

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

GREENBERG TRAURIG, P.A.;	:	
GREENBERG TRAURIG, LLP	:	
	:	Civil Action
v.	:	No.: 12-cv-6718-MSG
	:	
FRANCINE GRIESING	:	

OBJECTION

Francine Griesing submits this Objection to the improper disclosure of privileged and confidential information included in the Surreply filed by Greenberg Traurig, P.A. and Greenberg Traurig, LLP (collectively “GT”) on January 9, 2013, and the accompanying Declaration of William H. Jeffress, Jr. Both disclosed information in violation of Federal Rules of Evidence 408 and 501 and a signed Mediation Confidentiality Agreement (attached as “Exhibit A”).

I. GT Disclosed Specific Details of Settlement Communications In Its Filing.

On January 9, 2013, GT filed a “Surreply to Francine Griesing’s Reply to Petitioner’s Opposition to Motion to Dismiss or for a Change of Venue” that included a Declaration of GT’s Counsel William H. Jeffress, Jr. (collectively “GT’s Filing”). The Filing was docketed on January 10, 2013. (Dkt. 20).

GT’s Filing includes throughout specific details of the parties’ confidential settlement communications. Details include (1) characterizations and *purported quotations* of exchanges between Counsel during negotiations, (2) substantive topics covered in mediation briefings, and (3) allegations regarding actions taken and choices made by the parties during negotiations.

II. The Federal Rules of Evidence and the Parties' Confidentiality Agreement Prohibit GT's Disclosures.

Federal Rules of Evidence 408, 501, and the Parties' Confidentiality Agreement all prohibit the disclosures made in GT's Filing.

Federal Rule of Evidence 408 prohibits the use of conduct or statements made during compromise negotiations in subsequent litigation. Fed. R. Evid. 408(a)(2) ("Evidence of the following is not admissible . . . conduct or a statement made during compromise negotiations. . . ."). The rule applies to the conduct or statements of both parties regardless of who is attempting to make the disclosure. *Id.* ("Evidence of the following is not admissible — *on behalf of any party . . .*" (emphasis added)). Accordingly, GT's inclusion of alleged details of both parties' conduct and statements during the course of settlement negotiations is in direct violation of Rule 408, and this Court should not consider the tainted Filing. *See ECEM European Chem. Mktg. B.V. v. Purolite Co.*, 451 Fed. Appx. 73, 77 (3d Cir. 2011) (affirming the exclusion of statements made by the parties during compromise negotiations).

In addition, GT's Filing runs afoul of the mediation privilege of Federal Rule of Evidence 501, which "protect[s] the confidentiality of communications, either written or oral, made during the course of a mediation." *Chester Cty. Hosp. v. Independence Blue Cross*, No. 02-2746, 2003 U.S. Dist. LEXIS 25214, at *7-8 (E.D. Pa. Nov. 7, 2003) (holding the mediation privilege protects disclosure of information shared during mediation). In recognizing the mediation privilege, courts in this district have noted that parties engage in mediation with the

understanding that their communications would be confidential and to revoke the confidentiality would “have a chilling effect on other mediations.”¹ *Id.* at *11.

III. Conclusion

GT’s Surreply and the accompanying Declaration by Mr. Jeffress were submitted to this Court in violation of the Federal Rules of Evidence and the Confidentiality Agreement signed by Mr. Jeffress himself. Ms. Griesing has contacted counsel for GT to request that GT withdraw the violating materials. Should GT fail to withdraw the offending evidence, Ms. Griesing objects and respectfully requests that evidence of the conduct and statements of settlement negotiations be excluded from consideration by this Court.²

Respectfully submitted,

/s/ Kate Mueting

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¹ Indeed, the parties explicitly entered into a Confidentiality Agreement to protect against the very disclosures now at issue. *See* Exhibit A (“All statements made during the course of the mediation or in mediator follow-up thereafter at any time prior to complete settlement of this matter are privileged settlement discussions ... *are non-discoverable and inadmissible for any purpose including any legal proceeding.* . . . No aspect of the mediation shall be relied upon or introduced as evidence in any arbitral, judicial, or other proceeding . . .”).

² Ms. Griesing does not at this time seek sanctions against GT but reserves the right to do so.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Objection has been filed electronically and is now available for viewing and downloading from the Court's Electronic Case Filing System and that paper copies will be sent by regular mail to the following:

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