

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

AB ELECTROLUX,

ELECTROLUX NORTH AMERICA, INC.,

and

GENERAL ELECTRIC COMPANY,

Defendants.

Case No. 1:15-cv-01039-EGS

**JOINT STATUS REPORT FOR
OCTOBER 21 STATUS CONFERENCE**

As directed by the Court's October 14, 2015 Minute Order, the parties respectfully submit this joint status report for the status conference scheduled for October 21, 2015. The parties have identified the following issues for possible discussion at the October 21 hearing.

PENDING DISPUTES

- 1. The United States' motion for a declaration from Electrolux and its counsel about their compliance with the Court's September 25 and October 5 Orders and document preservation**

Status: This dispute is fully briefed.

- 2. The United States' oral motion for production of unredacted copies of Bates Numbers ELX00887431 – ELX00887599 and ELX0039641 – ELX0039642.**

Status: This dispute is fully briefed.

3. The United States' objection to certain documents that Defendants clawed back

Status: The parties have met and conferred regarding the documents that Defendants clawed back, but for which the United States has objected that it believes the clawed back documents may not be privileged.¹ Defendants stood by their clawback letters and refused to release the documents for the United States' use. The United States seeks guidance from the Court on its preferred procedure for handling disputes regarding these clawed back documents. Defendants note that the Parties have already agreed on the procedure to handle such disputes. The procedure is set out in Paragraph 5 of the Parties' Stipulated Agreement Under Federal Rule of Evidence 502(d) (Dkt. No. 53), which the Court endorsed on August 7, 2015. Defendants insist that the United States comply with the procedure already endorsed by the Court. Defendants further note that the disputes are not ripe for resolution by the Court and that Defendants remain open to meeting and conferring with the United States.

4. Defendants' and non-parties' motions regarding confidentiality at trial

Status: According to the Court's order on trial confidentiality (Dkt. No. 157) as amended by the Court's October 16, 2015 Minute Order, Defendants and non-parties filed their motions to seal exhibits or testimony on October 19. Responses if any are due October 22. The following non-parties filed such motions:

- Almo Corporation (Dkt. No. 177)
- Best Buy Co. Inc. (Dkt. No. 184)
- BSH Home Appliances Co. (Dkt. Nos. 169, 174)
- Defendants (Dkt. Nos. 196-97)
- D.R. Horton Inc. (Dkt. No. 185) [Motion to Redact]
- Ferguson Enterprises, Inc. (Dkt. No. 194)
- First Texas Homes, Inc. (Dkt. No. 182)
- Haier America Trading, LLC (Dkt. No. 187)
- JB Hunt (Dkt. No. 190)
- LG Electronics USA, Inc. (Dkt. No. 180)
- Midea America Co. (Dkt. No. 171)
- Samsung Electronics America, Inc. (Dkt. No. 181)
- The Home Depot USA, Inc. (Dkt. No. 176)
- Toll Brothers, Inc. (Dkt. No. 191)
- Whirlpool Corporation (Dkt. No. 192)

¹ GEA002567138; GEA002566385-86; GEA002566387-88; GEA002567139-40; GEA002567141-42; GEA002842669; GEA002842670; GEA002842671-72; GEA000234730-41; GEA003028940-41; GEA003028942; GEA-LIT-000916771-72; ELX00014030-32; ELX00065248; ELX0006526-62; ELX00145197; ELX00199378; ELX00220572-77; ELX00226779-88; ELX00232599-604; ELX00235354-65; ELX00251483-89; ELX00251490; ELX00251491; ELX00258665-68; ELX00271719-23.

PROPOSED POST-TRIAL SCHEDULES

At the October 14 status conference, the Court raised the subject of a post-trial schedule. The parties have exchanged proposed schedules but have been unable to reach agreement. The Court instructed the parties to examine *American Society for the Prevention of Cruelty to Animals v. Feld Entertainment*, Case No. 03-cv-2006-EGS (“*Ringling Bros.*”), for guidance on the Court’s prior practices with respect to bench trials. See October 14 Hearing Tr. at 46:5-14, 47: 16-20. The parties have reviewed the scheduling in *Ringling Bros.* and set forth their respective positions below.

