No. 20-1275

IN THE

SUPREME COURT OF THE UNITED STATES

VESUVIUS USA CORPORATION AND CHRISTOPHER YOUNG,

Petitioners,

v.

ROYSTON PHILLIPS,

Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of Ohio, Eighth Appellate District

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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COUNTERSTATEMENT OF THE QUESTION PRESENTED

Should the Court abandon the long-established precedent set forth in *Société Nationale Industrielle Aérospatiale v. United States Dist. Court for Southern Dist. of Iowa*, 482 U.S. 522, 107 S.Ct. 2542, 96 L.Ed.2d 461 (1987) and instead mandate that a new regulation adopted by the European Union block a civil litigant's access to otherwise discoverable information?

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COUNTERSTATEMENT OF THE PROVISIONS INVOLVED

Petitioners' appeal implicates Ohio Rule of Civil Procedure 26 and the European Union's General Data Protection Regulation. Petitioners never mentioned the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (the "Hague Convention") to the trial court and thus waived any reliance thereon.

COUNTERSTATEMENT OF THE CASE

This case concerns claims of age discrimination and retaliation brought by Respondent, Royston Phillips ("Respondent"), after the termination of his stellar four-decade career with Vesuvius USA Corporation ("Vesuvius") and its predecessors. From 2014 to 2016, Respondent worked for Vesuvius as part of a three-year assignment in China. As he neared the conclusion of this overseas assignment, Respondent expressed interest in two available positions, but was told that he was not a suitable candidate for either due to his age. As a result, Respondent raised concerns of age discrimination directly to human resources representative Christopher Young ("Young," together with Vesuvius, the "Petitioners"), before any severance was offered to him or any exit was proposed.

Shortly after Respondent made his complaint, however, Petitioners approached Respondent, in March 2017, to advise him of their intent to push him into retirement and offer him severance terms. Respondent rejected Petitioner's exit proposal, reemphasized his age discrimination complaints, and continued his employment. Petitioners then began creating self-serving and secretive internal emails, without including Respondent, to suggest that Respondent somehow "lacked

motivation." Petitioners further retaliated against Respondent by (i) cabining him into a newly-formed, fake position that lacked a job description, then (ii) terminating his employment involuntarily, and (iii) dramatically reducing Respondent's severance terms to punish his previously-raised age discrimination complaints.

Respondent filed his original Complaint against Petitioners on September 28, 2018. On July 29, 2019, Respondent was granted leave to add two (2) additional counts based on newly-discovered information. As a result, Respondent's current complaint alleges seven (7) counts, consisting of claims of age discrimination, retaliation, and aiding-and-abetting discrimination and retaliation liability under the Ohio Civil Rights Act, Ohio Rev. Code §4112.01 *et seq*.

On December 18, 2018, Respondent served Petitioners with his First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions. Those requests sought, *inter alia*, the location of individuals with discoverable knowledge and the personnel records of seven (7) individuals relevant to Respondent's claims.[1]

Petitioners refused to provide the location of individuals with discoverable knowledge and refused to provide the requested personnel records. On May 16, 2019, Respondent filed a Motion to Compel Discovery seeking, *inter alia*, the above-described items. Respondent's Appendix, hereinafter "Resp. App.," 1a-25a. Contrary to the Petition for Certiorari, Respondent has **never** taken the position that the

[1] One of the personnel files has since been produced by Petitioners.

relevant personnel records are in Europe. Instead, Respondent has actively, clearly, and consistently disputed that issue at the trial court and beyond. Resp. App. 22a.

Conversely, and despite heavily relying on it before this Court, Petitioners never objected on the basis of compliance with the Hague Convention at the trial court level. Resp. App. 70a-77a.

On July 29, 2019, the trial court granted Respondent's Motion to Compel in its entirety. Instead of complying with the trial court's order and producing the location of individuals with knowledge and relevant personnel records, however, Petitioners filed an interlocutory appeal with the Court of Appeals of Ohio, Eighth Appellate District.

In its June 11, 2020 opinion, the court of appeals affirmed in part, modified the trial court's motion to compel, and remanded the matter for the trial court to conduct an *in camera* review of the personnel records to protect against the disclosure of irrelevant information. In reaching this decision, the court of appeals applied the balancing test enunciated by this Court in *Société Nationale Industrielle Aérospatiale v. United States Dist. Court for Southern Dist. of Iowa*, 482 U.S. 522, (1987).

Petitioners sought review in the Supreme Court of Ohio, but their request was denied.

REASONS FOR DENYING THE PETITION FOR CERTIORARI

Petitioners are asking this Court to intercede in a standard discovery dispute on a single-plaintiff age discrimination claim when (1) they did not preserve the

record below to adequately support the relief sought before this Court; and (2) well-established precedent adequately protects civil litigants, and there has been no jurisdictional split or other unique justification to warrant abandoning that entrenched law. These flaws expose that what Petitioners actually want this Court to do is wade into a rather routine dispute over the scope of document production in a case that involves a quite limited universe: the parties to this particular dispute.

The Court of Appeals of Ohio, Eighth Appellate District properly applied the balancing test for resolving international cross-border discovery disputes, as was first set forth by this Court over 30 years ago in *Aérospatiale*. Petitioners do not like how the scales tipped, but this Court should not use its limited resources to get involved in an interlocutory discovery dispute regarding six personnel files, only to second-guess a state trial court's application of *Aérospatiale*.

Although Petitioners dangle the General Data Protection Regulation ("GDPR") as an opportunity for the Court to "reassess" *Aérospatiale*, this case is not the proper vehicle for the Court to embark on such a journey because such "reassessment" of *Aérospatiale* was never argued in the lower courts and it is not preserved for the Court's review. Resp. App. 70a-77a. Further, while the court of appeals found that Respondent was entitled to the discovery sought even if it fell within GDPR's purview, the court expressly declined to determine whether the GDPR even covered the information sought. Thus, the record is not fully developed to reach the merits of the conclusion that Petitioners seek.

Further, the instant matter does not provide a novel legal question of nationwide importance for this Court to consider. Over the past thirty years, state and federal courts have routinely applied *Aérospatiale* – including application to information covered by the GDPR. *Aérospatiale* has thus provided consistent, functional guidance enabling U.S. courts to address foreign statutes that conflict with discovery sought under the applicable civil rules. There is no unique question, circuit split, or anything for this Court to revisit or fix implicated in this appeal – other than an unfavorable outcome for these Petitioners under the well-established legal test.

Petitioners' real grievance is that they just do not agree with how *Aérospatiale* applied in this case. While Petitioners contend that the court of appeals "misapplied" *Aérospatiale*, a review of that court's decision reflects that it carefully balanced the applicable factors to the specific facts of this particular case. Thus, Petitioners simply disagree with the outcome of this Court's test as it was applied. That case-specific disagreement, however, should not inform this Court's wholesale abandonment of the battle-tested *Aérospatiale* factors.

I. This Case Is Not the Proper Vehicle for the Court to Reassess the Well-Established Test Set Forth in *Aérospatiale.*

A. Petitioners Have Waived the Core Arguments Presented to the Court.

This case is procedurally problematic for Petitioners because they never raised to the lower courts the arguments that are central to their request for a Writ of

Certiorari.[2] Specifically, Petitioners never argued that the *Aérospatiale* balancing test is inapplicable to the GDPR, nor did they make any argument that this test should be altered because of the GDPR. Resp. App. 74a-75a. Accordingly, Petitioners have waived these issues and the Court should not review matters that the lower courts did not have the opportunity to decide.

Moreover, at the trial court level, Petitioners never mentioned the Hague Convention nor did they bother to argue any of the *Aérospatiale* factors. Resp. App. 70a-77a. While they broadly referenced the existence of the GDPR, Petitioners briefing to the trial court wholly neglected to cite to a section of the GDPR, or even provide that state trial court with access to, or a copy of, this novel European regulation. Now, in explaining their Question Presented, Petitioners assert that the *Aérospatiale* factors should not apply to this appeal because the GDPR is not a "blocking" statute, but rather a "privacy" regulation that deserves greater deference and compliance with the Hague Convention. But given that Petitioners did not mention the Hague Convention or *Aérospatiale* factors to the trial court, it should come as no surprise that they certainly made no argument about any "blocking-privacy" dichotomy to the trial court.

It was only during Petitioners' interlocutory appeal (following their retention of new counsel) that they argued, for the first time, that the court of appeals must balance the *Aérospatiale* factors because of the restrictions that the GDPR imposes.

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[2] Respondent does note that Petitioners made such arguments – for the first time – to the Ohio Supreme Court in arguing that the court should assert jurisdiction. The Ohio Supreme Court declined to assert jurisdiction over this matter.

Even then, Petitioners still did not raise to the appellate court the so-called "blocking-privacy" dichotomy that they now hype to this Court.[3] Thus, Petitioners have failed to preserve these issues for this Court to review.

B. There Is No Lower Court Determination That the GDPR Applies to the Information at Issue.

In addition to Petitioners having already waived their central arguments, this matter is also an inappropriate vehicle to address the implications of the GDPR because, put simply, no lower court has even determined that the GDPR even applies to the discovery sought in this case.

In finding that the *Aérospatiale* factors weighed in favor of production, the appellate court qualified its opinion by stating that it was "[a]ssuming without deciding" that the discovery fell within the GDPR's protections. Petitioners' Appendix, hereinafter "Pet. App.," 13a. The court noted that, where the alleged obstacle to production of discovery is foreign law, the party resisting discovery has the burden of proving what that law is and why it impedes production. Pet. App., 12a.

Petitioners fell significantly short of their burden. Instead of Petitioners' sweeping, generalized reference to a new European regulation, they were required to

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[3] Even in front of this Court, Petitioners belatedly assert arguments. For example, Petitioners argue that the appellate court did not consider that Ohio has an interest in "upholding the rule of law," or that foreign countries might retaliate against the United States for enforcing domestic discovery orders. But they did not raise these issues with the lower courts. Petitioner's Petition for Writ of Certiorari, herein referred to as "Pet.," 20. Petitioners are continually raising new arguments without giving lower courts the opportunity to review them.

provide the trial court with information of sufficient particularity and specificity to allow a determination whether the discovery sought was indeed prohibited by the GDPR. *Laydon v. Mizuho Bank, Ltd.*, 183 F.Supp.3d 409, 413 (S.D.N.Y. 2016); *Dexia Credit Local v. Rogan*, 231 F.R.D. 538, 541 (N.D.Ill. 2004). Instead, Petitioners failed to (i) adequately reference the GDPR or a section thereof to the trial court, (ii) mention the Hague Convention, or (iii) introduce any evidence demonstrating that the requested discovery was covered by the GDPR. Accordingly, Petitioner's Question is flawed because it never provided the lower courts with the necessary information to answer it.

II. Petitioners' Question Is Not Important Enough to Merit Resolution by This Court.

Although Petitioners attempt to present this case as addressing a "novel" issue in light of the GDPR, this Court has already successfully instructed lower courts regarding conflicts between foreign laws and domestic discovery rules. Indeed, nationwide, courts have applied *Aérospatiale*'s straightforward guidance for over thirty years. The *Aérospatiale* standard should not be disturbed here, just because Petitioners dislike the outcome it produces in this particular case.

A. The Court of Appeals Did Not Decide an Important Question of Unsettled Federal Law.

The court of appeals did not decide an important question of unsettled federal law. Instead, it simply applied this Court's rule of law as set forth in *Aérospatiale*. Indeed, by applying *Aérospatiale* to the specific facts of this case, the appellate court preserved consistency and predictability throughout our court system. For the Court

to now review the court of appeals' application of *Aérospatiale* would actually create uncertainty in how courts should resolve such disputes, where none existed before.

B. There Is No Circuit Split and the Court of Appeal's Decision Did Not Depart from the Accepted and Usual Course of Proceedings.

Although Petitioners contend that there have been significant "developments" following *Aérospatiale*, there is nothing new about foreign companies doing business in the United States, or that the international nature of these business relationships occasionally gives rise to discovery disputes. After all, this was the problem posed in *Aérospatiale* over three decades ago. And *Aérospatiale*'s resolution of that issue was not a one-time outlier, either. Instead, *Aérospatiale* has been cited with approval by this Court as recently as 2018. *Animal Sci. Prods. v. Hebei Welcome Pharm. Co.*, 585 U.S. ___, 138 S.Ct. 1865, 1868 (2018); see also *Republic of Arg. v. NML Capital, Ltd.*, 573 U.S. 134, 146 at n. 6, (2014). As briefed to the courts below, jurisdictions throughout the country have long relied on *Aérospatiale*'s five factors. See, *e.g.*, *Laydon*, 183 F.Supp.3d at 419-20 (S.D.N.Y.2016); *Phoenix Process Equip. Co. v. Capital Equip. & Trading Corp.*, W.D.Ky. No. 16CV-00024, 2019 U.S. Dist. LEXIS 44390, *38 (Mar. 18, 2019); *Finjan, Inc. v. Zscaler, Inc.*, N.D.Cal. No. 17-cv-06946, 2019 U.S. Dist. LEXIS 24570, *4 (Feb. 14, 2019) (all recently relying on *Aérospatiale* factors). *Aérospatiale* thus represents the **opposite** of a jurisdictional split – courts throughout the country have consistently depended upon it.

In arguing that there should be a departure from *Aérospatiale*'s well-established balancing test, Petitioners assert that courts "err when they unthinkingly apply *Aérospatiale* to enforce American discovery obligations with respect to

documents or information protected by the GDPR" because the GDPR is a "privacy" regulation. As a result, say Petitioners, the GDPR should be accorded more deference than other foreign laws when used to block discovery. Pet., 16-17. Petitioners cite to a 2014 Delaware decision and a 2013 New York decision to support the claim that the GDPR is a "privacy" regulation, and not a "blocking" statute. Those decisions, however, do not involve the GDPR **in any way** and were issued several years **before** the GDPR was even implemented. And since Petitioners never mentioned a "blocking-privacy" dichotomy to either the trial court or the court of appeals, they have no basis to suggest that the lower courts did not afford the GDPR the proper "weight" as a "privacy" regulation, as opposed to a "blocking" statute.

Additionally, even if this "blocking-privacy" dichotomy were to be formally recognized by U.S. courts, it would be of limited value: any "blocking" statute could be easily justified under the pretext of protecting "privacy," and any "privacy" regulation will have the same practical effect as a "blocking" statute. Perhaps recognizing this blurred line, Petitioners cite to a law review article in an attempt to clarify the distinction. *Knapp, Enforcement of US Electronic Discovery Law Against Foreign Companies: Should US Courts Give Effect to the EU Data Protection Directive?*, 10 Rich.J.Global L.& Bus. 111 (2010). But Petitioners' authority actually undercuts their position. Specifically, the *Knapp* article recognizes that companies can abuse foreign "privacy" statutes to frustrate discovery rules:

> In the future, U.S. courts should not succumb to the temptation of allowing companies to hide behind foreign data privacy statutes as a means of escaping U.S. jurisdiction for the purposes of e-discovery. Succumbing to this temptation would give those litigants willing to

> abuse the situation a leg up in international disputes litigated in U.S. courts. Furthermore, it would generally frustrate the policy choices embodied by the Federal Rules of Civil Procedure, specifically that access to more information, indeed all information that is at least "reasonably calculated to lead to the discovery of admissible evidence" encourages and promotes the discovery of truth through the adversarial process.

Id. at 130-31. Thus, even Petitioners' own authority rejects this greater deference towards "privacy" laws, as opposed to "blocking" statutes.

This Court should not rely on Petitioners' artificial distinction between "blocking" and "privacy" regulations to disregard long-standing, settled U.S. Supreme Court law, which has aided courts throughout the nation for over three decades.

C. No Policy Reasons Exist for the Court to Consider this Case.

Not only is there no legal reason for the Court to consider this case, there also are no facts that would support Petitioners' claim that this is a question of federal law that needs to be settled by this Court. The GDPR is not a federal or global law; it applies only to European countries. Should the Court create a new test specific to the GDPR, such test would be completely irrelevant to statues enacted by other countries or regions. Then, every time a foreign country adopts a law that potentially impacts domestic discovery rules, lower courts will no longer have a singular procedure to follow, but will wonder what, if any, standard applies. This confusion – and likely increase of similar appeals to this Court – would be entirely avoided by this Court simply maintaining the *Aérospatiale* factors.

