

BEFORE THE
U.S. DEPARTMENT OF LABOR
NORTHEAST REGION

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In the Matter of:           :
                             :
COLLEEN A. GRAHAM,         :
                             :
                             : Complainant, : Case No.: 2019-SOX-00040
v.                           :
                             :
CREDIT SUISSE SECURITIES, et al., :
                             :
                             : Respondents. :
                             :
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U.S. Department of Labor
Office of Administrative Law Judges
2 Executive Campus, Suite 450
Cherry Hill, NJ 08002

Thursday,
September 5, 2019

The above-entitled matter came on for a conference
call, pursuant to notice, at 3:00 p.m.

BEFORE: THERESA C. TIMLIN
Administrative Law Judge

APPEARANCES:

On behalf of the Complainant:

ROBERT KRAUS, ESQ.
DESIREE GUSTAFSON, ESQ.
Latham & Watkins, LLP

On behalf of the Respondents:

KUAN HUANG, ESQ. (Suisse)
JOE SERINO, ESQ. (Suisse)
HEATHER GLATTER, ESQ. (Suisse)
In-house counsel

ELIZABETH LEWIS, ESQ. (Signac)
JOSEPH LOCKINGER, ESQ. (Signac)
DEVORA ALLON, ESQ. (Signac)

DEVORA ALLON (Palantir)
TOM BURNETT, ESQ. (Palantir)
DIANE KIM, ESQ. (Palantir)

Reporter: Chelsea Baranoski Date: September 5, 2019
 OALJ Case Name & Number: COLLEEN A. GRAHAM, 2019-SOX-00040

WITNESS (FULL NAME)	DIRECT	CROSS	REDIRECT	RECROSS
None.				

EXHIBITS

EXHIBITS	IDENTIFICATION	RECEIVED	WITHDRAWN	REJECTED
None.				

1 C O N F E R E N C E C A L L

2 (3:18 p.m.)

3 JUDGE TIMLIN: Okay. So 3:18, we're on the record.
4 And who do I have representing Ms. Graham?

5 MR. KRAUS: Good afternoon, Your Honor. You have
6 Robert Kraus and my colleague Desiree Gustafson representing
7 Colleen Graham.

8 JUDGE TIMLIN: And for Credit Suisse Securities?

9 MR. HUANG: Your Honor, you have Kuan Huang and Joe
10 Serino from Latham and Watkins. And also on the phone is in-
11 house counsel Heather Glatter.

12 JUDGE TIMLIN: And for Signac?

13 MS. LEWIS: Your Honor, you have Elizabeth Lewis and
14 Joe Lockinger from Cooley, LLP.

15 JUDGE TIMLIN: And for Palantir?

16 MS. ALLON: Good afternoon, Your Honor, you have
17 Devora Allon, Tom Burnett and Diane Kim from Kirkland & Ellis,
18 LLP.

19 JUDGE TIMLIN: Okay. And that's everyone?

20 MR. KRAUS: I believe so, Your Honor.

21 JUDGE TIMLIN: Okay, great. So this is -- I usually
22 do this at the outset of a case. I try to have an initial
23 prehearing conference call.

24 I also have with me Todd Filiplivitis, who is my
25 attorney advisor, and Ms. Katherine Butya, who will become my

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1 attorney advisor in October and I expect that she will be
2 working on this case.

3 COURT REPORTER: Excuse me, Your Honor, it's faint
4 again.

5 JUDGE TIMLIN: I know. I'm trying the best I can.

6 COURT REPORTER: Okay.

7 JUDGE TIMLIN: So I also have many motions to dismiss
8 or for summary judgment that are pending in front of me, and
9 some motions to stay, and a motion for (audio drop). Normally
10 what I do in these conference calls is I talk about settlement,
11 discovery, and just kind of make sure everybody is on -- is
12 moving forward and on track. I'm assuming initial disclosures
13 have been done?

