

1997 WL 563792

Only the Westlaw citation is currently available.
United States District Court, S.D. New York.

Bank Brussels LAMBERT, et al., Plaintiffs,

v.

THE CHASE MANHATTAN
BANK, N.A., et al., Defendants
and Third-Party Plaintiffs,
THE CHASE MANHATTAN
BANK, N.A., et al., Plaintiffs,

v.

ERNST & YOUNG, A
PARTNERSHIP, et al., Defendants.
Bank Brussels LAMBERT, et al., Plaintiffs,

v.

BANQUE PARIBAS (SUISSE)
S.A., et al., Defendants.
Bank Brussels LAMBERT, et al., Plaintiffs,

v.

CREDIT LYONNAIS (SUISSE)
S.A., et al., Defendants.

No. 93CIV.5298(LMM)(RLE),
93CIV.8270(LMM)(RLE), 94CIV.1317(LMM)
(RLE), 93CIV.6876(LMM)(RLE).

|
Sept. 10, 1997.

OPINION and ORDER

ELLIS, Magistrate J.

*1 Defendant Banque Paribas (Suisse) (“BPS”) contests the redactions in several documents produced by plaintiffs in 94 Civ. 1317. I have reviewed the redacted material in a portion of these documents and make the following rulings.

The redaction at SB 021368–69 of the document beginning at SB 021362 is denied. The information merely reiterates a court scheduling order and contains no information which is privileged in nature.

The redaction at SW 12732 is granted. The information is non-responsive.

The redaction at SW 12808–10 is granted on the grounds of attorney-client privilege.

The redaction at SW 12905–11 is granted. The information is non-responsive.

The redactions at IN 28433 and IN 28517 are denied. Although the redacted communications are by counsel, there is nothing in those communications which appears to relate to the obtaining or dispensing of legal advice. *See generally In re Grand Jury Subpoena Duces Tecum*, 731 F.2d 1032, 1036 (2d Cir.1984).

The redactions at IN 29496, IN 29505, IN 29510, IN 29513, IN 29517, IN 29525 and IN 29528 are denied. The information redacted there was relayed by Chase to the Bank Group and Milbank. Again, there is nothing in those communications which appears to relate to the obtaining or dispensing of legal advice. Additionally, the mere fact that counsel was one of the five or six recipients of the communication does not in itself make the communication privileged.

The redaction at IN 29539 is granted on the ground of attorney-client privilege.

The redactions at IN 29544–57 are granted on the ground of attorney-client privilege.

The redaction at IN 29566 is denied. There is nothing in the redacted communication which appears to relate to the obtaining or dispensing of legal advice.

Some of the redactions at IN 29580–94 are granted and some denied. The redaction at IN 29581 is denied. The information appears to be communication between the employees and/or officers of one or two parties without any involvement of or reference to or reliance upon counsel. Thus, there is no basis for asserting attorney-client privilege or work product immunity. The redactions at IN 29582–85 are granted on the ground that the redacted information does appear to be an attorney's handwritten notes, thereby qualifying for work product immunity. The redaction at IN 29588 is the same redaction as IN 29566 and is, therefore, denied for the same reason.

The redaction at IN 29603 is granted on the ground of attorney-client privilege.

The redactions at IN 29709, IN 29732, and IN 29760 are granted on the ground of attorney work product.

The redactions at IN 29736–37 are denied because the same document was produced at IN 29748–49. The redactions at IN 29738–29 are denied. The information consists of an internal Indosuez memo which does not appear to have been sent to, from, or upon the advice of counsel. Therefore, the information does not qualify for the asserted attorney-client privilege. The memo also contains handwritten notes by counsel which would qualify for attorney client privilege and work product immunity. However, any such privileges and immunities were waived by the production of the memo at IN 29736–37 which reiterates those handwritten notes.

*2 The redactions at IS 5539 and IS 15869 are granted on the ground of attorney-client privilege. The communications clearly constitute legal advice.

The redaction at IS 20902 is granted on the ground that the information is non-responsive.

The redaction at IN 29777 is granted on the ground of attorney work product and attorney-client privilege.

The redaction at IS 21155 of the document beginning at IS 21147 is granted on the ground of attorney work product. The information reflects counsel's mental impressions.

The redactions at OS 12551–53, OS 12554–56, OS 12557–60, OS 12561–63, OS 12564–67, OS 12568–70, OS 12571–73, OS 12580–81, OS 12582083 and OS 12599–12603 are denied. These documents memorialize information exchanged at conferences at which members of the Bank Group were present along with Milbank Tweed and, usually, in-house counsel. It appears that information was redacted solely for the reason that litigation counsel, Milbank Tweed, was present. Notably, in one instance, as reflected at OS 12554, where Milbank Tweed joined the conference late, the information which was communicated before Milbank Tweed arrived was not redacted, but at the point where Milbank Tweed joined the conference, the remaining information was immediately redacted.

The mere fact that litigation counsel is present at a meeting does not make the meeting privileged. The party seeking attorney-client protection must show that the information was exchanged for the purpose of obtaining or dispensing legal advice. *See id.* While some of the redacted information is privileged, for example, where the information reflects legal advice by Milbank, the vast majority of the information appears only to be relayed for business purposes and is, therefore, not privileged. Similarly, to demonstrate work product immunity, the movant must show that the documents were prepared by an attorney or on behalf of an attorney in anticipation of litigation. *See Riddell Sports, Inc. v. Brooks*, No. 92 Civ. 7851, 1995 U.S. Dist LEXIS 434 (S.D.N.Y. Jan. 19, 1995). There is no showing that these conference summaries were prepared by an attorney or at the direction of an attorney. For the above reasons, the redactions are denied.

The redactions at OS 12577 are granted in part and denied in part. The last redacted paragraph is granted on the ground of attorney work product. The information clearly reflects part of the party's litigation strategy. The remaining redactions are denied because, for purposes of work product, the redacted information does not reflect the attorney's mental impressions nor does it consist of a document or some other tangible thing prepared in anticipation of litigation. *See id.* Also, for purposes of attorney client privilege, the information does not appear to be communicated for the purpose of obtaining or dispensing legal advice.

The redaction at OS 12588 is denied. The document constitutes the agenda for a Skopbank meeting. The redacted information reflects only that legal information will be discussed and, therefore, does not constitute privileged information.

*3 The redaction at 12591–92 is granted. The information reflects legal advice and, therefore, is protected under attorney client privilege.

The above rulings address only portion of the redacted documents presented to the court by BPS. Plaintiffs are hereby ordered to review and reconsider the redactions in the remaining documents in light of my rulings. The parties are ordered to meet and attempt to reach an agreement regarding the remaining documents and to advise the court whether they still seek the court's ruling on all or any portion of the remaining documents.

BPS shall serve a copy of this order on the other parties.

All Citations

SO ORDERED this 2nd day of September 1997.

Not Reported in F.Supp., 1997 WL 563792

New York, New York

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