III. Respondent Will Prevail on the Merits of this Case.

A. Petitioner Cannot Show That the GDPR Applies.

Should the Court grant the Petition, Respondent will nevertheless win on the merits. As mentioned above, the appellate court did not determine whether the GDPR applies to Respondent's requested discovery. It does not. First, the GDPR only covers "the processing of personal data wholly or partly by **automated means** and to the processing other than by automated means of personal data which form part of a **filing system** or are intended to form part of a filing system." General Data Protection Regulation, Article 2, Section 1 (emphasis added). Respondent does not seek personal data by "automated means." Further, Petitioners have never shown how Respondent's discovery requests seek data that form part of a "filing system." Petitioners boldly claim that all of an employee's personnel records fall under the GDPR, but they have no authority or support for that sweeping statement. Pet., 4. Indeed, even as this issue winds its way through the appellate court system, Petitioners have still never proved that the six sets of personnel records even pertain to citizens of the European Union. Neither Respondent nor this Court have any basis to accept that the GDPR even applies.

Even if the GDPR did apply, Article 49 of that regulation permits the transfer of data to a non-EU country when "necessary for the establishment, exercise or defense of legal claims." General Data Protection Regulation (2016), Article 49, Section 1(e). The European Data Protection Board has stated that "data transfers for the purpose of formal pre-trial discovery procedures in civil litigation may fall under

this [Article 49] derogation." *EDPB Guidelines 2/2018 on derogations of Article 49 under Regulation 2016/679,* adopted 25 May 2018, 2.5, p. 11.[4] Yet, without any authority, Petitioners state that Article 49 does not allow U.S.-based discovery. Pet., 4 at n. 6. They claim that the "transfer" of information would also need to be permitted under the GDPR's "processing" rules. But those "processing" rules permit "processing" when "necessary for the purposes of the legitimate interests pursued by" Petitioners. General Data Protection Regulation (2016), Article 6, Section 1(f). Surely Petitioners would agree that compliance with duly-served discovery requests, or with a Court Order, is a "legitimate interest" justifying the "processing" (and then the "transfer") of the information.

Based on the foregoing, the appellate court's decision was correct, if for no other reason than Petitioners never met their threshold burden of demonstrating that the GDPR applied to block, or would be violated by the production of, the discovery at issue.

B. The Appellate Court's Application of *Aérospatiale* Was Correct.

The appellate court determined that, if the GDPR applied, *Aérospatiale*'s five factors of international comity would still favor production in this particular case. The appellate court did not ignore *Aérospatiale*; on the contrary, it cited to *Aérospatiale* in its analysis, noting its five comity factors as derived from the

[4] Full text available at: https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_guidelines_2_2018_derogations_en.pdf.

Restatement of the Law 3d, Foreign Relations Law, §442(1)(c). Pet. App. 11a-12a. It then applied those factors methodically as follows:

Factor One. The appellate court first considered "the importance of the documents or other information requested to the litigation." While Respondent worked for Vesuvius USA Corporation and its predecessor entities for approximately **40 years**, he sought only (a) six sets of personnel records, and (b) location information for witnesses who played a role in (1) rejecting Respondent for two vacant positions (because he was "not a young, high-potential candidate"), or (2) terminating his lengthy career. As explained to the courts below, the records requested likely contain information bearing on central aspects of Respondent's civil rights action, like (a) qualifications of the candidates seeking the vacant employment positions, (b) Respondent's performance, (c) the performance of the units in which Respondents worked, (d) prior discrimination complaints against Respondents, (e) Petitioners' management of Respondent's termination, and (f) Petitioners' knowledge of Ohio and American antidiscrimination laws, and potentially other issues. While this is far from a "broad fishing expedition," the appellate court even took pains to further protect Petitioners by *sua sponte* requiring that the trial court conduct an *in camera* inspection of the files for otherwise sensitive data prior to production to Respondent.

Factor Two. Given that Respondents sought such targeted information, Petitioners do not take issue with the lower court's determination of the second *Aérospatiale* factor: the degree of specificity of the request. The court of appeals

determined that seeking location information of witnesses (a mandatory disclosure under Ohio Civ.R. 26) and six personnel files was not overbroad.

Factor Three. The lower court found that the third factor – whether the information originated in the United States – weighed in neither party's favor because it was unclear from the record. Petitioners now fervently dispute this conclusion, yet they have never provided any evidence to support their position – and Respondent has never conceded it.

Factor Four. The fourth *Aérospatiale* factor is the "availability of alternative means of securing the information." The appellate court again found in favor of Respondent on this factor, and did so correctly for at least two reasons.

First, as discussed above, Petitioners never raised compliance with the Hague Convention until they filed their Merits Brief with the court of appeals. This was over ten months after Respondent served his discovery requests, and after Respondent had obtained an order compelling production from the trial court. At that point, the appellate court correctly determined that Respondent should not have to "start over" through the Hague Convention when Ohio discovery rules provided a more efficient resolution, stating that "[b]ased on the record before this court, requiring Phillips to undergo another avenue of seeking the requested documents, which have been requested for over a year, is not a viable alternative to the liberal discovery rules of Civ.R. 26." Pet. App., 14a.

Second, Petitioners' insistence on the Hague Convention procedures was explicitly rejected by *Aérospatiale*. More specifically, this Court has already

recognized that the Hague Convention is not the mandatory method of obtaining discovery abroad, nor was it even the method of "first resort," as this would "be inconsistent with the overriding interest in the 'just, speedy, and inexpensive determination' of litigation in our courts." *Aérospatiale*, 482 U. S. at 542-43.

Factor Five. Petitioners reserve their most strenuous argument for *Aérospatiale*'s fifth factor, claiming the appellate court failed to consider how compliance with Respondent's discovery requests "would undermine important interests of the state where the information is located." Petitioners never established which countries were actually implicated, and they did not provide any evidence that the employees at issue were employed by foreign affiliates. Noticeably absent from their Petition is any explanation for how a court would conduct a targeted balance of competing national interests without Petitioners demonstrating which countries were at issue.

Despite this glaring weakness in Petitioners' position, the appellate court still considered foreign interests in its opinion by noting that "[t]he GDPR concerns the data protection and privacy of all EU citizens and regulates the transfer of EU citizens' personal data outside of EU member states, such as the transfer to the U.S." Pet. App., 11a. Thus, the court of appeals not only assumed the GDPR applied, but also explicitly noted the privacy interests that would be at stake.

Only after recognizing those interests did the appellate court further note that Petitioners "failed to produce evidence that the disclosure of the personnel files would lead to hardship or an enforcement action from an EU data protection supervisory

authority for breach of the GDPR." Pet. App. 14a. Thus, the court determined that there was no evidence to suggest that the European Union would actually enforce the interests purportedly protected by the GDPR. The court contrasted this with Ohio's "clear public policy prohibiting age discrimination and unlawful retaliation" and that Civ.R. 26 requires disclosure of location information.

Taken together, the appellate court properly balanced all of the respective interests and determined they weighed in favor of disclosure. That decision should not be disturbed.

CONCLUSION

For the foregoing reasons, the Court should deny the petition.

Respectfully submitted,

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APPENDIX

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[1] Respondent omits in this Appendix the Exhibit 5 that was originally attached to Plaintiff's Motion to Compel. That Exhibit consisted entirely of a voluminous compilation of unpublished case law relied upon by Respondent at the trial court, and was attached in accordance with Cuyahoga County Local Rule 11(H).

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ROYSTON PHILLIPS,	)	CASE NO. CV-18-904574
	)	
Plaintiff,	)	JUDGE PETER J. CORRIGAN
	)	
v.	)	
	)	
VESUVIUS USA CORPORATION, *et al.*,	)	**PLAINTIFF'S MOTION TO COMPEL DISCOVERY**
	)	
Defendants.	)	
	)	

Plaintiff, Royston Phillips, through counsel, and pursuant to Civ. R. 37 and Cuy. Co. Loc. R. 11(F), hereby moves for an Order compelling Defendants, Vesuvius USA Corporation ("Vesuvius") and Christopher Young ("Young," together with Vesuvius, the "Defendants"), to provide complete answers and produce documents in response to Plaintiff's discovery requests. In derogation of Civ. R. 26's liberal policy of discovery, Defendants have failed to produce discovery that is critical to affording Plaintiff an adequate opportunity to present his claims.

Plaintiff has complied with his duty to attempt to resolve this matter without the Court's intervention pursuant to Civ. R. 37(E) and Cuy. Co. Loc. R. 11(F). In addition to the extensive correspondence attached to the Memorandum in Support hereof, Plaintiff's counsel has convened or attempted to convene discovery telephone conferences with the Court on March 5, 2019, April 3, 2019, and April 11, 2019, and discussed Defendants' deficient discovery production during the April 17, 2019 in-person conference with the Court. Nevertheless, Defendants have refused to produce answers and documents that are patently discoverable. Thus, Plaintiff has been forced to involve this Court again through this Motion, and hereby respectfully seeks an Order compelling Defendants to abide by their obligations in discovery. A Memorandum in Support is attached hereto and incorporated herein.

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Respectfully submitted,

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of May, 2019, the foregoing Plaintiff's Motion to Compel and Memorandum in Support was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

One of the Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ROYSTON PHILLIPS, Plaintiff, v. VESUVIUS USA CORPORATION, *et al.*, Defendants.	)	CASE NO. CV-18-904574 JUDGE PETER J. CORRIGAN **MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL DISCOVERY**

I. FACTUAL BACKGROUND

Plaintiff, Royston "Roy" Phillips ("Roy" or "Plaintiff"), has worked for Vesuvius and its predecessor entities for approximately 40 years. Vesuvius is a metal flow engineering business that provides engineering services to customers in the steel and foundry industries.

Working in the steel market for the past few decades, Roy has weathered many changes in his industry. For example, in 2008, Roy's then-employer, Foseco Metallurgical Inc. ("Foseco"), was purchased by – and merged into – Vesuvius. Prior to that merger, Roy had executed a document with Foseco that promised him certain terms of severance when and if his employment terminated (the "Severance Contract").[1] (See, Exhibit 1 to Amended Complaint.)

Without belaboring this Motion with a detailed discussion, Roy was an excellent performer and regularly received positive performance reviews, raises, and promotions, all while making countless sacrifices to advance Vesuvius' interests. For example, in early 2014, Roy accepted a three-year position relocation to China as the company's Marketing & Technology

[1] The Severance Contract promised that Roy would be given, *inter alia*, (a) 12 months of severance, (b) a payment equal to the average of the bonuses received in the three years preceding termination, (c) six months of healthcare continuation, and (d) a $15,000 payment for the loss of a company car.

Director. Roy skillfully executed this overseas commitment, and enjoyed such success that Vesuvius asked him to continue his time in China beyond the original three-year period.

With his wife eager to return to the United States, Roy declined the proposal that he remain in China. Vesuvius management then suggested that Roy consider what position openings he would want in the United States.

First, Roy selected the position of Global Product Director – also known as the Flux Director position. But Vesuvius balked, telling Roy that it was looking for a candidate with a "longer term future in the company." Instead, that position was awarded to Michael Chetwyn ("Chetwyn"), a significantly younger counterpart.

Roy then pursued his second choice – the position of Global Development Director. He was told, however, that this job needed to be filled by a "young," "high-potential" candidate. Vesuvius continued to seek applicants for that job, though it eventually elected to reassign those duties to a younger employee named Mark Snyder.

Ultimately, Vesuvius forced Roy into the newly-created role of "Special Projects Director." Roy was told that he would report half (50%) of the time to Chetwyn, and the other half (50%) to Vincent Boisdequin ("Boisdequin") in the "Flow Control" division. In the meantime, Vesuvius representatives began to press Roy on his plans for retirement or resignation. Internal emails recently produced by Vesuvius show discussions occurring behind Roy's back, revealing that Vesuvius management "believe[d] he [would] personally elect to retire in the next 12 to 18 months," that it was a "delicate situation," and that "[o]ver the year we will manage him towards retirement." In March 2017, Defendant Christopher Young ("Young") acknowledged in writing that "Roy has 38 years continuous (sic) service if we end the contract in

the US after 12 months then we will have a substantial severance liability, which we do not want to initiate. The best outcome is that Roy elects to retire and then we can manage any liability."

A year later, in March 2018, Young ("Young") offered Roy a severance of one year of salary plus 18 months of COBRA reimbursement. Young never provided anything in writing regarding this offer to Roy. Roy expressed his concern that he should have had a secure position when he returned from China, and told Young directly: "I think there's been age discrimination." Roy further stated his preference that legal counsel not be involved, but that the severance offer had to be increased.

Discussions about severance then stopped until May 2018. At that point, Young told Roy he would be given a dramatically lower severance – only three months of severance pay. Roy reminded Vesuvius of its obligations under the Severance Contact. Vesuvius' human resources representative, Ryan van der Aa, told Roy that the Severance Contract did not apply. Roy's employment then ended in June 2018, with no severance having been paid.

Even though Vesuvius had selected Chetwyn over Roy for the Flux Director position, Chetwyn actually left his employment in the Fall of 2018. Roy learned of this shortly after he filed his Complaint in this action and, on October 3, 2018, Roy wrote to Vesuvius, expressing interest in the now-vacant position. Defendants never responded to Roy's attempts at re-employment. Instead, Defendants filled the position with Olaf Schultz, yet another substantially younger candidate.

II. PLAINTIFF HAS *EXHAUSTIVELY* SATISFIED HIS MEET AND CONFER OBLIGATIONS

On December 18, 2018, Plaintiff served his First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions on Defendants. Defendants produced their responses to the Requests for Admissions on January 15, 2019.

Thereafter, Defendants sought repeated extensions of time to produce responses to the remaining discovery requests. On January 15, 2019, Defendants' counsel asked for an additional two (2) weeks, with the responses to be produced by January 29, 2019. On January 29, 2019, Defendants' counsel asked for additional time, with the responses to be produced by February 4, 2019. On February 11, 2019, Plaintiff's counsel attempted to confer with Defendants' counsel, as he still had no discovery responses. Defendants' counsel was on vacation, so Plaintiff's counsel waited until February 19, 2019 to follow-up further. At that point, counsel for both parties spoke by telephone and, based on Defendants' counsel's representations in that conversation and in the interest of avoiding Court intervention, Plaintiff's counsel agreed to provide Defendants until February 27, 2019 to produce their discovery. (See, email correspondence, attached hereto collectively as **Exhibit 1**.)

On February 28, 2019, Defendants produced some responsive documents (*e.g.*, a series of emails and portions of Plaintiff's personnel file), but no written responses or other documents. With much of the production entirely missing, the parties contacted the Court for further direction on March 5, 2019. Defendants were given until March 15, 2019 to produce discovery. (See, Journal Entry dated March 5, 2019.) Defendants failed to meet that deadline. As such, the Court scheduled another telephone conference for the morning of April 3, 2019.

On April 2, 2019, at approximately 5:30 p.m., Defendants produced amended admission responses, written responses to interrogatories and document requests, and some responsive documents. (See, Defendants' Answers to Interrogatories and Requests for Production of Documents, attached hereto as **Exhibit 2**.) In the telephone conference the next morning, Plaintiff's counsel acknowledged that he had just received this production, but that it appeared to be deficient and that further production would be necessary. Since Plaintiff had not had adequate

time to review the production, the parties were directed to confer with each other and call back for a telephone conference the morning of April 11, 2019. (See, Journal Entry dated April 3, 2019.)

Thus, on April 5, 2019, Plaintiff's counsel sent a letter outlining the deficiencies in Defendants' production. So that a meaningful discussion could be had, Plaintiff's counsel asked for a response from Defendants by April 9, 2019. Defendants did not respond, however, until 6:54 p.m. on April 10, 2019, again preventing Plaintiff's counsel from having a meaningful opportunity to assess their response prior to the conference scheduled for the following morning. (See, April 5 and April 10, 2019 letters, attached hereto as **Exhibit 3**.)

As such, the Court scheduled an in-person conference for April 17, 2019. Despite the above-described **four months** of foot-dragging, delay, and missed deadlines, Defendants' counsel incredulously claimed at this conference that Plaintiff's counsel had not fully exhausted his "meet and confer" obligations, and expressed to the Court a desire to continue working through the discovery dispute.

In light of Defendants' counsel's concerns about exhausting efforts to resolve any issues, and in an effort to give such counsel every benefit of the doubt, Plaintiff's counsel thus arranged for a telephone conference on April 24, 2019 to further discuss discovery issues. Plaintiff's counsel then memorialized that telephone conference in an April 26, 2019 email, asking for a response to the outstanding issues by May 3, 2019. Unfortunately, however, a familiar pattern then re-emerged. On May 3, 2019, Defendants' counsel produced nothing. Instead, he asked that Plaintiff refrain from further action until May 7, 2019. On May 8, 2019, having still produced nothing, Defendants' counsel asked that Plaintiff's counsel refrain from a motion to compel until May 9, 2019. On May 13, 2019, having still produced no response, Defendants'

counsel again asked for more time – until May 15, 2019. In response, Plaintiff's counsel wrote: "I understand. We will hold off on filing a motion to compel until then. However, we cannot wait any longer than this latest delay." (See, email correspondence, attached hereto collectively as **Exhibit 4**.) After all, at this point, Plaintiff's counsel had agreed to provide Defendants' counsel with no less than eight separate extensions of time, not including the several conferences with the Court to compel production.[2]

III. LAW AND ARGUMENT

Under the Ohio Rules of Civil Procedure, the scope of discovery is liberal. Civ. R. 26(B)(1) provides:

> Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, electronically stored information, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

As explained below, the information sought by Plaintiff falls well within the scope of Civ. R. 26(B)(1). Nevertheless, Defendants have refused to permit such discovery. Thus, Plaintiff hereby moves for an Order compelling responses under Civ. R. 37, which empowers this Court to compel Defendants to answer discovery when they will not do so voluntarily.

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[2] Given the history of discovery, it is not surprising that, despite Plaintiff's counsel's admonition that a Motion to Compel would finally be filed, Defendants' counsel wrote on May 16, 2019 that he was "preparing a response to your email" and asked for **yet another** extension. Assuming that Defendants would meet this new self-imposed deadline – a dubious assumption at best – Defendants' counsel did not actually promise he would produce anything, just that he was "preparing a response." While Plaintiff is filing this Motion, should Defendants in fact produce all responsive information, Plaintiff will gladly withdraw it.

A. Plaintiff Is Entitled to Know the Location of Individuals with Discoverable Knowledge

First, Interrogatory Number 1 requested the name, contact information, and job title of any and all persons answering or in any way participating in answering the Interrogatories. Defendant provided several names but not their location or contact information. Defendant is obligated to provide this information under Civ.R. 26(B)(1), which states that parties "may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action...including the...identity and **location** of persons having knowledge of any discoverable matter." (Emphasis added.)

This information is crucial because, *inter alia*, Plaintiff needs to be able to subpoena witnesses. To resolve this efficiently, Plaintiff's counsel suggested that Defendants' counsel simply accept subpoenas on behalf of the individuals it identified. But Defendants refused.

Not only have they refused to accept subpoenas, but Defendants also claim that they cannot produce the addresses of these individuals because of the European Union's General Data Privacy Regulation ("GDPR") and the United Kingdom's Data Protection Act of 2018. Defendants never raised this issue until their discovery production was three months overdue, in violation of Civ.R. 44.1(B).

Perhaps more importantly, where the alleged obstacle to production is foreign law, the burden of proving what that law is and demonstrating why it impedes production falls on the party resisting discovery. *Laydon v. Mizuho Bank, Ltd.*, 183 F. Supp. 3d 409, 413 (S.D.N.Y. Apr. 29, 2016) (internal quotations omitted). (Pursuant to Loc.R. 11.0(H), unpublished and out-of-state cases are attached hereto collectively in the order they are cited as **Exhibit 5**.) In order to meet that burden, the party resisting discovery must provide the Court with information of sufficient particularity and specificity to allow the Court to determine whether the discovery

sought is indeed prohibited by foreign law. *Id*; see also, *Phoenix Process Equip. Co. v. Capital Equip. & Trading Corp.*, W.D.Ky. No. 16CV-00024, 2019 U.S. Dist. LEXIS 44390, *30 (Mar. 18, 2019) ("the party claiming the 'shelter of foreign law' bears the burden of establishing that foreign law in fact bars production"). Despite nearly a half-year of delay and withholding of information, Defendants have never identified any specific section of the GDPR or any other foreign law that supports their claimed position. Since Defendants have failed to meet their obligation to explain why a European law somehow absolves them of their basic discovery obligations under Civ.R. 26, Defendants should be compelled to produce the responsive information.

B. Plaintiff Is Entitled to the Identity of the Individuals Who Reviewed Plaintiff's Job Performance

Plaintiff's Interrogatory Number 5 asked for the name, contact information, date of birth, and job title of each current or former employee, agent, or representative of Vesuvius whose responsibility it was to review Plaintiff's job performance during his employment through his termination, indicating the dates during which each person had that responsibility.

Plaintiff's Complaint alleges claims for both failure to promote and unlawful termination. In order to meet his *prima facie* burden for either claim, Plaintiff must demonstrate his qualifications – which Defendants have claimed are lacking despite his lengthy employment. *Provenzano v. LCI Holdings, Inc.*, 663 F.3d 806, 813-14 (6th Cir. 2011); *Shazor v. Prof'l Transit Mgmt.*, 744 F.3d 948, 957 (6th Cir. 2014).[3] Further, this discovery is relevant because, *inter alia*, Defendants have asserted that Plaintiff's job performance was one of several reasons that his

[3] Ohio courts look to federal case law when interpreting analogous claims under R.C. § 4112. *Coryell v. Bank One Trust Co. N.A.*, 101 Ohio St. 3d 175, 2004-Ohio-723, P15, 803 N.E.2d 781, ¶15.

four-decade employment was terminated. (See, Defendants' Answers to Interrogatories, Ex. 2, No. 7.)

In their response to Interrogatory No. 5, Defendants objected, but told Plaintiff to "see produced documents." This reference to documents, however, leaves the Interrogatory completely unanswered. First, Plaintiff is now forced to guess which documents are responsive. Second, assuming Defendants are referring to Plaintiff's performance evaluations, no such evaluations were produced for the time period from 2006 to 2011 or from 2017 to 2018. Third, the 2016 performance evaluation is blank. Fourth, the evaluations from 2012 to 2016 are objectively **incorrect** – they identify Plaintiff's position as "Special Projects Director" for years in which he did not hold that role.

This would be a lot easier if Defendants would simply answer the Interrogatory. Defendants' last substantive position on this issue, however, was that they would work toward answering Plaintiff's question, but that "[t]he individual responsible for custody and control of Vesuvius' performance reviews is located in Europe and is on a leave of absence until April 23, 2019." Despite this unidentified individual returning from leave more than three weeks ago, Defendants still have not answered a very simple question: who do Defendants claim was responsible for evaluating Plaintiff's employment? Defendants should be compelled to produce this information.

C. Plaintiff Must Discover the Reason that Defendants Changed the Terms of Severance

Interrogatory Number 7 sought, *inter alia*, each and every reason relied upon by Vesuvius as justification for how the terms of severance offered to Plaintiff were determined. As explained above, Young verbally offered Plaintiff one year of severance (in addition to other terms) in March 2018. At that time, Plaintiff complained of age discrimination. Two months

later, Young delivered a written severance agreement to Plaintiff, promising only three months of severance. Since the one-year offer of severance was never delivered to Plaintiff in writing, Document Request No. 27 sought all documents referenced in, created for, or otherwise related to the meeting between Christopher Young and Plaintiff in March 2018 in which severance was discussed.

1. *The Reason for Defendants' Dramatic Reduction in Severance Terms Is Directly Related to the Basic Elements of Plaintiff's Retaliation Claim*

Interrogatory No. 7 and Document Request No. 27 seek information bearing directly on a fundamental aspect of Plaintiff's retaliation claim. More specifically, Plaintiff's claims have been brought under, *inter alia*, R.C. § 4112.02(A), which makes it unlawful for "any employer, because of the...age...of any person, to...discriminate against that person with respect to...terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment." In his conversation with Young in March 2018, Plaintiff expressed his concerns that Vesuvius was violating age discrimination law. Roy was protected from retaliation for expressing this concern – R.C. § 4112.02(I) states that it is illegal "[f]or any person to discriminate in any manner against any other person because that person has opposed any unlawful discriminatory practice defined in this section."

Retaliation claims under R.C. § 4112.02(I) can be proved circumstantially by showing that the plaintiff (1) engaged in protected activity; (2) the employer knew of this protected activity; (3) the employer subsequently took an employment action adverse to the plaintiff; and (4) a causal connection between the protected activity and the adverse employment action exists. *Abbott v. Crown Motor Co.*, 348 F.3d 537, 542 (6th Cir. 2003). If a plaintiff meets his *prima facie* burden, the defendant then must advance a legitimate, non-retaliatory reason for the challenged

decision. *Id.* If the defendant advances such a reason, the plaintiff must then demonstrate that the reason is pretextual.

Defendants are refusing to provide the reason that they reduced the severance – this obviously would then prevent Plaintiff from demonstrating pretext. How can Plaintiff show that a reason is pretextual if he does not even know what the reason is?

2. *Defendants Cannot Rely on Evid.R. 408 to Withhold Production, Because No Claim by Plaintiff Was Pending When the Severance Was Offered and the Claim at Issue Did Not Even Exist until that Offer Was Made*

Defendants have argued that Evid.R. 408 justifies their withholding of an explanation for why Plaintiff's severance was reduced from 12 months to three after complaining of discrimination. That rule states:

> Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, **is not admissible to prove liability for or invalidity of the claim or its amount**. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. **This rule also does not require exclusion when the evidence is offered for another purpose**, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

(Emphasis added.)

First and foremost, Evid. R. 408 does not apply, because no claim was pending at the time Defendants' offer was made. In *Atkinson v. International Technegroup*, 106 Ohio App. 3d 349 (1st Dist.1995), the defendant's human resources director had concerns about age discrimination when the plaintiff was terminated. After consulting with lawyers, the HR director offered the plaintiff a release at his discharge, even though the plaintiff had not raised a claim. In her deposition, the HR director admitted that, when she offered the release, she was concerned

about an eventual age discrimination claim. The court affirmed the trial court's inclusion of that admission at trial. The court held that Evid. R. 408 did not apply because, at the time the agreement was offered to the plaintiff, no claim by the plaintiff was pending.

Thus, Evid. R. 408 is only operative if the claim at issue precedes the offer of settlement. Here, however, the claim for unlawful retaliation actually **arose from** Defendants' offer of three months of severance in May 2018. Stated otherwise, it was the offer itself that created the claim, so Evid. R. 408 does not control.

Even if Evid.R. 408 applied, the reason for Defendants' dramatic reduction in offered severance – whatever that reason may be – would still be admissible because Plaintiff is clearly not seeking to introduce it to prove "liability for or invalidity of the claim or its amount." Instead, the purpose of the discovery is to explore whether Defendants punishes employees, through the terms and conditions of their employment (including severance offers), when those employees raise retaliation concerns.

Perhaps most importantly, the admissibility of the explanation for Defendants' reduction in severance is an issue best left for summary judgment or pretrial proceedings. At the discovery phase, this Court need not determine – before the discovery is even produced! – whether the response to Plaintiff's request is admissible under Evid.R. 408.

Finally, Defendants have incorrectly claimed that documents already produced somehow provide the explanation for the reduction in severance. A review of the produced documents fails to illuminate why Defendants offered one year of severance in March 2018, and then three months of severance just 60 days later. Defendants must be compelled to provide an explanation for such a shift.

D. Defendants Should Be Compelled to Identify the Individuals Who Expressed Interest in the Global Product (Flux) Director Position

Interrogatory Number 9 sought the name, contact information, date of birth, date of hire, and the salary and bonus for individuals who **applied** for the Global Product Director position – also known as the Flux Director – at any time from January 1, 2016 to the present.

As explained above, Plaintiff has asserted an age discrimination failure to promote claim with respect to this position. Plaintiff sought the role, but it was instead awarded to Chetwyn. After Chetwyn's employment ended, Plaintiff expressed his interest in the position again, but was again passed over in favor of a younger candidate. Thus, Plaintiff has moved to amend his Complaint to include an additional age discrimination failure to hire claim.

Plaintiff is entitled to know if other individuals – besides him, Chetwyn, and Schulz – expressed interest in this position. For example, if other, older applicants or employees sought the position, but were passed over, similar to Plaintiff, it would show a pattern of denying opportunities to older candidates in favor of younger, perhaps less-qualified alternatives. Such evidence is clearly relevant to an age discrimination claim.

E. Discovery of Other Complaints Is Prototypical Evidence in Discrimination and Retaliation Claims

In Interrogatory Number 16, Plaintiff sought the name, contact information, age, date of birth, and job title of any person who has filed a wrongful discharge, retaliation, or age discrimination complaint or charge against Defendant Vesuvius during the past five (5) years, including, but not limited to, any formal or informal, written or verbal, and/or complaints or charges made through internal company procedures, or filed with any State or Federal agency. In Request Number 18, Plaintiff asked for any and all documents relating to any age discrimination complaint or concerns (including Plaintiff's), whether formal or informal, written

or verbal, made by any employee of Defendants in the last five (5) years, including, but not limited to, notes, memoranda, letters, emails, tapes, and any documents relating to any investigation.[4]

Initially, Defendants identified eight separate individuals in response to these requests, but did not provide the other requested information. When Plaintiff followed up to seek contact information and ages, Defendants only produced the information for three of the eight (besides Plaintiff). Defendants have not produced any documents related to these complaints.

Evidence of how discrimination and retaliation affected other employees is relevant and discoverable in this case. More specifically, "[c]ircumstantial evidence establishing the existence of a discriminatory atmosphere at the defendant's workplace in turn may serve as circumstantial evidence of individualized discrimination directed at the plaintiff," and evidence of a discriminatory atmosphere "tend[s] to add 'color' to the employer's decision making processes and to the influences behind the actions taken with respect to the individual plaintiff." *Ercegovich v. Goodyear Tire & Rubber Co.*, 154 F.3d 344, 356 (6th Cir. 1998). Further, courts have routinely determined that discovery spanning five years prior to the alleged discriminatory acts is appropriate is discrimination cases. *Stevenson v. General Electric Co.*, S.D.Ohio No. C-1-77-122, 1978 U.S. Dist. LEXIS 15133, at *3 (Oct. 4, 1978); *Leibforth v. Belvidere Nat'l Bank*, N.D.Ill. No. 99 C 50381, 2001 U.S. Dist. LEXIS 7725, at *4 (June 7, 2001); *Tomanovich v. Autumn Glen*, N.D.Ind. No. IP 01-1247, 2002 U.S. Dist. LEXIS 14885, at *6 (Aug. 13, 2002).

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[4] Plaintiff's counsel proposed a revised version of this request to resolve an impasse, but Defendants did not produce anything in response to either Plaintiff's original or revised version.

F. Plaintiff Should Be Permitted to Discover the Personnel Files of Key Players Involved in Plaintiff's Claims.

Request No. 10 sought personnel files of Christopher Young, Ryan Van der Aa, Michael Chetwyn, Patrick Andre, Vincent Boisdequin, Alan Charnock, and Roel van der Sluis. Defendants have objected on various grounds, including that the personnel files are not relevant nor likely to lead to the discovery of admissible evidence.

1. *The Personnel Files Are Relevant and Likely to Lead to the Discovery of Admissible Evidence*

Michael Chetwyn is Vesuvius' former Global Flux Director. As explained above, Chetwyn was hired into the Global Product (Flux) Director position instead of Plaintiff. In a failure to promote claim, the plaintiff's *prima facie* burden is to show: (1) he is a member of a protected class; (2) he applied and was qualified for the job; (3) he was considered for and denied the promotion; and (4) another employee of similar qualifications who was not a member of the protected class was instead hired. *Provenzano*, 663 F.3d at 813-14. Thus, Plaintiff must be permitted to explore Chetwyn's qualifications – it is basic discovery in a failure to promote case. Chetwyn's personnel file is thus clearly relevant.

Further, Chetwyn ultimately became one of Plaintiff's supervisors when Roy took the job as Special Projects Director. Though Young promised that Plaintiff would have a job description for that position, none was ever created. Thus, Plaintiff is now forced to seek discovery of other personnel documents (*e.g.*, Chetwyn's personnel file) to explore what roles and responsibilities were held by the individuals overseeing the areas of Vesuvius' business relevant to Roy's duties as Special Projects Director.

For the same reason, Boisdequin's personnel file is also relevant. Boisdequin was Vesuvius' Vice President Marketing & Technology, Flow Control. As Roy's other supervisor in

the Special Projects Director position, Boisdequin's records may have information about duties, responsibilities, and performance of the areas in which Plaintiff worked. Given that Plaintiff's performance is cited as a reason for his termination, the performance of the areas in which Plaintiff worked is obviously relevant to this dispute.

Given the relevance of Plaintiff's performance, Plaintiff also sought the personnel files of Patrick Andre and Roel van der Sluis, each of whom presided over Vesuvius' "Flow Control" division. At the time he was given the Special Projects Director role, Plaintiff was told that 50% of the role was to support this division. Since Defendant has (a) limited (and seemingly inaccurate) performance documentation related to Plaintiff's performance, (b) no job description for Special Projects Director, and (c) very little documents related to this role, Defendants must produce documents showing how the individuals overseeing the relevant area of the company were performing.

Young and Ryan van der Aa are each in human resources roles at Vesuvius. Their personnel files are relevant first and foremost to discover whether they have any training in American or Ohio antidiscrimination laws and/or whether any prior discrimination complaints have been lodged against them. Additionally, given their roles in Plaintiff's termination, Plaintiff should be permitted to discover whether either of them were criticized for how they handled Plaintiff's departure or any other, similar situation.

Finally, Alan Charnock was Plaintiff's former supervisor during his employment in China. Charnock would have reviewed Plaintiff's performance and, Charnock's performance would have bore on how Plaintiff's performance was perceived.

2. *Defendants Have Possession, Custody, or Control over the Requested Documents*

Defendants know that the above-described personnel files are relevant, so they have lobbed a series of other meritless arguments to avoid production. For example, Defendants claim that "these requested files are maintained in Europe" and, thus, "the files are not under the custody or control of either Vesuvius USA Corporation or Young."

First, since at least 2010, Plaintiff's W-2 employer has been "Vesuvius USA Corporation." The idea that this Vesuvius entity would not have possession of documents so clearly related to Plaintiff's employment is exceedingly suspect. Instead, Defendants' argument is, in actuality, an attempt by Defendants to force Plaintiff into participating in an ever-expanding shell game of its **127 separate affiliates**, most of whom are headquartered overseas. Notably, Defendants withheld this objection about "custody or control" for **four months** before raising it the evening before a telephone conference with the Court. And, when they bothered to make this dubious claim, Defendants could not trouble themselves to actually identify the foreign affiliate that purports to possess the responsive files. This is simply an abusive delay tactic.

Several of the employees at issue – like Chetwyn and Young – worked in the United States. The other individuals supervised employees and operations in Ohio and throughout the United States. Defendant should not be permitted to employ individuals in Ohio and then, once litigation is filed, claim that information directly related to that employment is stored overseas and thus incapable of production.

Civ.R. 34(A)(1) states that Plaintiff is entitled "to inspect and copy any designated documents or electronically stored information...that are in the possession, custody, or control of" Defendants. In interpreting the Ohio Civil Rules of Procedure, the Ohio Supreme Court has consistently advised that federal cases provide guidance to our interpretation of those rules.

State ex rel. Portune v. NFL, 155 Ohio App. 3d 314, 316, 2003-Ohio-6195, 800 N.E.2d 1188, ¶6 (1st Dist.2003).

A review of such federal cases demonstrates that discovery material is within a party's "control" when the party has the practical ability to obtain the documents, particularly when the opposing party does not have the same practical ability to do so. *Union Commer. Servs. v. FCA Int'l Operations LLC*, E.D. Mich. No. 16-cv-10925, 2018 U.S. Dist. LEXIS 11820, *6-7 (Jan. 25, 2018). Indeed, neither physical possession nor legal ownership of the documents is required; instead, Rule 34 requires production if the party has the "practical ability" to obtain the documents from another, irrespective of legal entitlement. *Libertarian Party of Ohio v. Husted*, S.D. Ohio No. 13-cv-953, 2014 U.S. Dist. LEXIS 111338, *3-4 (Aug. 12, 2014); see also, *Chicago Ins. Co. v. Wiggins*, E.D. Mich. No. 02-73801, 2005 U.S. Dist. LEXIS 27159, *6-7 (Aug. 12, 2005).

Importantly, this "practical ability" test applies with respect to documents held by a foreign parent or affiliate. *M.L.C., Inc. v. North American Philips Corp.*, 109 F.R.D. 134, 138 (S.D.N.Y. 1986). Contrary to Defendants' efforts here, parties "cannot be allowed to shield crucial documents from discovery by parties with whom it has dealt in the United States **merely by storing them with its affiliate abroad**....If defendant could so easily evade discovery, every United States company would have a foreign affiliate for storing sensitive documents. *Cooper Industries, Inc. v. British Aerospace, Inc.*, 102 F.R.D. 918, 920 (S.D.N.Y. 1984) (emphasis added).

The fact that Defendants have stored the personnel files of key players in foreign affiliates does not absolve them of their obligation to produce. Since Defendants have the practical ability to obtain these documents, the Court should compel them to produce any

responsive documents that are technically maintained by Vesuvius or any of its parent, subsidiary, or affiliate entities.

3. *The GDPR Does Not Block Production*

Like the location of witnesses discussed above in Section III(A), Defendants nebulously claim that the GDPR and other foreign laws preclude their production of these personnel files. As explained above, Defendants have failed to carry their burden of identifying what sections of these laws, if any, they actually claim support their position. As such, the Court should not credit this argument at all.[5]

While the GDPR is a relatively recent E.U. law, at least one American court has confronted the same argument advanced by Defendants – and rejected it. In *Finjan, Inc. v. Zscaler, Inc.*, N.D. Cal. No. 17-cv-06946, 2019 U.S. Dist. LEXIS 24570 (Feb. 14, 2019), the defendant claimed that it could not produce certain emails because they were purportedly protected by the GDPR. The court wrote that, "[i]n general, a foreign country's statute precluding disclosure of evidence do[es] not deprive an American court of the power to order a party subject to its jurisdiction to produce evidence even though the act of production may violate that statute." *Id.* at *3-4. Therefore, even if Defendants could coherently explain how production of the personnel files would violate the GDPR – which they have not – such an explanation would not preclude production.

Instead, under the U.S. Supreme Court's decision in *Societe Nationale Industrielle Aerospatiale v. United States Dist. Court for Southern Dist.*, 42 U.S. 522, 107 S. Ct. 2542 (1987), the *Finjan, Inc.* court used five factors to determine that production was appropriate: (1)

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[5] Plaintiff anticipates that Defendants will – for the first time – identify sections of the GDPR and other laws in the opposition briefing. If that occurs, it would, of course, completely undercut the burden Defendants bear, and would entirely prevent Plaintiff from a meaningful opportunity to rebut their position. Thus, the Court should not permit such a tactic.

the importance of the documents or other information requested to the litigation; (2) the degree of specificity of the request; (3) whether the information originated in the United States; (4) the availability of alternative means of securing the information; and (5) the extent to which noncompliance would undermine important interests of the United States. In weighing these factors, the court determined that the defendant needed to produce the requested information. The same analysis results in the same outcome here.

For example, factor (1) clearly weighs in favor of production. The personnel records, as explained above, bear directly on central issues to this litigation like (a) Plaintiff's performance, (b) the performance of the units in which Plaintiff worked, (c) prior discrimination complaints, (d) Defendants' management of Plaintiff's termination, (e) Defendants' knowledge of Ohio and American antidiscrimination laws, and potentially other issues.

Factor (2) also weighs in favor of production. Plaintiff only seeks the personnel files of **seven** individuals. Plaintiff did not seek "all" personnel files for certain units or divisions, nor did he request "any" personnel files that fell within broad, vague parameters. Instead, he specifically identified seven specific individuals relevant to this lawsuit.

Factor (3) is unclear. Plaintiff knows that Chetwyn and Young performed significant job responsibilities within the United States. Upon information and belief, all of the other identified employees oversaw work, divisions, and employees in the United States. Thus, at least some of the responsive personnel records likely did originate in the United States.

Factor (4) again weighs in favor of disclosure. Plaintiff has no alternative means of obtaining the requested files.

Factor (5), perhaps more than any other factors, tips the scales entirely in favor of production. Ohio has a clear public policy prohibiting age discrimination and unlawful

retaliation. As explained herein, personnel records (performance evaluations, training, etc.) are basic discovery in such cases. If a foreign company were permitted to employ individuals in this state, but then evade liability for flagrantly violating our laws by simply warehousing personnel files overseas, it would dramatically undermine the state's public policy.

G. Defendants Should Not Be Permitted to Hide behind Their "Custody or Control" Argument

In addition to Document Request No. 10 (discussed above), Defendants' "possession, custody, and control" argument was also made in response to Document Request No. 25, which sought all personnel files/applicant materials for all applicants for the following positions: (1) Global Product Director; (2) Global Development Director; and (3) Special Projects Director. For the reasons explained above in Section III(D), this information is critical to Plaintiff's failure to promote claim.

Indeed, the "possession, custody, and control" argument was advanced by Defendants in response to the following discovery requests: Interrogatory Number 2, Interrogatory Number 3, Interrogatory Number 4, Interrogatory Number 26, Interrogatory Number 29, Interrogatory Number 30, Interrogatory Number 31, Request Number 1, Request Number 2, Request Number 4, Request Number 7, Request Number 8, Request Number 13, and Request Number 19. For the reasons outlined above in Section III(F)(2), any responsive information held by sister or parent companies that is responsive to these requests should be produced in response.

H. Defendants Must Produce Documents Related to Plaintiff's Breach of Contract Claim

Plaintiff's Document Request Number 23 sought all agreements, assignments, memoranda, notes, filings, and other documents associated with the merger/acquisition between Vesuvius and Foseco Metallurgical Inc. in 2008. Plaintiff sought this information based on his

breach of contract claim, arising from Defendants' failure to comply with the obligations under the Severance Contract. In refusing to pay Plaintiff what he was owed, Ryan van der Aa claimed that the Severance Contract did not apply because it was executed by Foseco, Vesuvius' predecessor. In response to this Request, Defendants initially objected and produced nothing. They have since produced a few pages filed with Ohio Secretary of State, but the merger agreement, assignment documents, and other related discovery is still being withheld.

In *Acordia of Ohio, L.L.C. v. Fishel*, 133 Ohio St.3d 356, 2012-Ohio-4648, 978 N.E.2d 823, the Ohio Supreme Court held that, while an "absorbed company ceases to exist as a separate business entity," it is not "completely erased from existence" and instead "becomes part of the resulting company following the merger." The merged company thus "step[s] into the shoes of the absorbed company" with respect to agreements between employers and employees. *Id.* at ¶7. The *Fishel* decision related to non-compete agreements, but has since been applied in other unrelated circumstances. See, *e.g., Nationstar Mortgage, L.L.C. v. Wagener*, 8th Dist. Cuyahoga No. 101280, 2015-Ohio-1289, ¶63 at n.12.

Plaintiff needs to evaluate the documentation related to the merger between Foseco and Vesuvius to ascertain whether liabilities (like those under the Severance Contract) were explicitly retained or transferred, whether the documents have a choice of law provision, and other related issues. Defendants should be compelled to produce all responsive documents.

I. Plaintiff is Entitled to an Award of Attorneys' Fees

Civ.R. 37(A)(5)(a) provides, in pertinent part:

> If the motion [to compel] is granted, the court shall, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees.

The only limitation on the award of attorneys' fees is that they be reasonable. See, *Swanson v. Swanson*, 48 Ohio App. 2d 85, 355 N.E.2d 894 (1976).

Defendants' unjustified delay, refusal to answer discovery, and deficient production is either an unfair delaying tactic or simply a disregard for the Ohio Rules of Civil Procedure. Either way, Plaintiff should be entitled to an award of reasonable attorneys' fees in connection with the filing of this Motion to Compel.

IV. CONCLUSION

Civ. R. 26 adopts the liberal discovery philosophy, implementing a "policy of affording attorneys every opportunity and advantage in preparing their case before trial." *Rossman v. Rossman*, 47 Ohio App.2d 103, 107, 352 N.E.2d 149 (8th Dist.1975). In derogation of this policy, Defendants have failed to produce discovery that is crucial to affording Plaintiff an adequate opportunity to present his claims. Despite ample efforts, however, and compliance with Civ. R. 37(E) and Cuy. Co. Loc. R. 11(F), Defendants have refused to produce this discovery. Thus, based on the foregoing, Plaintiff respectfully moves this Court for an Order compelling Defendants to thoroughly respond to and produce the discovery at issue.

Respectfully submitted,

Ann-Marie Ahern (#0070020)
ama@mccarthylebit.com
John E. Moran (#0087272)
jem@mccarthylebit.com
McCARTHY, LEBIT, CRYSTAL
& LIFFMAN CO., L.P.A.
101 West Prospect Avenue
1800 Midland Building
Cleveland, Ohio 44115
(216) 696-1422
(216) 696-1210 (facsimile)

Attorneys for Plaintiff

Moran, Jack E.

From: Moran, Jack E.
Sent: Tuesday, February 19, 2019 4:33 PM
To: Peters, Patrick O. (Cleveland)
Cc: Ahern, Ann Marie; Brown, Sabrina L. (Cleveland); Mazzone, Charlene M.; Saghy, Joy D.
Subject: RE: Royston Phillips v. Vesuvius USA Corporation

Follow Up Flag: Copied to Worldox (Clients\18569\00001\01286506.MSG)

Pat:

Thank you for our call today. I understand that you will be speaking with your client later this week. In the interest of avoiding Court involvement, we will wait until Wednesday, February 27, 2019 for Defendants' discovery responses. If we do not have them at that time, however, we will contact the Court to seek an order compelling the responses.

Jack E. Moran ▪ Principal ▪ McCarthy, Lebit, Crystal & Liffman Co., LPA
101 W. Prospect Ave., Suite 1800 ▪ Cleveland, OH 44115 ▪ Phone: 216.696.1422
jem@mccarthylebit.com ▪ www.mccarthylebit.com ▪ Download my vCard
LinkedIn ▪ Twitter ▪ Google+ ▪ Facebook ▪ IR Global Member Firm

From: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
Sent: Thursday, February 14, 2019 3:17 PM
To: Moran, Jack E. <JEM@mccarthylebit.com>
Cc: Ahern, Ann Marie <AMA@mccarthylebit.com>; Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Saghy, Joy D. <jds@mccarthylebit.com>
Subject: Re: Royston Phillips v. Vesuvius USA Corporation

Will do.

On: 14 February 2019 13:02,

Patrick O. Peters
Attorney at Law
Jackson Lewis P.C.
Park Center Plaza I, Suite 400
6100 Oak Tree Blvd.
Cleveland, OH 44131
Direct: (216) 750-4338 | Main: (216) 750-0404 | Mobile: (216) 288-9972
Patrick.Peters@jacksonlewis.com | www.jacksonlewis.com
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"Moran, Jack E." <JEM@mccarthylebit.com> wrote:

EXHIBIT
tabbies

Pat:

Please let me know a time in the afternoon on Monday that will work for you.

Jack E. Moran ▪ Principal ▪ McCarthy, Lebit, Crystal & Liffman Co., LPA
101 W. Prospect Ave., Suite 1800 ▪ Cleveland, OH 44115 ▪ Phone: 216.696.1422
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From: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
Sent: Thursday, February 14, 2019 10:44 AM
To: Moran, Jack E. <JEM@mccarthylebit.com>
Cc: Ahern, Ann Marie <AMA@mccarthylebit.com>; Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Saghy, Joy D. <jds@mccarthylebit.com>
Subject: RE: Royston Phillips v. Vesuvius USA Corporation

Hi Jack,

I am out of the office this week but will call you on Monday.

Thanks,
Pat

Patrick O. Peters
Attorney at Law
Jackson Lewis P.C.
Park Center Plaza I, Suite 400
6100 Oak Tree Blvd.
Cleveland, OH 44131
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From: Moran, Jack E. <JEM@mccarthylebit.com>
Sent: Monday, February 11, 2019 5:18 PM
To: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
Cc: Ahern, Ann Marie <AMA@mccarthylebit.com>; Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Saghy, Joy D. <jds@mccarthylebit.com>
Subject: RE: Royston Phillips v. Vesuvius USA Corporation

Pat:

I just left you a voicemail on this. Can we please have the written responses and what documents you do have?

Jack E. Moran ▪ Principal ▪ McCarthy, Lebit, Crystal & Liffman Co., LPA
101 W. Prospect Ave., Suite 1800 ▪ Cleveland, OH 44115 ▪ Phone: 216.696.1422
jem@mccarthylebit.com ▪ www.mccarthylebit.com ▪ Download my vCard
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From: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
Sent: Tuesday, January 29, 2019 5:45 PM
To: Moran, Jack E. <JEM@mccarthylebit.com>
Cc: Sturgess, Cheryl (Cleveland) <Cheryl.Sturgess@jacksonlewis.com>; Ahern, Ann Marie <AMA@mccarthylebit.com>; Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Saghy, Joy D. <jds@mccarthylebit.com>
Subject: RE: Royston Phillips v. Vesuvius USA Corporation

Good evening Jack,

I have not been able to complete our discovery responses by today's extended deadline, but anticipate being able to do so by the end of the week/beginning of next. I will get our responses to you ASAP.

Thanks in advance for your courtesies.

Patrick O. Peters

Attorney at Law

Jackson Lewis P.C.

Park Center Plaza I, Suite 400
6100 Oak Tree Blvd.

Cleveland, OH 44131

Direct: (216) 750-4338 | Main: (216) 750-0404 | Mobile: (216) 288-9972

Patrick.Peters@jacksonlewis.com | www.jacksonlewis.com

From: Moran, Jack E. <JEM@mccarthylebit.com>
Sent: Tuesday, January 15, 2019 5:04 PM
To: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
Cc: Sturgess, Cheryl (Cleveland) <Cheryl.Sturgess@jacksonlewis.com>; Ahern, Ann Marie <AMA@mccarthylebit.com>; Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Saghy, Joy D. <jds@mccarthylebit.com>
Subject: Re: Royston Phillips v. Vesuvius USA Corporation

Pat:

Two weeks is acceptable, thanks.

Jack E. Moran
(216) 696-1422

On Jan 15, 2019, at 4:53 PM, Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com> wrote:

> Hi Ann-Marie and Jack,

We're working on gathering the documents and information needed to respond to the interrogatories and requests for production. Can we have an additional two weeks? I know you want to keep this case moving and I am working to do that, but the intervening holidays delayed my efforts a bit. Please let me know.

Thanks,
Pat

Patrick O. Peters

Attorney at Law

Jackson Lewis P.C.

Park Center Plaza I, Suite 400
6100 Oak Tree Blvd.

Cleveland, OH 44131

Direct: (216) 750-4338 | Main: (216) 750-0404 | Mobile: (216) 288-9972

Patrick.Peters@jacksonlewis.com | www.jacksonlewis.com

From: Sturgess, Cheryl (Cleveland) <Cheryl.Sturgess@jacksonlewis.com>
Sent: Tuesday, January 15, 2019 4:44 PM
To: ama@mccarthylebit.com; jem@mccarthylebit.com
Cc: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>; Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>
Subject: Royston Phillips v. Vesuvius USA Corporation

This message is being sent on behalf of Patrick Peters

Attached are correspondence from Mr. Peters and Defendants' Responses and Objections to Plaintiff's First Set of Requests for Admissions.

Cheryl Sturgess

Legal Secretary

Jackson Lewis P.C.

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6100 Oak Tree Blvd.

Cleveland, OH 44131

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Jackson Lewis P.C. is honored to be recognized as the "Innovative Law Firm of the Year" by the International Legal Technology Association (ILTA) and is a proud member of the CEO Action for Diversity and Inclusion initiative

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ROYSTON PHILLIPS,	)	CASE NO. CV-18-904574
	)	
Plaintiff,	)	JUDGE PETER J. CORRIGAN
	)	
v.	)	**DEFENDANTS' RESPONSES AND OBJECTIONS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANTS**
	)	
VESUVIUS U.S.A. CORPORATION, *et al.*,	)	
	)	
Defendants.	)	
	)	

Defendants Vesuvius USA Corporation[1] ("Vesuvius") and Christopher Young (collectively "Defendants") respond to Plaintiff's Royston Phillips' ("Plaintiff") First Set of Interrogatories and Requests for Production of Documents ("Discovery Requests") as follows:

GENERAL OBJECTIONS

Except where otherwise noted, these general objections apply to each Discovery Request and are incorporated into the answer to each inquiry.

1. Defendants object to the Discovery Requests insofar as they seek information that is neither relevant to any party's claims or defenses nor proportional to the needs of the case.

2. Defendants object to the Discovery Requests insofar as they seek to impose on Defendant obligations beyond those imposed by the Court and any other relevant rules, orders, or mandates from the Court.

[1] Improperly identified as "Vesuvius U.S.A. Corporation" in the original filed Complaint.

3. By making a specific objection to a particular Discovery Request, Defendants do not imply that the specific objection is not applicable in response to any other particular Discovery Request, or that the general objections are not applicable to that particular Discovery Request.

4. While Defendants have responded to the Discovery Requests, they do so without waiver of their rights to object to any further inquiry by Plaintiff or any effort by him to compel responses beyond those provided herein.

5. Defendants object to the Discovery Requests to the extent they seek information and/or documents about persons, entities and/or subject matters that are unrelated to the matters before the Court.

6. Defendants understand the Discovery Requests are continuing in nature. Defendants will provide responses to the Discovery Requests and will supplement such responses in accordance with the Federal Rules of Civil Procedure and any rule, order or mandates of the Court.

7. Defendants object to the Discovery Requests to the extent that they seek information that are not in their possession, custody, or control.

8. Defendants object to any Discovery Requests that may request the production of documents or information that is subject to the attorney-client privilege, work product doctrine, or any other applicable privileges or as otherwise protected from disclosure. To the extent there is any inadvertent disclosure of privileged or otherwise protected information, such disclosure shall not constitute any waiver of the privileges and protections, and all such material will be promptly returned.

9. Defendant reserves the right to object to the introduction into evidence before the Court of information that is privileged or protected under the law or that has been revealed or produced inadvertently. Defendants do not by these answers knowingly or intentionally waive any claim of attorney-client privilege, work product, or any other applicable protection.

Subject to and in accordance with the foregoing General Objections, Defendants respond to the Discovery Requests as follows:

INTERROGATORIES

1. Please state the name, residential and business addresses, residential and business telephone numbers, and job title of any and all persons answering or in any way participating in answering these Interrogatories, and briefly describe in what way each person participated in answering these Interrogatories.

ANSWER: Objection. This Interrogatory impermissibly seeks to invade the attorney-client privilege and is otherwise not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objection, Defendant Christopher Young ("Young") and various representatives of Defendant Vesuvius USA Corporation ("Vesuvius") with the assistance of undersigned counsel.

2. Please state the salary, commission, bonuses, and any other compensation received by Plaintiff for each year of his employment with Defendant Vesuvius U.S.A. Corporation (hereinafter, "Vesuvius").

ANSWER: Objection. This Interrogatory is overly broad and unduly burdensome due to Plaintiff's long employment history with Vesuvius and Foseco. Subject to and without waiving the foregoing objections, see produced documents.

3. Please state your cost for any benefits provided to Plaintiff for the last two (2) years of Plaintiff's employment and state what the costs would be through today if Plaintiff were still employed.

ANSWER: See produced documents.

4. Please list the title, job duties, and responsibilities of each position Plaintiff held while he was employed by Defendant Vesuvius, providing the dates for which each position was held.

ANSWER: Objection. This Interrogatory is overly broad and unduly burdensome due to Plaintiff's long employment history with Vesuvius and Foseco. Subject to and without waiving the foregoing objections, see produced documents.

5. Please state the name, residential and business addresses, residential, business, and mobile telephone numbers, date of birth, and job title of each current or former employee, agent or representative of Defendant Vesuvius whose responsibility it was to review Plaintiff's job performance during his employment through his termination, indicating the dates during which each person had that responsibility.

ANSWER: Objection. This Interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Vesuvius employees can be contacted through counsel. Further, this Interrogatory is overly broad and unduly burdensome due to Plaintiff's long employment history with Vesuvius and Foseco. Subject to and without waiving the foregoing objections, see produced documents.

6. Please state the name, residential and business addresses, residential, business and mobile telephone numbers, date of birth, and job title of each employee of Defendant Vesuvius who (a) participated in the decision to terminate Plaintiff's employment; (b) participated in the decision regarding who would hold the Global Product Director position in 2016/2017; (c) participated in the decision regarding who would hold the Global Development Director position in 2016/2017; participated in the decision to assign Plaintiff to the Special Projects Director position; and (e) participated in deciding what severance terms, if any, should be offered to Plaintiff during 2016-2018; identifying the role each person had in the decision making of each above-described decision.

ANSWER: Objection. This Interrogatory is overly broad, unduly burdensome, and seeks a narrative responses better suited for a deposition. Subject to and without waiving the foregoing objections, personnel decisions for senior management employees are made by relevant members of the senior executive board. At the time of Plaintiff's termination, Ryan van der Aa, Vice President Human Resources, Foundry; Vincent Boisdequin, Vice President M&T Flow Control; and Roel van der Sluis, President, Flow Control were the relevant members of the senior executive committee involved in the decision to terminate Plaintiff's employment and offer him severance. Mr. Boisdequin made the decision regarding who would hold the Flux Director position in 2016/2017. Mr. Boisdequin made the decision regarding who would assume the duties contemplated for the Global Development Director position in 2016/2017. Mr. Boisdequin made the decision to create the Special Projects Director position for Plaintiff.

7. Please state each and every reason or reasons relied upon by Vesuvius as justification for the following decisions and list the name, residential and business addresses, residential, business, and mobile telephone numbers, date of birth, and job title of each current or former employee who has knowledge of the reasons allegedly supporting (a) the termination of Plaintiff's employment, (b) Plaintiff not being assigned to the Global Product Director position, (c) Plaintiff not being assigned to the Global Development

Director position, (d) Plaintiff's assignment to the Special Projects Director position, and (e) how the terms of severance offered to Plaintiff at any time were determined.

ANSWER: Objection. This Interrogatory is overly broad, unduly burdensome, and seeks a narrative responses better suited for a deposition. Subject to and without waiving the foregoing objections, Defendants state that Vesuvius terminated Plaintiff's employment primarily on account of his desire to relocate back to Ohio from China and the lack of a position available to him in Ohio. While Plaintiff was offered the position of Global Development Director with Vesuvius in Europe following his tenure in China, Plaintiff declined the same due to the location and travel required of the position. Plaintiff was not considered for the Flux Director position due to the fact that it was also located in Europe and Plaintiff lacked recent line and P/L experience. In order to ease his transition to retirement, Vesuvius created the position of Special Projects Director for Plaintiff for a one-year term. As Special Projects Director, Plaintiff expressed a clear lack of motivation in contributing to Vesuvius due to his disagreements with the direction of the company and did not contribute much, if anything, towards the Special Projects Director role over the last several months of his employment. His performance as Special Projects Director was, therefore, disappointing and contributed to the decision to terminate his employment.

8. Please state the name, residential and business addresses, residential, business, and mobile telephone numbers, current salary, commission, bonuses, date of birth, job title and the date of hire for the person(s) who assumed or performed Plaintiff's job responsibilities after Plaintiff's termination from employment, identifying the duties each person assumed and the date on which the person assumed the duties.

ANSWER: Objection. This Interrogatory is overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Plaintiff's position at Vesuvius was a temporary, term position, created for Plaintiff upon his return from China. As such, no Vesuvius employee assumed his job duties following his termination.

9. Please state the name, address, telephone number, date of birth, date of hire, and the salary and bonus for individuals who applied for the Global Product Director position at any time from January 1, 2016 to the present, identifying which candidate was given the position (if any candidate).

ANSWER: Objection. This Interrogatory is overly broad and unduly burdensome. Subject to and without waiving the foregoing objections, the Flux Director position was filled by current employees Michael Chetwyn and Olaf Schulz through the succession planning process. There were no internal or external candidates. Michael Chetwyn's date of birth is July xx, 1972, and Olaf Schulz's date of birth is March xx, 1970.

10. Please state the name, address, telephone number, and date of birth of the individuals who applied for the Special Projects Director position at any time from January 1, 2016 to the present, identifying which candidate was given the position (if any candidate).

ANSWER: Objection. This Interrogatory is overly broad and unduly burdensome. Subject to and without waiving the foregoing objections, Plaintiff's position at Vesuvius was a temporary, term position, created for Plaintiff upon his return from China to ease his transition to retirement. As such, there were no applicants for the Special Projects Director position.

11. Please state the name, address, telephone number, and date of birth of the individuals who applied for the Global Development Director position at any time from January 1, 2016 to the present, identifying which individual was given the position (if any candidate).

ANSWER: Objection. This Interrogatory is overly broad and unduly burdensome. Subject to and without waiving the foregoing objections, the Global Development Director position was never filled. Rather, Mark Snyder, Global R&D Director, assumed the duties that were contemplated to comprise the Global Development Director position. Mark Snyder's date of birth is April xx, 1976.

12. Please state the name, residential and business addresses, and residential, business, and mobile telephone numbers, date of birth, and job title of each person who has relevant knowledge concerning or relating to the subject matter of Plaintiff's Complaint.

ANSWER: Objection. This Interrogatory is overly broad and unduly burdensome, and seeks information covered by the attorney-client privilege and work product doctrine. Subject to and without waiving the foregoing objections, Defendants state that the following individuals may have knowledge of the claims or defenses asserted in this matter and may be contacted through undersigned counsel:

1. **Royston Phillips ("Phillips"). Phillips has knowledge of his employment with Vesuvius and the claims and defenses asserted in this matter.**
2. **Christopher Young ("Young"). Young has knowledge of Phillips' employment with Vesuvius and the claims and defenses asserted in this matter.**
3. **Ryan van der Aa ("van der Aa"). van der Aa has knowledge of Phillips' employment with Vesuvius and the claims and defenses asserted in this matter.**
4. **Roel van der Sluis ("van der Sluis"). van der Sluis has knowledge of Phillips' employment with Vesuvius and the claims and defenses asserted in this matter.**
5. **Vincent Boisdequin ("Boisdequin"). Boisdequin has knowledge of Phillips' employment with Vesuvius and the claims and defenses asserted in this matter.**

Defendants reserve the right to supplement its response to this Interrogatory as discovery progresses.

13. Please state the name, residential and business addresses, residential, business, and mobile telephone numbers, and job title of the person(s) having the most knowledge of Defendant Vesuvius' personnel policies for the years 2014 to the present.

ANSWER: Objection. This Interrogatory is overly broad and unduly burdensome. Subject to and without waiving the foregoing objections, Sonya Santos, Human Resources Manager. Santos can be contacted through undersigned counsel.

14. Please state the name, residential and business addresses, residential, business, and mobile telephone numbers, and job title of the person(s) having the most knowledge of Defendant Vesuvius' computer systems, e-mail systems and file retention policies and practices for the years 2014 to the present.

ANSWER: Objection. This Interrogatory is overly broad, unduly burdensome, and not reasonably calculated to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Marek Frackiewicz, Chief Information Officer.

15. Please state whether any statement, affidavit or other related documents have been obtained by you, your agents, attorneys, or representatives from any of the persons having any knowledge of the facts of this case, and identify the person from whom the statement or document was obtained and the dates on which the statement or document was obtained.

ANSWER: Objection. This Interrogatory seeks information covered by the attorney-client privilege and work product doctrine. Subject to and without waiving the foregoing objection, no formal statements, affidavits, or related documents have been obtained to date. Defendants reserve the right to supplement its response to this Interrogatory as discovery progresses.

16. Please provide the name, residential and business addresses, residential, business and mobile telephone numbers, age, date of birth, and job title of any person who has filed a wrongful discharge, retaliation, or age discrimination complaint or charge against Defendant Vesuvius during the past five (5) years, including but not limited to any formal or informal, written or verbal, and/or complaints or charges made through internal company procedures, or filed with any State or Federal agency.

ANSWER: Objection. This Interrogatory is overly broad and seeks categories of information not reasonably calculated to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Plaintiff, Alireza Rezaie, Angel Davis, Marcus Walker, Kevin Greeson, Mary Matson, Robert Hiltebeitel, and Raymond Anderson.

17. Except experts, state the name, residential and business addresses, residential, business, and mobile telephone numbers of each person you intend to call as a witness at trial and/or use as a witness on summary judgment, and as to each, state the issue or issues as to which each individual will be called to testify.

ANSWER: Objection. This Interrogatory is premature and seeks information covered by the attorney-client privilege and work product doctrine. Defendants have not yet determined what witnesses they will call in the defense of this matter. Defendants will supplement this Response as required by the Ohio Rules of Civil Procedure, Local Rules, or any applicable Court order.

18. State the name, residential and business addresses, residential and business telephone numbers of every person whom you intend to call as an expert witness at the trial of this case and state the general field of his or her expertise; the subject matter on which each such expert is expected to testify; the substance of the facts and opinions to which each expert is expected to testify; and a summary of the grounds for each opinion which each such expert is expected to express.

ANSWER: Objection. This Interrogatory is premature. Defendants have not yet determined what experts, if any, they will use in the defense of this matter. Defendants will supplement this Response as required by the Ohio Rules of Civil Procedure, Local Rules, or any applicable Court order.

19. For each expert identified above, state whether each such expert has rendered a written report, the date of each written report prepared or approved by each expert, and the name and address of each person now having custody of each written report prepared or approved by each expert.

ANSWER: Objection. This Interrogatory is premature. Defendants have not yet determined what experts, if any, they will use in the defense of this matter. Defendants will supplement this Response as required by the Ohio Rules of Civil Procedure, Local Rules, or any applicable Court order.

20. Identify each document Defendant Vesuvius intends to offer as evidence at trial or summary judgment in this case.

ANSWER: Objection. This Interrogatory is premature and seeks information covered by the attorney-client privilege and work product doctrine. Defendants have not yet determined what exhibits they will use in the defense of this matter. Defendants will supplement this Response as required by the Ohio Rules of Civil Procedure, Local Rules, or any applicable Court order.

21. Please state the name of any person or company who has issued any insurance policy or agreement under which any person or company carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse any such judgment or settlement, and the limits of the liability for injury to any one person under the terms of each such insurance agreement or policy.

ANSWER: Objection. This Interrogatory is overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, see produced documents.

22. Please state whether Defendants will agree that all documents produced by Defendants during discovery are "records of regular conducted activity" as defined in Ohio Evid. R. 803(6) and that testimony from a records custodian is not necessary in order to authenticate originals or any copies of the documents.

ANSWER: Defendants agree that all documents produced to date are "records of regular conducted activity" as defined by Ohio Evid. R. 803(6) and that testimony from a records custodian is not necessary to authenticate said documents.

23. If your response to Interrogatory Number 22 is "no", please state the name, business address and residential, business, and mobile phone number of Custodian of Records for Defendants.

ANSWER: Please see Defendants' Answer to Interrogatory No. 22.

24. State, in dollar amounts, the volume of sales performed by Vesuvius to customers located in the state of Ohio for the years 2015, 2016, 2017, and 2018.

ANSWER: Objection. This Interrogatory is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

25. Identify all customers in the state of Ohio for whom Vesuvius has solicited business in the years 2015, 2016, 2017, and 2018.

ANSWER: Objection. This Interrogatory is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

26. Identify all evidence that supports the allegations set forth in Paragraph 13 of your Answer, in which you state that "Plaintiff indicated that it was his intention to only hold the [M&T Position in China] for the three years, after which he would return to the United States and retire."

ANSWER: Objection. This Interrogatory seeks information covered by the attorney-client privilege and work product doctrine. Subject to and without waiving the foregoing objections, see produced documents and witness testimony.

27. State any and all reasons that Vesuvius decreased its severance offer to Plaintiff between March 2018 and May 2018.

ANSWER: Objection. This Interrogatory is overly broad, unduly burdensome, and seeks a narrative response better suited for a deposition. Further responding, Ohio Evid. R. 408

protects discussions related to offers of compromise, and as such, interrogatories relating to Defendants' discussions regarding severance are not reasonably calculated to the discovery of admissible evidence.

28. Identify all locations in the state of Ohio from which Vesuvius conducts business.

ANSWER: **Objection. This Interrogatory is vague, ambiguous, and overly broad. Subject to and without waiving the foregoing objections, Vesuvius operates facilities in Avon Lake, Ohio; Brook Park, Ohio; and Conneaut, Ohio.**

29. State the basis for the allegations you made in Paragraph 13 of your Affirmative Defenses in your Answer.

ANSWER: **Objection. This Interrogatory seeks information covered by the attorney-client privilege and work product doctrine.**

30. State the basis for the allegations you made in Paragraph 15 of your Affirmative Defenses in your Answer.

ANSWER: **Objection. This Interrogatory seeks information covered by the attorney-client privilege and work product doctrine.**

31. State the basis for the allegations you made in Paragraph 5 of your affirmative Defenses in your Answer.

ANSWER: **Objection. This Interrogatory seeks information covered by the attorney-client privilege and work product doctrine.**

REQUEST FOR PRODOUCTION OF DOCUMENTS

REQUEST NO.1. Please provide all documents reflecting positions held by Plaintiff, all transfers made, including the name/title of the position, the dates during which he held each position, and the rate of pay in each position during his employment with Defendant Vesuvius.

RESPONSE: **Objection. This Interrogatory is overly broad and unduly burdensome due to Plaintiff's long employment history with Vesuvius and Foseco. Subject to and without waiving the foregoing objections, see produced documents.**

REQUEST NO. 2. Please provide all documents which show income, commission, bonuses and any other compensation received by Plaintiff during his employment with Defendant Vesuvius.

RESPONSE: **Objection. This Interrogatory is overly broad and unduly burdensome due to Plaintiff's long employment history with Vesuvius and Foseco. Subject to and without waiving the foregoing objections, see produced documents.**

REQUEST NO. 3. Please provide all documents which show income, commission, bonuses and any other compensation paid to the position of M&T Director Steel, China/North Asia from January 1, 2016 to the present.

RESPONSE: See produced documents.

REQUEST NO. 4. Please provide all documents which show income, commission, bonuses and any other compensation paid to the position of Global Product Director from January 1, 2016 to the present.

RESPONSE: See produced documents.

REQUEST NO. 5. Please provide all documents which show income, commission, bonuses and any other compensation paid to the position of Global Development Director from January 1, 2016 to the present.

RESPONSE: As this position does not and has never existed, no such documents exist.

REQUEST NO. 6. Please provide any and all information concerning benefits extended to Plaintiff before his termination of employment, including but not limited to life insurance, accidental death insurance, disability insurance, and vision insurance, and any and all documentation regarding all benefits offered and all premiums paid with respect to Plaintiff.

RESPONSE: See produced documents.

REQUEST NO. 7. Please provide a copy of the job description for each position held by Plaintiff throughout his employment with Defendant Vesuvius.

RESPONSE: Objection. This Interrogatory is overly broad and unduly burdensome due to Plaintiff's long employment history with Vesuvius and Foseco. Subject to and without waiving the foregoing objections, see produced documents.

REQUEST NO. 8. Please provide copies of all performance appraisals, evaluations, and any notes, memoranda, and/or other documents which pertain to Plaintiff's performance throughout his employment with Defendant Vesuvius.

RESPONSE: Objection. This Interrogatory is overly broad and unduly burdensome due to Plaintiff's long employment history with Vesuvius and Foseco. Subject to and without waiving the foregoing objections, see produced documents.

REQUEST NO. 9. Please provide the complete personnel, and any other file or document maintained by any agent or employee of the Defendant Vesuvius, including but not limited to performance, performance evaluations, discipline, termination, all documents reflecting compensation, salary, W-2's, raises, merit increases and bonus information, employment applications, documents related to experience and training, educational transcripts of any sort, all

documents reflecting change in position, title or compensation and the reasons therefore for Plaintiff, and all e-mails that refer or relate to Plaintiff and/or Plaintiff's performance as an employee of Defendant Vesuvius.

RESPONSE: Objection. This Interrogatory is overly broad and unduly burdensome due to Plaintiff's long employment history with Vesuvius and Foseco. Subject to and without waiving the foregoing objections, see produced documents.

REQUEST NO. 10. Please produce the complete personnel file, excluding medical records, and any other file maintained by any agent or employee of the Defendant Vesuvius, including but not limited to performance, performance evaluations, discipline, termination, all documents reflecting compensation, salary, W-2's, raises, merit increases and bonus information, employment applications, documents related to experience and training, educational transcripts of any sort, all documents reflecting change in position, title or compensation and the reasons therefor for Christopher Young, Ryan Van der Aa, Michael Chetwyn, Patrick Andre, Vincent Boisdequin, Alan Charnock, and Roel van der Sluis.

RESPONSE: Objection. This Request is not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 11. Please provide any and all documents reflecting the severance offered to Plaintiff, whether or not it was rejected, including but not limited to any notes, memoranda, recordings, or email correspondence regarding the approval, agreement or terms to offer to Plaintiff.

RESPONSE: Objection. This Request seeks information covered by the attorney-client privilege and work product doctrine. Subject to and without waiving the foregoing objections, see produced documents.

REQUEST NO. 12. Please produce any documents regarding the "Severance Arrangements for the Foseco Businesses in the USA" document executed by Plaintiff and Foseco Metallurgical Inc., including but not limited to any notes, memoranda, recordings, or email regarding the enforcement of such document.

RESPONSE: Objection. This Request seeks information covered by the attorney-client privilege and work product doctrine. Subject to and without waiving the foregoing objections, see produced documents.

REQUEST NO. 13. Please produce in native format any and all job postings, descriptions, or any other documents related to the positions of M&T Director Steel, China/North Asia; Global Product Director; Global Development Director; and the Special Projects Director.

RESPONSE: See produced documents.

REQUEST NO. 14. Please provide any and all documents regarding the following decisions, including but not limited to any email correspondence, notes and memorandum discussing the reason and/or the details supporting such decisions:

(1) Plaintiff's termination;
(2) Plaintiff's non-assignment to Global Product Director;
(3) Plaintiff's non-assignment to Global Development Director;
(4) Plaintiff's assignment to Special Projects Director.

RESPONSE: Objection. This Request seeks information covered by the attorney-client privilege and work product doctrine. Subject to and without waiving the foregoing objections, see produced documents.

REQUEST NO. 15. Please produce the complete personnel file, excluding medical records, and any other file maintained by any agent or employee of the Defendant Vesuvius, including but not limited to performance, performance evaluations, discipline, termination, all documents reflecting compensation, salary, W-2's, raises, merit increases and bonus information, employment applications, documents related to experience and training, educational transcripts of any sort, all documents reflecting change in position, title or compensation and the reasons therefor for any person who assumed any of Plaintiff's responsibilities after Plaintiff's termination from employment.

RESPONSE: Objection. This Request is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Plaintiff's position as Special Projects Director was a temporary, term position, created for Plaintiff upon his return from China to ease his transition to retirement. As such, no person assumed any of Plaintiff's responsibilities after Plaintiff's termination from employment.

REQUEST NO. 16. Please produce any and all statements, affidavits or other related documents containing information relating to any of the allegations in this litigation which have been obtained by you, your agents, attorneys or representatives from any of the persons having any knowledge of the facts of this case.

RESPONSE: Objection. This Request seeks information covered by the attorney-client privilege and work product doctrine. Subject to and without waiving the foregoing objections, see produced documents.

REQUEST NO. 17. Please provide a copy of each document Defendants intend to produce as evidence at trial in this case.

RESPONSE: Objection. This Request is premature and seeks information covered by the attorney-client privilege and work product doctrine. Defendants have not yet determined what exhibits they will use in the defense of this matter. Defendants will supplement this Response as required by the Ohio Rules of Civil Procedure, Local Rules, or any applicable Court order.

REQUEST NO. 18. Please provide any and all documents relating to any age discrimination complaint or concerns (including Plaintiff's), whether formal or informal, written or verbal, made by any employee of Defendants in the last five (5) years, including but not limited to notes, memoranda, letters, emails, tapes, and any documents relating to any investigation.

RESPONSE: Objection. This Request is not reasonably calculated to the discovery of admissible evidence. Further, this Request seeks information covered by the attorney-client privilege and work product doctrine.

REQUEST NO. 19. Please provide all organizational charts that include any positions held or applied for by Plaintiff at Defendant Vesuvius for the years 2008 through the present.

RESPONSE: Objection. This Request is overly broad and unduly burdensome. Subject to and without waiving the foregoing objections, see produced documents.

REQUEST NO. 20. Please provide the complete file for any expert that you intend to call at trial, including but not limited to copies of any and all documents given to or received from such expert.

RESPONSE: Objection. This Request is premature. Defendants have not yet determined what experts, if any, they will use in the defense of this matter. Defendants will supplement this Response as required by the Ohio Rules of Civil Procedure, Local Rules, or any applicable Court order.

REQUEST NO. 21. Please provide copies of any insurance policy or indemnification agreement which may satisfy part or all of any judgment which may be entered in this lawsuit, or which may indemnify or reimburse for payments made to satisfy any judgment related to the claims asserted in this lawsuit.

RESPONSE: Objection. This Request is overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving said objections, see produced documents.

REQUEST NO. 22. Please produce Defendant Vesuvius' annual reports for the years 2014 to present.

RESPONSE: Objection. This Request is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, the annual reports for Vesuvius PLC are available online.

REQUEST NO. 23. Please produce all agreements, assignments, memoranda, notes, filings, and other documents associated with the merger/acquisition between Vesuvius and Foseco Metallurgical Inc. in 2008.

RESPONSE: Objection. This Request is overly broad and unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 24. Please produce all documents that support Paragraphs 5, 13, and 15 of your Affirmative Defenses in your Answer.

RESPONSE: Objection. This Request seeks information covered by the attorney-client privilege and work product doctrine. Subject to and without waiving the foregoing objections, see produced documents.

REQUEST NO. 25. Please produce all personnel files/applicant materials for all applicants for the following positions: (1) Global Product Director; (2) Global Development Director; (3) Special Projects Director.

RESPONSE: Objection. This Request is overly broad and unduly burdensome. Subject to and without waiving the foregoing objections, there were no applicants for the Special Projects Director position as Vesuvius created the position of Special Projects Director for Plaintiff for a one-year term to ease his transition to retirement upon his return from China. Further responding, the Flux Director position was filled by existing employees through Vesuvius' succession planning. Further responding, no one has ever held the Global Development Director position. Subject to the foregoing, see produced documents.

REQUEST NO. 26. Please produce all documents supporting the allegations in Paragraph 13 of your Answer, in which you state "Plaintiff indicated that it was his intention to only hold the [M&T Position in China] for the three years, after which he would return to the United States and retire."

RESPONSE: See produced documents.

REQUEST NO. 27. Please produce all documents referenced in, created for, or otherwise related to the meeting between Christopher Young and Plaintiff in March 2018 in which severance was discussed.

RESPONSE: Objection. This Request seeks information covered by the attorney-client privilege and work product doctrine. Subject to and without waiving the foregoing objections, see produced documents.

As to objections,

JACKSON LEWIS P.C.

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Counsel for Defendants
Vesuvius USA Corporation and Christopher Young

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of April, 2019, a true and accurate copy of the foregoing was sent to the following parties of record via email.

Ann-Marie Ahern (#0070020)
ama@mccarthylebit.com
John E. Moran (#0087272)
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4816-0318-9894, v. 6

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April 5, 2019

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Re: *Royston Phillips v. Vesuvius U.S.A. Corporation, et al.*
Cuyahoga County Common Pleas Court Case No. CV-18-904574

Dear Counsel:

Pursuant to Local Rule 11(F), I am writing to call your attention to certain deficiencies in your responses to Plaintiff's first set of discovery in the above-captioned matter. In some instances, we believe that your objections are without merit and that your failure to fully respond is unjustified. In other instances, Defendants failed to respond completely. We are quite disappointed with Defendants' lack of response in light of the fact that Defendants were given over three months to respond to these Requests. As explained below, the information sought by Plaintiff clearly falls within the broad scope of Ohio Rule of Civil Procedure 26(A). Therefore, we ask that you promptly supplement all of the deficient responses listed below.

Interrogatory Number 1 requested the name, residential and business addresses, residential and business telephone numbers, and job title of any and all persons answering or in any way participating in answering these Interrogatories, and briefly describe in what way each person participated in answering these Interrogatories. We need to know the individuals that provided information, by name, so that we can determine which individuals need to be deposed. Please specifically identify the individuals that provided the information, as well as what information they provided.

In Interrogatory Number 2, Plaintiff sought the salary, commission, bonuses, and any other compensation received by Plaintiff for each year of his employment with Defendant Vesuvius USA Corporation (hereinafter, "Vesuvius"). As with several of your responses, your Answer to this Interrogatory says "see produced documents" but does not identify which documents answer the question, as required by Civ. R. 33. The documents you provided do not appear to answer this Interrogatory. If you are referring to Foseco documents from 2008 and earlier, those documents obviously do not shed light on the breakdown of compensation from 2009 and beyond. If you are

EXHIBIT 3 tabbies

referring to Mr. Phillips' W-2 statements, those documents do not provide a breakdown of salary, commission, bonuses, and other compensation. That breakdown is relevant to, *inter alia*, Plaintiff's job performance as well as his damages.

For Interrogatory Number 3, Plaintiff asked for your cost for any benefits provided to Plaintiff for the last two (2) years of Plaintiff's employment and state what the costs would be through today if Plaintiff were still employed. Again, your Answer referenced produced documents, yet none of the documents produced show the cost to Defendant Vesuvius for providing the referenced benefits. We need these documents for a damage calculation. If Defendant elects not to provide the requested information, we will assume that it acquiesces to Plaintiff's expert's benefit cost assumptions and calculations.

With respect to Interrogatory Number 4, we sought the title, job duties, and responsibilities of each position Plaintiff held while he was employed by Defendant Vesuvius, providing the dates for which each position was held. The documents you have provided make reference to certain selected titles, duties, and responsibilities, but they do not provide a comprehensive picture of this information – which is standard information in an employment case. Please answer the Interrogatory.

Interrogatory Number 5 asked for the name, residential and business addresses, residential, business, and mobile telephone numbers, date of birth, and job title of each current or former employee, agent or representative of Defendant Vesuvius whose responsibility it was to review Plaintiff's job performance during his employment through his termination, indicating the dates during which each person had that responsibility. Your reference to documents again still leaves this Interrogatory unanswered. Presumably, you are referring to performance evaluations. However, we are missing performance evaluations for the time period from 2006 to 2011 and from 2017 to 2018. The 2016 performance evaluation is blank – should it be blank? Further, the evaluations from 2012 to 2016 are exceedingly irregular, in that, *e.g.*, they identify Mr. Phillips' position as Special Projects Director for years in which he did not hold this role, as well as other pieces of incorrect information. Please provide all (and correct versions of) Plaintiff's performance evaluations.

In Interrogatory Number 7, we sought, each and every reason or reasons relied upon by Vesuvius as justification for the following decisions and list the name, residential and business addresses, residential, business, and mobile telephone numbers, date of birth, and job title of each current or former employee who has knowledge of the reasons allegedly supporting (a) the termination of Plaintiff's employment, (b) Plaintiff not being assigned to the Global Product Director position, (c) Plaintiff not being assigned to the Global Development Director position, (d) Plaintiff's assignment to the Special Projects Director position, and (e) how the terms of severance offered to Plaintiff at any time were determined. Defendants did not address subpart (e); please provide the requested information.

In Interrogatory Number 9, Plaintiff sought the name, address, telephone number, date of birth, date of hire, and the salary and bonus for individuals who applied for the Global Product Director position at any time from January 1, 2016 to the present, identifying which candidate was given the position (if any candidate). Defendants have yet to provide (1) the full dates of birth, (2) the dates of hire for each named individual, and (3) the salary and bonus information for each person. This is relevant to an age claim as well as a damage calculation. Further, we requested the identity of all **applicants**. Please identify any other applicants for this role.

With respect to Interrogatory Number 11, Plaintiff asked for the name, address, telephone number, and date of birth of the individuals who applied for the Global Development Director position at any time from January 1, 2016 to the present, identifying which individual was given the position (if any candidate). You specify that the position was never filled, but you did not tell us who applied for the position (or any other information related to them), as requested in the Interrogatory. You also did not provide Mr. Snyder's date of birth. Please provide the requested information.

Interrogatory Number 12 asked for the name, residential and business addresses, and residential, business, and mobile telephone numbers, date of birth, and job title of each person who has relevant knowledge concerning or relating to the subject matter of Plaintiff's Complaint. Please provide the dates of birth for these individuals. Further, Christopher Young's job title was not provided in response to this, or any other, Interrogatory. Please provide same.

In Interrogatory Number 16, we sought the name, residential and business addresses, residential, business and mobile telephone numbers, age, date of birth, and job title of any person who has filed a wrongful discharge, retaliation, or age discrimination complaint or charge against Defendant Vesuvius during the past five (5) years, including but not limited to any formal or informal, written or verbal, complaints and/or charges made through internal company procedures, or filed with any State or Federal agency. You did not provide the age, date of birth, or job titles for the individuals referenced in your Answer. This information is necessary to identify the people at issue; for example, the name "Angel Davis" is exceedingly common and providing his or her name alone does not provide Plaintiff with the information actually sought by this request. Plaintiff is entitled to discover whether Defendant has a history or atmosphere of condoning discrimination and/or treating certain, protected workers less favorably than others. See e.g., *Sprint/United Management Co., v. Mendelsohn*, 552 U.S. 379, 388, 128 S.Ct. 1140 (2008); *Griffin v. Finkbeiner*, 689 F.3d 584, 598 (6th Cir.2012). The time period specified certainly is not objectionable, because periods of five (5) years have been found appropriate for such discovery. See, *e.g.*, *Leibforth v. Belvidere Nat'l Bank*, No. 99 C 50381, 2001 U.S. Dist. LEXIS 7725, at *4 (N.D. Ill. June 7, 2001); *Tomanovich v. Autumn Glen*, No. IP 01-1247, 2002 U.S. Dist. LEXIS 14885, at *6 (N.D. Ind. Aug. 13, 2002). The requested information falls well within the liberal purview of Civ. R. 26 and is discoverable.

With respect to Interrogatory Number 24, Plaintiff requested that Defendant state, in dollar amounts, the volume of sales performed by Vesuvius to customers located in the state of Ohio for the years 2015, 2016, 2017, and 2018. Interrogatory Number 25 sought Defendant to identify all customers in the state of Ohio for whom Vesuvius has solicited business in the years 2015, 2016, 2017, and 2018. If Defendants are willing to unequivocally consent to jurisdiction in this Court in this action, then Plaintiff will not insist that Defendants provide the information requested in these Interrogatories. However, Defendants denied that jurisdiction was proper in this Court. (Answer to Amended Complaint, ¶5.) As such, the amount of business done, and the nature of Defendants' contacts with this State, are directly relevant to the case. Please advise as to which course you would like to take.

In Interrogatory Number 26, we requested that Defendant identify all evidence that supports the allegations set forth in Paragraph 13 of your Answer, in which you state that "Plaintiff indicated that it was his intention to only hold the [M&T Position in China] for the three years, after which he would return to the United States and retire." Your Answer includes an objection. Please confirm that you have not withheld any documents under this objection, but instead have produced all responsive documents subject to your objection.

For Interrogatory Number 27, Plaintiff asked for any and all reasons that Vesuvius decreased its severance offer to Plaintiff between March 2018 and May 2018. You objected and asserted the provisions of Evid. R. 408. That rule says, in pertinent part:

> Evidence of...**furnishing or offering or promising to furnish**...a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible **to prove liability for...the claim or its amount**.

This information is not being requested to prove that an offer or promise was furnished. Further, this information is not being requested to "prove liability...for the claim or its amount." Instead, Interrogatory No. 27 seeks the reasons that the offer was reduced in an approximately two-month period, from, *inter alia*, one year of severance to three months of severance, when the only change in circumstances was that Plaintiff had raised age discrimination concerns. Evid. R. 408 explicitly says that the "rule...does not require exclusion when the evidence is offered for another purpose," as in, a purpose other than establishing liability for the claim. Here, the purpose of the evidence is to establish that Vesuvius unlawfully retaliated against Plaintiff in response to his protected activity, by changing the terms and conditions of his employment. Therefore, this Interrogatory must be answered, as your objection is misplaced.

Interrogatory Number 29 sought the basis for the allegations you made in Paragraph 13 of your Affirmative Defenses in your Answer. In Interrogatory Number 30, Plaintiff asked for the basis for the allegations you made in Paragraph 15 of your Affirmative Defenses in your Answer. For Interrogatory Number 31, we asked for the basis for the allegations you made in Paragraph 5

of your affirmative Defenses in your Answer. If you have asserted an affirmative defense, we assume that you are in possession of evidence that supports that defense. For example, in Paragraph 15, you asserted the "after acquired evidence" defense. By its very nature, your assertion of that defense suggests that you have "evidence" that you have "acquired." Please identify that evidence, and the evidence supporting your other affirmative defenses as requested in these interrogatories.

REQUEST FOR PRODUCTION OF DOCUMENTS

With regard to Request Number 1, Plaintiff asked for all documents reflecting positions held by Plaintiff, all transfers made, including the name/title of the position, the dates during which he held each position, and the rate of pay in each position during his employment with Defendant Vesuvius. The employment records list spans until 2008, and you have provided a few offer letters for different positions. This seems like a minimal production given Plaintiff's nearly 40-year career. Can you please identify which documents are actually responsive to this request?

Request Number 2 sought all documents which show income, commission, bonuses and any other compensation received by Plaintiff during his employment with Defendant Vesuvius. As with our discussion of Interrogatory No. 2, above, we do not believe you have actually produced documents that reflect the requested information for Plaintiff's recent employment, let alone his entire employment.

In Request Number 3, Plaintiff requested all documents which show income, commission, bonuses and any other compensation paid to the position of M&T Director Steel, China/North Asia from January 1, 2016 to the present. You only produced information related to Plaintiff, but we know that at least one other employee took this position during the requested time period. Please produce the information requested.

For Request Number 4, we asked for all documents which show income, commission, bonuses and any other compensation paid to the position of Global Product Director from January 1, 2016 to the present. While your response says "see produced documents," we do not actually see any documents responsive to this request. Please clarify.

Request Number 6 sought any and all information concerning benefits extended to Plaintiff before his termination of employment, including but not limited to life insurance, accidental death insurance, disability insurance, and vision insurance, and any and all documentation regarding all benefits offered and all premiums paid with respect to Plaintiff. We have no documents that relate to this. Perhaps you can explain, but we do not have any benefit books, policies, employee handbooks, or any documents showing the cost, premiums, etc. with respect to any of these benefits. Please produce the same.

In Request Number 7, Plaintiff requested a copy of the job description for each position held by Plaintiff throughout his employment with Defendant Vesuvius. You objected, referenced produced documents, but we see no job descriptions in the production. Please identify which documents you claim are responsive.

For Request Number 8, Plaintiff requested copies of all performance appraisals, evaluations, and any notes, memoranda, and/or other documents which pertain to Plaintiff's performance throughout his employment with Defendant Vesuvius. Please see our discussion regarding Interrogatory No. 5, explaining the serious deficiencies in Defendant's production of the performance evaluations.

With respect to Request Number 9, Plaintiff asked for the complete personnel, and any other file or document maintained by any agent or employee of the Defendant Vesuvius, including but not limited to performance, performance evaluations, discipline, termination, all documents reflecting compensation, salary, W-2's, raises, merit increases and bonus information, employment applications, documents related to experience and training, educational transcripts of any sort, all documents reflecting change in position, title or compensation and the reasons therefor for Plaintiff, and all e-mails that refer or relate to Plaintiff and/or Plaintiff's performance as an employee of Defendant Vesuvius. In your February 28, 2019 email, you identified Bates Nos. 000077-000403 as the contents of Plaintiff's personnel file. However, you just recently produced additional performance evaluations, which we assume would also constitute contents of Plaintiff's personnel file. As such, please identify the Bates ranges of Plaintiff's full file.

Request Number 10 asked for the complete personnel file, excluding medical records, and any other file maintained by any agent or employee of the Defendant Vesuvius, including but not limited to performance, performance evaluations, discipline, termination, all documents reflecting compensation, salary, W-2's, raises, merit increases and bonus information, employment applications, documents related to experience and training, educational transcripts of any sort, all documents reflecting change in position, title or compensation and the reasons therefor for Christopher Young, Ryan Van der Aa, Michael Chetwyn, Patrick Andre, Vincent Boisdequin, Alan Charnock, and Roel van der Sluis. Young, van der Aa, Chetwyn, Boisdequin, and van der Sluis are all managerial employees who played central roles in the decision-making leading to the termination of Plaintiff's four-decade career. Charnock and Andre are managerial employees who allocated Plaintiff's job duties in the latter years of his career, and thus had significant influence over the trajectory of his career. We are entitled to discover all relevant information related to the individuals who made the questioned decisions in this case, and this request is aimed at discovering that admissible evidence regarding the positions held, personnel history, discipline, and performance of the individuals who made the significant decisions leading to the end of Plaintiff's employment. As but one example, personnel files would show whether these individuals have ever been the subject of a discrimination or retaliation claim, and other potentially relevant information.

In Request Number 11, Plaintiff requested any and all documents reflecting the severance offered to Plaintiff, whether or not it was rejected, including but not limited to any notes, memoranda, recordings, or email correspondence regarding the approval, agreement or terms to offer to Plaintiff. For Request Number 12, Plaintiff sought any documents regarding the "Severance Arrangements for the Foseco Businesses in the USA" document executed by Plaintiff and Foseco Metallurgical Inc., including but not limited to any notes, memoranda, recordings, or email regarding the enforcement of such document. You objected to each request and it is not clear whether you withheld documents subject to this objection. Please provide a privilege log as required by Civ.R. 26, both for these requests and all other requests in which you asserted a work product or attorney-client privilege objection.

With respect to Request Number 13 we requested Defendants produce in native format any and all job postings, descriptions, or any other documents related to the positions of M&T Director Steel, China/North Asia; Global Product Director; Global Development Director; and the Special Projects Director. Please confirm that there are no job postings or job descriptions for these positions, as none were provided.

In Request Number 16, Plaintiff sought any and all statements, affidavits or other related documents containing information relating to any of the allegations in this litigation which have been obtained by you, your agents, attorneys or representatives from any of the persons having any knowledge of the facts of this case. It is not clear whether you are in possession of statements or affidavits, because nothing was provided but your response says "see produced documents." Please clarify.

For Request Number 18, Plaintiff asked for any and all documents relating to any age discrimination complaint or concerns (including Plaintiff's), whether formal or informal, written or verbal, made by any employee of Defendants in the last five (5) years, including but not limited to notes, memoranda, letters, emails, tapes, and any documents relating to any investigation. Please see our discussion of Interrogatory No. 16; this information is relevant and discoverable and must be produced given the allegations in this case.

With respect to Request Number 19, Plaintiff requested all organizational charts that include any positions held or applied for by Plaintiff at Defendant Vesuvius for the years 2008 through the present. Your production does not include an organizational chart involving the Special Projects Director. Further, the only two charts you produced appear to be current but you have not produced any for the full time frame requested. Please supplement with all responsive charts.

Request Number 21 asked for any insurance policy or indemnification agreement which may satisfy part or all of any judgment which may be entered in this lawsuit, or which may indemnify or reimburse for payments made to satisfy any judgment related to the claims asserted in this lawsuit. As you know, Civ. R. 26(B)(2) entitles us to "the existence and **contents** of any

insurance agreement." (Emphasis added.) A single declarations page is not sufficient to meet the producing party's obligation. *Painter v. Ju-Lin*, E.D. Tenn. No. 08-CV-122, 2010 U.S. Dist. LEXIS 29845, *3-4 (Mar. 29, 2010) (construing Fed. R. Civ. P. 26's similar provision). Please produce the entire policy.

In Request Number 23, Plaintiff sought all agreements, assignments, memoranda, notes, filings, and other documents associated with the merger/acquisition between Vesuvius and Foseco Metallurgical Inc. in 2008. During our call with the Court, Sabrina said that responsive documents would comprise "boxes and boxes" of documents. This is surprising, given that merger documents typically are not so voluminous. Please provide the final, executed documents memorializing the merger/acquisition in question (e.g., the merger agreement), as well as any publicly filed documents giving notice of the transaction, as we are not in a position to know where (which states) to look for such information.

For Request Number 24, Plaintiff requested all documents that support Paragraphs 5, 13, and 15 of your Affirmative Defenses in your Answer. Please see our discussion of Interrogatory Nos. 29-31 and identify by Bates number or ranges what documents you claim actually support these defenses.

With respect to Request Number 25, Plaintiff asked for all personnel files/applicant materials for all applicants for the following positions: (1) Global Product Director; (2) Global Development Director; (3) Special Projects Director. This is, in part, a failure to promote case. (See Amended Complaint, Count I.) Thus, we are entitled to discovery on the individuals who actually obtained the jobs in question. Thus, please provide the personnel files for Michael Chetwyn and Olaf Schulz.

Request Number 26 sought all documents supporting the allegations in Paragraph 13 of your Answer, in which you state "Plaintiff indicated that it was his intention to only hold the [M&T Position in China] for the three years, after which he would return to the United States and retire." Please identify by Bates number or ranges what documents you claim actually support this statement.

In Request Number 27, Plaintiff sought all documents referenced in, created for, or otherwise related to the meeting between Christopher Young and Plaintiff in March 2018 in which severance was discussed. Again, please identify by Bates number or ranges what documents you claim are responsive to this request.

Finally, there are several produced documents that appear, without explanation, to have large, blank redactions. Further, Bates No. 000065 appears to be an incomplete production as does Bates No. 000241. Please let us know whether there are additional pages or information related to this production.

Finally, we noticed that you failed to provide residential addresses for the individuals identified in these requests. We need these addresses to subpoena these witnesses for trial. Please either produce these addresses now or indicate your agreement to accept service of subpoenas on behalf of all individuals identified in your Answers.

So that we can satisfy the Court's request for a single written document prior to the Thursday conference call, please get back to us with your position on these matters by Tuesday, April 9, 2019.

Sincerely,

Jack E. Moran

JEM:jds

Representing Management Exclusively in Workplace Law and Related Litigation

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ALBANY, NY	GREENVILLE, SC	MONMOUTH COUNTY, NJ	RALEIGH, NC
ALBUQUERQUE, NM	HARTFORD, CT	MORRISTOWN, NJ	RAPID CITY, SD
ATLANTA, GA	HONOLULU, HI*	NEW ORLEANS, LA	RICHMOND, VA
AUSTIN, TX	HOUSTON, TX	NEW YORK, NY	SACRAMENTO, CA
BALTIMORE, MD	INDIANAPOLIS, IN	NORFOLK, VA	SALT LAKE CITY, UT
BIRMINGHAM, AL	JACKSONVILLE, FL	OMAHA, NE	SAN DIEGO, CA
BOSTON, MA	KANSAS CITY REGION	ORANGE COUNTY, CA	SAN FRANCISCO, CA
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CINCINNATI, OH	LONG ISLAND, NY	PHILADELPHIA, PA	SEATTLE, WA
CLEVELAND, OH	LOS ANGELES, CA	PHOENIX, AZ	ST. LOUIS, MO
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DAYTON, OH	MEMPHIS, TN	PORTLAND, OR	WASHINGTON, DC REGION
DENVER, CO	MIAMI, FL	PORTSMOUTH, NH	WHITE PLAINS, NY
DETROIT, MI	MILWAUKEE, WI	PROVIDENCE, RI	
GRAND RAPIDS, MI	MINNEAPOLIS, MN		

*through an affiliation with Jackson Lewis P.C., a Law Corporation

MY DIRECT DIAL IS: 216.750.4338
MY EMAIL ADDRESS IS: PATRICK.PETERS@JACKSONLEWIS.COM

April 10, 2019

Via Email and Regular U.S. Mail

Ann-Marie Ahern, Esq.
ama@mccarthylebit.com
John E. Moran, Esq.
jem@mccarthylebit.com
McCARTHY, LEBIT, CRYSTAL
& LIFFMAN CO., L.P.A.
101 West Prospect Avenue
1800 Midland Building
Cleveland, Ohio 44115

Re: ***Royston Phillips v. Vesuvius U.S.A. Corporation, et al.***
Cuyahoga County Court of Common Pleas Case No. CV 18 904574

Dear Counsel:

The following responds to your April 5, 2019 discovery "Deficiency Letter." With respect to Defendants' objections and responses to Interrogatory Nos. 1-4, 5-7, 9, 11-12, 16, 24, 26-27, and 29-31 and Document Request Nos. 1-4, 6-13, 16, 18-19, 21, and 23-27, we maintain that Defendants' responses and objections are proper and appropriate for the reasons detailed below. That being said, in the spirit of good faith and cooperation, we have provided additional responses and/or documentation, where possible and appropriate.