14 MR. KRAUS: Yes, Your Honor.

15 JUDGE TIMLIN: Okay. And some discovery has started?

16 COURT REPORTER: Please state your names before
17 speaking.

18 MR. KRAUS: (audio drop) document request.

19 JUDGE TIMLIN: The Complainant has done some
20 discovery or started?

21 MR. KRAUS: We served requests, Your Honor. And for
22 efficiency purposes, I guess I should note right at the outset,
23 the parties did agree -- you said you had a motion for a stay.
24 The parties did agree to a temporary stay pending resolution
25 of the motion to dismiss or for summary decision. So that's --

1 so discovery, you know, we agreed to it amongst ourselves.

2 COURT REPORTER: Excuse me, is this Mr. Kraus?

3 MR. KRAUS: Yes, I'm sorry.

4 COURT REPORTER: Okay. Thank you.

5 JUDGE TIMLIN: Because your thought is that if I
6 don't -- if I don't issue -- if I issue something that's in
7 Complainant's favor, is your thought that I'm going to issue a
8 later hearing date and reopen discovery?

9 MR. KRAUS: We were hoping, Your Honor, that, yes,
10 the underlying discovery schedule would be adjusted
11 accordingly. That was the hope -- is the hope.

12 JUDGE TIMLIN: (audio drop).

13 MR. KRAUS: I'm sorry, Your Honor, I didn't --

14 JUDGE TIMLIN: And the hearing date?

15 MR. KRAUS: And the -- yes, all the dates, including
16 the hearing date.

17 JUDGE TIMLIN: Okay. You guys are all hoping not to
18 go to the hearing in December?

19 MS. ALLON: Yes, Your Honor.

20 COURT REPORTER: Who just spoke?

21 MS. ALLON: That was Devora Allon for Palantir.

22 COURT REPORTER: Thank you.

23 JUDGE TIMLIN: So assuming that I were to rule at the
24 end of October and that I were to rule in Complainant's
25 favor -- and I'm not telling you that I am. I'm just -- because

1 I haven't -- I've read through the motions, but I haven't
2 looked seriously at merits, I haven't done any research. I'm
3 just telling you that these motions are disfavored and I've had
4 very bad luck with the Board when I have granted them in the
5 Respondent's favor because they tend to come back two years
6 later and the case is - and I still have to try the case, and
7 the case is much older and it makes my life very unhappy. So
8 assuming that I were to rule in Complainant's favor and we had
9 to have a hearing in this case, what were you thinking about in
10 terms of how long were you thinking you would need for
11 discovery and a hearing?

12 MR. HUANG: Your Honor, this Kuan Huang from Latham &
13 Watkins on behalf of Credit Suisse. We actually talked about
14 proposed new dates for the hearing amongst the parties. I
15 think at least for the Respondents, we'd identified some dates
16 in February of next year that would work. We shared those
17 dates with Complainant, but it's not clear if those dates would
18 work for Complainant. We haven't actually heard back on that
19 to date. And the dates in particular were February 10th
20 through the 13th.

21 JUDGE TIMLIN: Okay. So we're not talking -- okay.
22 So you're not talking (audio drop).

23 MR. HUANG: No.

24 JUDGE TIMLIN: Okay.

25 MR. KRAUS: No, not at all, Your Honor. The thought

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1 on Complainant's part was that if the motion was stayed for
2 three weeks or such, whatever the actual time, was then the
3 dates would just slide a similar amount.

4 JUDGE TIMLIN: Okay. All right. So that's fine, and
5 I'm not opposed to that. I can do that. I'm more amenable to
6 that than I would be amenable to you guys (audio drop).

7 COURT REPORTER: You're fading, Your Honor. It's
8 hard to hear.

9 JUDGE TIMLIN: Sorry. I'm more amenable to that than
10 I would be if you guys were telling me that you were going to
11 want another six months or another nine months. But if you're
12 telling me that if I rule at the end of October, you're just
13 talking about another month or two, that's fine and I can live
14 with that.

