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MAY 17 1982

CLERK, U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 75-1996
	:	
U.S. DEPARTMENT OF JUSTICE,	:	
	:	
Defendant	:	

OPPOSITION TO DEFENDANT'S MOTION  
FOR A PROTECTIVE ORDER

Defendant has moved for a protective order staying the discovery requested by plaintiff; that is, the depositions of Mr. Daniel J. Metcalfe and Mrs. Lynne K. Zusman. Defendant has also opposed plaintiff's motion for an order allowing Mrs. Zusman's deposition to be taken at Frederick, Maryland.

The last issue is now moot. Plaintiff's counsel has informed counsel for defendant that Mrs. Zusman's deposition will be taken at 10:00 a.m., on May 21, 1982, at the office of his attorney at 1000 Wilson Blvd., Suite 900, Arlington, Virginia.

With respect to the first issue, defendant argues that the court should rule on plaintiff's motion for payment of the consultancy fee and its opposition thereto before allowing any discovery because such a ruling may dispose of the issue. Under the circumstances presented here, this would be putting the horse before the cart.

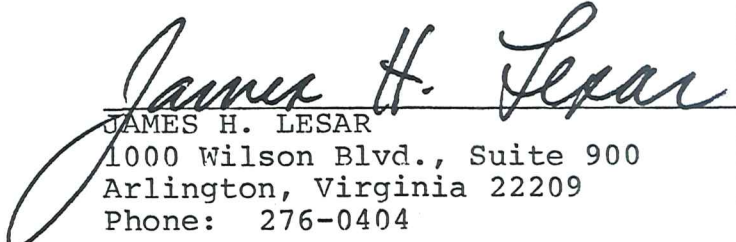
First, in opposing plaintiff's motion for payment of the consultancy fee, defendant has raised new legal issues. For example, defendant now asserts that this Court lacks jurisdiction over the matter, and that "no contract was ever entered into by any Department of Justice official, authorized or otherwise." Memorandum of Points and Authorities in Opposition to Motion to Pay Consultancy Fee, p. 2. In light of these new legal issues, it is of critical importance to plaintiff that he be allowed to

depose Mrs. Lynne K. Zusman regarding her role, activities, authority, etc. regarding the consultancy arrangement. Although Mrs. Zusman has executed an affidavit regarding some of these matters, she has not been subjected to cross-examination regarding the representations she makes therein, and plaintiff regards her representations as untruthful.

The importance of plaintiff's being allowed to subject Mrs. Zusman to cross-examination has been enhanced by the fact that defendant has already appealed this Court's ruling that plaintiff is entitled to payment of a consultancy fee at the rate of \$75 per hour to the United States Court of Appeals. To insure that there is a full, complete, and accurate record on appeal, deposition testimony is essential.

Secondly, the legal defenses which defendant has raised in opposition to payment of the consultancy fee will not be dispositive in any event. Plaintiff intends to argue that this Court has the power to award him his consultancy fee pursuant to both its general equitable powers and its authority to award costs pursuant to 5 U.S.C. § 552(a)(4)(E). He should be allowed to make this argument in light of the complete record as supplemented by deposition testimony which subjects the word of government witnesses to adversarial testing.

Respectfully submitted,

  
JAMES H. LESAR  
1000 Wilson Blvd., Suite 900  
Arlington, Virginia 22209  
Phone: 276-0404

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of May, 1982, mailed a copy of the foregoing Opposition to Defendant's Motion for a Protective Order to Mr. William G. Cole, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.

  
JAMES H. LESAR

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant

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Civil Action No. 75-1996

O R D E R

Upon consideration of defendant's motion for a protective order, plaintiff's opposition thereto, and the entire record herein, it is by the Court this \_\_\_\_\_ day of May, 1982, hereby ORDERED, that defendant's motion for a protective order is DENIED.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE