OR practice! OR report! OR compli! OR comply! OR investigat! OR analy!)

investigat! w/10 (policy OR policies OR protocol! OR procedure! OR practice! OR report!)

General Information

Court	Delaware Court of Chancery
Docket Number	7779