15 I will initially -- so I'm willing to let you guys
16 live with your agreement to your temporary stay, and I'll do
17 something in writing on that. And I will issue an immediate --
18 the first thing I'll address is the motion for the reply
19 briefs, which I'll do by the end of this week. I'd have to
20 look and decide whether I think I need a reply brief, so that's
21 still out there. And then (audio drop) due by the end of
22 October probably is rule on all the other motions for summary
23 (audio drop) dismissal and summary decision, and then we'll see
24 where we are.

25 Anything else I need to deal with in the meantime?

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1 MR. KRAUS: Not that Complainant is aware of.

2 JUDGE TIMLIN: Where are you guys on settlement?

3 MR. KRAUS: Do Respondents want to handle that one?

4 MR. HUANG: Sure. Your Honor, this is Kuan Huang
5 again on behalf of Credit Suisse. I believe the last kind of
6 formal face-to-face settlement discussions the parties had were
7 in the summer of 2017. There was a mediation. I think the
8 parties were so far apart that I'm not even sure that, at least
9 for Credit Suisse, we were able to put out an offer.
10 Thereafter, the parties have discussed kind of ad hoc, at
11 various points the potential for settlement, but it hasn't
12 really progressed since then.

13 JUDGE TIMLIN: Okay. So let me just throw a few
14 things out there for you because we have programs here within
15 the Department of Labor that I want to call to your attention.
16 You may know about that, and they're on our website, they're
17 probably in my Notice of Hearing, but I like to tell people
18 about them, too.

19 We have a very experienced mediator in the person of
20 Beth Slavet in our National Office who does particularly good
21 with whistleblower mediations. And you can ask for her
22 assistance at any time to serve as a mediator and work with the
23 parties to try and come to a resolution. If you want to work
24 with Beth Slavet, you can just put something in writing to me
25 and I will send the case down to her and, you know, she'll work

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1 with you. She does travel. She'll come to New York. She'll
2 make time and spend time.

3 We also have a settlement judge program which works a
4 little differently traditional mediation. And same thing, if
5 you guys want to go to a settlement judge, you put something in
6 writing to me. I will assign it to a different judge in my
7 office most likely. If not my office, I'll find somebody else
8 nationally, you know, one of the other ALJs, and again it can
9 be done in New York or you could come here, but the judge can
10 travel for it. And they will meet with you and try to help you
11 come to a resolution of the case.

12 But of both things are available for you. There's no
13 cost to the parties, you just have to ask and we're happy to
14 make that available for you. So you both have to agree that
15 you want to participate and it's there for you, and you can do
16 that at any time. What I will not do is stay the hearing at
17 the last minute just so you can (audio drop) mediation, if that
18 makes sense.

19 MR. KRAUS: It does.

20 JUDGE TIMLIN: So if you want to think about that
21 and, you know, even if after you've gotten my rulings and the
22 case is still alive and we've got a hearing date scheduled for
23 February, if you want to come to me in December and say we want
24 to try mediation or we want to try a settlement judge, that's
25 fine, but don't come to me on, you know, a week before the

1 hearing and say, oh, now we want to go to mediation, will you
2 push back the hearing. I won't do that. I'll let you go to
3 mediation, but I'm not going to push back the hearing, okay?

4 MR. KRAUS: Yes, Your Honor.

5 JUDGE TIMLIN: All right. Anything else? Any other
6 things, any other odd things about this case that I should know
7 before we move forward? Any difficulties you see in litigating
8 it?

9 MR. KRAUS: Say again?

10 JUDGE TIMLIN: Any difficulties you guys see in
11 litigating it other than the fact that there's a million
12 lawyers?

13 MR. KRAUS: Well, from Complainant's side, I don't
14 foresee any difficulties other than having lots of lawyers who
15 sometimes don't agree.

16 JUDGE TIMLIN: Okay. That sounds good. That I've
17 dealt with before, so I can handle that.

18 All right. I don't want to take any more of your --

19 MR. KRAUS: In fact, Your Honor, there was a related
20 proceeding and so much of the -- there has been exchange of a
21 lot of the -- a lot, but not all of, relevant documentation
22 here.

23 (Unrelated conference call interruption.)