United States’ Proposed Post-Trial Schedule

Based on the *Ringling Bros.* schedule, the United States proposes the following:

Event	Date	Notes
Trial Begins	Nov. 9, 2015	Date set in the Amended Scheduling Order (Dkt No. 89)
Trial Ends	Dec. 4, 2015	Date based on the parties’ estimates, witness availability, and the November holidays
Post-Trial Briefs, Findings of Fact/Conclusions of Law	Jan. 8, 2016	Date based on <i>Ringling Bros.</i> , where post-trial briefs were filed about five weeks after the last day of trial
Responsive Post-Trial Briefs	None	In <i>Ringling Bros.</i> , the parties submitted responsive post-trial briefing; here such briefing seems unnecessary
Summations	After Mar. 4, 2016	Date based on <i>Ringling Bros.</i> , where summations were given about eight weeks after post-trial briefs

Defendants’ Proposed Post-Trial Schedule

Defendants believe that the exigencies presented by this challenge to the acquisition of a going concern, with tens of thousands of employees and thousands of customers, differs markedly from the situation presented in *Ringling Bros.* and were appropriately reflected in this Court’s initial scheduling order. An informative and relevant source of precedent is how other

judges of United States District Court for the District of Columbia have managed the timing of injunction actions seeking to block substantial corporate mergers, including cases such as *Federal Trade Commission v. Sysco Foods*, Civil Action No. 15-cv-00256 (Mehta, J.) and *United States v. H&R Block*, Civil Action No. 11-00948 (Howell, J.), in which post-hearing papers and argument were held shortly after the close of evidentiary hearings. Based on those precedents, Defendants propose the following schedule:

Event	Date	Notes
Trial Begins	Nov. 9, 2015	Amended Scheduling Order (Dkt No. 89)
Trial Ends	Nov. 23, 2015	Based on the parties' estimates.
Summations	Final Day of Trial	Consistent with Court's remarks at October 14 Status Conference. <i>See</i> October 14 Hearing Tr. at 46:15-23; 47: 9-13.
Post-Trial Briefs, Findings of Fact/ Conclusions of Law	Dec. 4, 2015	Consistent with procedure followed in <i>Ringling Bros.</i> , with timing appropriately adjusted to exigencies of merger litigation
Responsive Post-Trial Briefs	None	Defendants agree that responsive post-trial briefs seem unnecessary here.
Additional argument, if deemed necessary	Dec. 11, 2015	Consistent with procedure followed in <i>Ringling Bros.</i> , with timing appropriately adjusted to exigencies of merger litigation

Dated: October 20, 2015

Respectfully submitted,

/s/ Ethan C. Glass

Ethan C. Glass (D.D.C. Bar #MI0018)
U.S. Department of Justice
Antitrust Division, Litigation III Section
450 Fifth Street, NW #4000
Washington, D.C. 20530
Telephone: (202) 305-1489
Facsimile: (202) 514-7308
ethan.glass@usdoj.gov

Counsel for Plaintiff United States of America

/s/ John M. Majoras

John M. Majoras (DDC No. 474267)
Joe Sims (DDC No. 962050)
Michael R. Shumaker (*admitted pro hac vice*)
JONES DAY
51 Louisiana Avenue, NW
Washington, DC 20001
Telephone: (202) 879-3939
Facsimile: (202) 626-1700
jmmajoras@jonesday.com
jsims@jonesday.com
mrshumaker@jonesday.com

Daniel E. Reidy (*admitted pro hac vice*)
Paula W. Render (*admitted pro hac vice*)
JONES DAY
77 West Wacker Drive
Chicago, IL 60601-1692
Telephone: (312) 782-3939
Facsimile: (312) 782-8585
dereidy@jonesday.com
prender@jonesday.com

Thomas Demitrack (*admitted pro hac vice*)
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, OH 44114-1190
Telephone: (216) 586-3939
Facsimile: (216) 579-0212
tdemitrack@jonesday.com

*Counsel for Defendants AB Electrolux and
Electrolux North America, Inc.*

/s/ Paul H. Friedman

Paul T. Denis (DDC No. 437040)
Paul H. Friedman (DDC No. 290635)
Michael G. Cowie (DDC No. 432338)
DECHERT LLP
1900 K Street NW
Washington, DC. 20006

Telephone: (202) 261-3300
Facsimile: (202) 261-3333
paul.denis@dechert.com
paul.friedman@dechert.com
mike.cowie@dechert.com

*Counsel for Defendant General Electric
Company*

CERTIFICATE OF SERVICE

I certify that on October 20, 2015, the foregoing was served on all counsel of record via ECF.

Dated: October 20, 2015

/s/ *Ethan C. Glass*

Ethan C. Glass (D.D.C. Bar #MI0018)
U.S. Department of Justice
Antitrust Division, Litigation III Section
450 Fifth Street, NW #4000
Washington, D.C. 20530
Telephone: (202) 598-2854
Facsimile: (202) 514-7308
ethan.glass@usdoj.gov
*Counsel for Plaintiff United States of
America*