



U.S. Department of Justice

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VIA FAX

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Re: United States v. Gary Swanson, CR 06-0692 (PJH)

Dear Counsel:

This letter responds to the Defendant's November 21, 2007 supplemental disclosure of certain documents upon which expert Jerry Hausman's "opinions are based." Defendant has not amended his October 26, 2007, Summary Under Rule 16(b)(1)(C) for Hausman. And the Defendant has not withdrawn or modified his position that "*The defense expert witness [Hausman] will not contest the existence of a conspiracy, and the Government should not be permitted to shoehorn the plea and amnesty agreements through the defense's expert witness.*" (Defendant's Brief, Doc. 223 at p. 7)

Consequently, it is unclear to the Government whether you intend Hausman to testify as an expert at trial on the "permissible grounds" outlined by Judge Hamilton in her Final Pretrial Order. If that is the Defendant's intention, your disclosure falls short of the requirements of Rule 16 and the Court's Final Pretrial Order, for the following reasons:

1. You have limited Defendant's disclosure to documents "readily available" to the expert, but the Court has ordered disclosure of "Copies or a specification of all documents, writings and other information reviewed by the expert or on which the expert's opinions are based, in sufficient detail so that the opinion rendered can be tested against that upon which it is based." Defendant's November 21 disclosure sets forth eight categories of documents (1, 2, 5, 7, 10, 11, 12, and 16) that you

EXHIBIT 4

have not provided to the Government. For example, Hausman relied upon certain undated "Consulting Reports from International Data Corporation," but you have not provided us a copy of those documents. (Nov. 21 disclosure, No. 2)

2. Your disclosure No. 15 ("Data Considered") is a broad, general statement, apparently confirming that Hausman relied upon data in making his report, but refusing to provide "copies or a specification of all documents" as required. Hausman's ITC report states that he "collected quarterly data from 1994 to 2002," but you have not disclosed that data so that the Government may test Hausman's opinions.
3. You have not provided any "work papers" for Hausman. (Final Pretrial Order at p. 6)
4. To the extent that Hausman will opine to "rebut the existence of the alleged conspiracy itself" or "negate the fact" that the conspiracy occurred (Final Pretrial Order at p. 5), you have not sufficiently described Hausman's opinion as required by Rule 16(b)(1)(C). Rather, you have solely disclosed Hausman's opinion given in an ITC proceeding in 2003.

We ask you to clarify the "permissible grounds" under which you are proffering Hausman's expert testimony under the Final Pretrial Order. In the event Hausman will *not* be offering any expert opinion testimony, please tell us, as the Court has set a December 3 deadline for our renewed *Daubert* motion. We request that you clarify the Defendant's position by noon on November 28, so that we may raise these issues with the Court, if necessary, at the hearing on that day.

Sincerely,



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