24 JUDGE TIMLIN: Sorry guys. I scheduled too many
25 conference calls too close together today.

1 All right. So you were saying?

2 MR. KRAUS: Well, no, so I would say it's actually
3 not a complication. It's -- there has been -- even though
4 there has been a fair amount of discovery done in connection
5 with a related proceeding.

6 JUDGE TIMLIN: Oh, okay. Good.

7 MR. KRAUS: So you know, I'd just note that. And I'm
8 assuming that the documents that were admitted into evidence in
9 that proceeding, which was a JAMS arbitration, will be
10 considered admissible in this case also since the parties
11 agreed on their admission into evidence in that case.

12 JUDGE TIMLIN: Okay. Do you anticipate any need for
13 protective orders or anything like that?

14 MR. HUANG: Your Honor, this is Kuan Huang again on
15 behalf of Credit Suisse. That is an issue that has bubbled up
16 to the surface, but given that the parties agreed to this
17 temporary stay, we haven't brought it to your attention. The
18 Respondents do believe there is a need and it's appropriate to
19 have a protective order or confidentiality agreement in this
20 case. The case relates to a private joint venture company that
21 dealt with some pretty sensitive and confidential information
22 about technology and financial information belonging to the
23 Respondents. We had a similar confidentiality order in the
24 arbitration matter that Mr. Kraus just referenced, and we see
25 no reason not to have another one here if there is going to be

1 the free exchange of all the same sorts of documents and
2 testimony and all that.

3 JUDGE TIMLIN: Okay. Yeah, that's why I referenced
4 it. Okay. So that's fine. I just want to make sure that as
5 we move forward, we get that in place sooner rather than later.

6 MR. KRAUS: Your Honor, the Complainant objects. I
7 have been asked -- I've asked what exactly is privileged,
8 sensitive or confidential under the governing regs. They still
9 haven't identified it other than, you know, I guess sort of a
10 blunder buss everything. And, you know, this proceeding --

11 (cross-talk)

12 MR. KRAUS: -- is obviously different -- sorry?

13 JUDGE TIMLIN: Employer has to make the appropriate
14 motions and you make the appropriate exceptions. I'm just
15 telling the employer they should make the appropriate motions
16 sooner rather than later so that, you know, I can make rulings
17 and we can get it all straightened out so it doesn't become an
18 issue later.

19 MR. HUANG: Your Honor, given that you have a number
20 of motions in your hands already, and we have the same, is this
21 something you would like to see in the short term or is this
22 something we can wait until you rule on the substantive motions
23 before you in late October?

24 JUDGE TIMLIN: Let's rule on the substantive motions
25 first. Let's see where we are and let's see if we're going to

1 go forward. If we decide that we're going forward, if I decide
2 we're going forward with the hearing, then I would say you want
3 to get anything that deals with privilege issues, you want to
4 get that in front of me as soon as you can.

5 MR. HUANG: Got it. Thank you, Your Honor.

6 COURT REPORTER: Who just spoke?

7 MR. HUANG: That was Kuan Huang again from Latham &
8 Watkins.

9 COURT REPORTER: Okay, thank you.

10 JUDGE TIMLIN: Anything else?

11 MR. HUANG: Nothing for Credit Suisse.

12 MR. KRAUS: I don't think anything from Complainant.

13 MS. ALLON: Nothing from Palantir. Thank you, Your
14 Honor.

15 JUDGE TIMLIN: All right. Thanks, everybody. Thanks
16 for your patience and for dealing with the difficult phone
17 situation.

18 MR. KRAUS: Thank you, Your Honor.

19 MS. ALLON: Thank you, Your Honor.

20 MR. HUANG: Thank you.

21 (Whereupon, at 3:37 p.m., the conference call in the
22 above-entitled matter was closed.)

23

24

25

C E R T I F I C A T E

This is to certify that the attached conference call before the
Administrative Law Judge Theresa C. Timlin, Cherry Hill, NJ
Insert Title of Officer Name and Office

In the matter of: Colleen A. Graham v. Credit Suisse
Securities, et al.

Case/Docket Number: 2019-SOX-00040

Place: Cherry Hill, NJ

Date: September 5, 2019

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