Interrogatory No. 1

Without waiving either the attorney-client privilege and/or the work product doctrine, with the assistance of both outside and in-house counsel, Defendant Christopher Young ("Young"), Ryan van der Aa, and Vincent Boisdequin provided information regarding Plaintiff Royston Phillips' ("Plaintiff" or "Phillips") employment with and separation from Defendant Vesuvius USA Corporation ("Vesuvius" or the "Company"). Deana Giuliani, HR Director Flow Control NAFTA, provided information regarding Vesuvius' corporate structure and human resources policies. All individuals can be contacted through counsel for Defendants.

Interrogatory No. 2

Interrogatory No. 2 requests the "salary, commission, bonuses, and any other compensation

received by Plaintiff for each year of his employment with Defendant Vesuvius U.S.A. Corporation." Defendants have produced all wage-related information in their care, custody, and control, including offer letters and W-2 statements. Defendants have conducted a diligent search and have not located any additional information or documentation responsive to this request. Defendants will supplement their response, to the extent relevant and responsive information or documents are later discovered.

Interrogatory No. 3

Defendants have produced the information in their care, custody, and control, which includes information reflecting the benefits provided to Plaintiff. Defendants have conducted a diligent search and have not located any additional responsive information. Defendants will supplement their response, to the extent relevant and responsive information or documents are later discovered.

Interrogatories Nos. 4 and 5

Defendants have produced the information in their care, custody, and control, which includes all position information included in Mr. Phillips' personnel file. Given Plaintiff's long employment history with Foseco prior to Foseco and Vesuvius' transaction, information regarding prior positions is available through retained documents. Regarding Mr. Phillips' employment with Vesuvius, the produced documents indicate the positions held by Plaintiff, along with his relevant job duties and performance reviews conducted during his employment. Defendants have conducted a diligent search for additional information but have not located any additional information responsive to this request. The individual responsible for custody and control of Vesuvius' performance reviews is located in Europe and is on a leave of absence until April 23, 2019. We are working with her to provide answers to your questions regarding specific performance reviews. Defendants will also supplement their responses, to the extent relevant and responsive information or documents are later discovered.

Interrogatory No. 7

Interrogatory No. 7 requested the reasons relied upon by Defendants in deciding "how the terms of severance offered to Plaintiff at any time were determined." Pursuant to Ohio Rule of Evidence 408, determinations regarding offers of compromise are inadmissible. As such, any such information is not reasonably calculated to lead to the discovery of admissible evidence. Please see Defendants' response to Interrogatory No. 27 below for additional information regarding the severance benefits offered to Plaintiff.

Interrogatory Nos. 9 and 11

Interrogatories Nos. 9 and 11 seek information regarding applicants for the positions of Global Development Director and Global Product Director. As stated in Defendants' Interrogatory Responses, the Global Development Director position never existed. Rather, Mark Snyder, Global R&D Director, assumed the duties that were contemplated to comprise the Global Development Director position. Mark Snyder's date of birth is April xx, 1976. Further, the Flux (Global Product) Director position was filled

by internal candidates, and no formal applications were ever sought or considered. As stated in Defendants' Interrogatory responses, Olaf Schultz's date of birth is March xx, 1970, and Michael Chetwyn's date of birth is July xx, 1972. Mr. Schultz and Mr. Chetwyn had salaries of 137,054.56 EUR and 143,388.25 EUR, respectively, when each held the Flux Director position.

Interrogatory No. 12

Ryan van der Aa's date of birth is April xx, 1959. Roel van der Sluis' date of birth is September xx, 1962. Vincent Boisdequin's date of birth is October xx, 1972. Young's date of birth is April xx, 1959, and Young's position at Vesuvius prior to his retirement was Vice President HR Foundry & Americas.

Interrogatory No. 16

Only Plaintiff, Alireza Rezaie, a senior research associate (date of birth February xx, 1976), and Kevin Greeson, an account manager (January xx, 1965), have raised complaints of age discrimination against Vesuvius in the past five years. Plaintiff and Angel Davis, an oven packer (date of birth June xx, 1985), are the only employees who have raised complaints of retaliation against Vesuvius in the past five years. The expansive scope of Plaintiff's request is not reasonably calculated to the discovery of admissible evidence, as it seeks information irrelevant to the claims in Defendants' lawsuit. Defendants have produced the information reasonably calculated to the discovery of admissible evidence.

Interrogatory No. 24

Defendants consent to the jurisdiction of the Cuyahoga County Court of Common Pleas.

Interrogatory No. 26

Defendants have produced the information in their care, custody, and control. Defendants will supplement their response, to the extent relevant and responsive information or documents are later discovered.

Interrogatory No. 27

Defendants maintain that their considerations in determining the amount of severance offered to Plaintiff falls within the purview of Rule 408 of the Ohio Rules of Evidence as it is related to both liability and the content of offers to compromise. Subject to and without waiving the foregoing objection, pursuant to Civ. R. 33(c), please see VESUVIUS 000071-000072.

Interrogatory Nos. 29, 30, and 31

Defendants have not yet determined what evidence they will use in their defense of this case. Defendants have produced all non-privileged information in their care, custody, and control. Defendants

jackson|lewis

Ann-Marie Ahern, Esq.
John E. Moran, Esq.
McCARTHY, LEBIT, CRYSTAL
& LIFFMAN CO., L.P.A.

will supplement their response, to the extent relevant and responsive information or documents are later discovered.

Request for Production No. 1

Please see Defendants' response above regarding Interrogatories Nos. 4 and 5. Defendants have conducted a diligent search of the information in their care, custody, and control and have produced the information and documents, including Plaintiff's voluminous personnel file, performance reviews, and relevant correspondence. Defendants will supplement their response, to the extent relevant and responsive information or documents are later discovered.

Request for Production No. 2

Please see Defendants' response above to Interrogatory No. 2. Defendants have conducted a diligent search of documents in their care, custody, and control and have produced the information and documents, including W-2 statements, offer letters, and correspondence relating to Plaintiff's compensation. Defendants will supplement their response, to the extent relevant and responsive information or documents are later discovered.

Request for Production No. 3

As Plaintiff left his role as M&T Director Steel, China/North Asia voluntarily, the income, commission, bonuses, and any other compensation paid to other employees in the position are irrelevant to the present litigation and not reasonably calculated to lead to the discovery of admissible evidence in this case.

Request for Production No. 4

Defendants have produced the information in their care, custody, and control after a diligent search. Defendants will supplement their response, to the extent relevant and responsive information or documents are later discovered.

Request for Production No. 6

Defendants have produced the information in their care, custody, and control after a diligent search. Defendants will supplement their response, to the extent relevant and responsive information or documents are later discovered. Please see Defendants' response above regarding Interrogatories Nos. 9 and 11 above for additional information.

Request for Production No. 7

Please see Defendants' response above regarding Interrogatories Nos. 4 and 5. Plaintiff's personnel file (VESUVIUS 000077-000403 and 000612-000630) and the produced correspondence

(VESUVIUS 000004-000076) address positions held by Plaintiff and relevant job duties, where available. Defendants have conducted a diligent search of the documents in their care, custody, and control. Defendants will supplement their response, to the extent relevant and responsive information or documents are later discovered.

Request for Production No. 8

Please see Defendants' response regarding Interrogatory No. 5. Defendants have produced the information in their care, custody, and control after a diligent search. Defendants will supplement their response, to the extent relevant and responsive information or documents are later discovered.

Request for Production No. 9

Documents VESUVIUS 000077-000403 represent the documents present in Plaintiff's physical personnel file. Documents VESUVIUS 000612-000630 provide additional performance reviews now stored electronically with Vesuvius.

Request for Production No. 10

Defendants maintain their assertion that the requested personnel files are irrelevant, overly broad, and not reasonably calculated to the discovery of admissible evidence. Further, as these requested files are maintained in Europe, the files are not under the custody or control of either Vesuvius USA Corporation or Young. Said documents also constitute personal data under the EU's General Data Protection Regulation (GDPR) and the United Kingdom's Data Protection Act of 2018, among other privacy statutes. As such, Vesuvius or related entities cannot lawfully transmit the personnel files of the requested individuals, as they are citizens of the European Union and/or the United Kingdom and are under the purview of the GDPR and the U.K.'s parallel law, among others.

Further, Plaintiff requests the personnel file of individuals unrelated to this lawsuit, including the Company's CEO and individuals who are not identified by Defendants as potential witness, without sufficient justification for the production of said personnel files. Defendants maintain that Plaintiff's request for this information is harassing.

Request for Production Nos. 11 and 12

Defendants' Privilege Log is attached hereto.

Request for Production No. 13

A diligent search of the documents in Defendants' care, custody, and control has not returned formal job postings or position descriptions for the requested positions. Defendants will supplement their response, to the extent relevant and responsive information or documents are later discovered.

jackson|lewis.

Ann-Marie Ahern, Esq.
John E. Moran, Esq.
McCARTHY, LEBIT, CRYSTAL
& LIFFMAN CO., L.P.A.

Request for Production No. 16

Though Defendants have not obtained any formal statements or affidavits in connection with this litigation, Defendants have produced informal statements in their possession. Defendants will supplement their response, to the extent relevant and responsive information or documents are later discovered.

Request for Production No. 18

Please see Defendants' Response to Interrogatory No. 16.

Request for Production No. 19

Defendants have conducted a diligent search of the documents in their care, custody, and control and have produced the organizational charts discovered. Defendants will supplement their response, to the extent relevant and responsive information or documents are later discovered.

Request for Production No. 21

Defendants have produced the declaration page for the insurance policy, which provides all relevant coverage information. While Defendants are not currently in possession of the full insurance policy, and maintain that procurement and production of the insurance policy in its entirety is unduly burdensome and not reasonably calculated to the discovery of admissible evidence in this case, we are in the process of obtaining the full policy and will produce it shortly.

Request for Production No. 23

Please see enclosed documents labeled VESUVIUS 000631-000634.

Request for Production No. 24

Please see Defendants' Response to Interrogatory Nos. 29-31.

Request for Production No. 25

Defendants maintain their objection that the personnel files of Michael Chetwyn or Olaf Schultz are not reasonably calculated to the discovery of admissible evidence. Further, these files are stored in Belgium, and Vesuvius USA Corporation does not have custody or control over these files. Defendants have produced the information in their care, custody, and control. Please see Defendants' above response regarding Request for Production No. 10 for additional privacy concerns related to the production of the requested personnel files.

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Request for Production No. 26

Document VESUVIUS 000071-00072 memorializes Plaintiff's stated intention to retire shortly after his return to the United States.

Request for Production No. 27

Documents VESUVIUS 000001 – 000076 include internal discussions and proposed agreements, along with memorialization of conversations between Young and Plaintiff, regarding Plaintiff's potential severance package. Defendants will supplement their response, to the extent relevant and responsive information or documents are later discovered.

Defendants have further provided a privilege log memorializing any documents withheld for privilege. Any redacted documents were redacted due to the attorney-client privilege. Further, due to the citizenship of the individuals whose residential addresses were requested, Defendants cannot produce these addresses due to the privacy concerns under the EU's GDPR and U.K.'s Data Protection Act of 2018, among others, as discussed above in Defendants' response regarding Request for Production No. 10. Further, as these individuals are employed by entities other than Vesuvius USA Corporation, Defendants cannot presently agree to accept service on their behalf.

Please contact me if you have any questions.

Very truly yours,

JACKSON LEWIS P.C.

Patrick O. Peters/SLB

Patrick O. Peters

SLB
Enclosure
cc: Sabrina L. Brown, Esq.
Vesuvius U.S.A. Corporation
Christopher Young

Moran, Jack E.

From: Moran, Jack E.
Sent: Monday, May 13, 2019 6:15 PM
To: Peters, Patrick O. (Cleveland)
Cc: Brown, Sabrina L. (Cleveland); Ahern, Ann Marie; Mazzone, Charlene M.; Saghy, Joy D.
Subject: RE: Phillips v. Vesuvius USA Corporation, et al.

Pat:

I understand. We will hold off on filing a motion to compel until then. However, we cannot wait any longer than this latest delay.

Jack E. Moran ▪ Principal ▪ McCarthy, Lebit, Crystal & Liffman Co., LPA
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From: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
Sent: Monday, May 13, 2019 2:52 PM
To: Moran, Jack E. <JEM@mccarthylebit.com>
Cc: Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>; Ahern, Ann Marie <AMA@mccarthylebit.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Saghy, Joy D. <jds@mccarthylebit.com>
Subject: RE: Phillips v. Vesuvius USA Corporation, et al.

Hi Jack,

I just hung up with our clients. We discussed the issues outlined in your letter but are scheduling a follow-up call for Wednesday. I should have more information for you then.

Thanks,
Pat

Patrick O. Peters
Attorney at Law
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6100 Oak Tree Blvd.
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From: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
Sent: Wednesday, May 8, 2019 7:03 AM
To: Moran, Jack E. <JEM@mccarthylebit.com>

EXHIBIT
tabbies 4

Cc: Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>; Ahern, Ann Marie <AMA@mccarthylebit.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Saghy, Joy D. <jds@mccarthylebit.com>
Subject: Re: Phillips v. Vesuvius USA Corporation, et al.

Hi Jack,

I am told I will have answers to your remaining questions Thursday. Thank you again for your courtesies. Of course we will work with you and the court to schedule depositions and extend the discovery cutoff if needed.

On: 03 May 2019 16:19,

Patrick O. Peters
Attorney at Law
Jackson Lewis P.C.
Park Center Plaza I, Suite 400
6100 Oak Tree Blvd.
Cleveland, OH 44131
Direct: (216) 750-4338 | Main: (216) 750-0404 | Mobile: (216) 288-9972
Patrick.Peters@jacksonlewis.com | www.jacksonlewis.com

"Peters, Patrick O. (Cleveland)" <Patrick.Peters@jacksonlewis.com> wrote:

Hi Jack,

Thank you for your email – I appreciate your efforts to narrow the issues here and I think we are making progress. I was not able to finalize our response with our client this week, but am optimistic we will be in a position to respond substantively Monday or Tuesday.

I appreciate your courtesies and will get back to you early next week.

Thanks,
Pat

Patrick O. Peters
Attorney at Law
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From: Moran, Jack E. <JEM@mccarthylebit.com>
Sent: Friday, April 26, 2019 9:42 AM
To: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
Cc: Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>; Ahern, Ann Marie <AMA@mccarthylebit.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Saghy, Joy D. <jds@mccarthylebit.com>
Subject: RE: Phillips v. Vesuvius USA Corporation, et al.

Pat:

Thanks for speaking with me on Wednesday.

My understanding now is that Defendants do not have any information regarding the identity of individuals who reviewed Plaintiff's job performance, beyond the contents of the performance evaluations that have been produced. If that is not correct, please let me know.

During our call, we discussed Interrogatory Nos. 7 and 27, specifically with respect to the change in the terms of severance offered to Mr. Phillips. Plaintiff's position is that the documents that have been produced do not answer this question, and that we are entitled to a formal answer to this Interrogatory.

With respect to Interrogatory Nos. 9 and 11, we are looking for the identity of any person who expressed interest in the positions, formal or otherwise. My understanding is that there are no such individuals for the Global Development Director position, and that you will double-check on the Global Product Director position (other than Phillips and Chetwyn).

My understanding is that you *may* have some EEOC documents responsive to Request for Production No. 18. Please produce those if so. To help resolve an impasse, I will agree for now to revise Interrogatory No. 16 and Request for Production No. 18 to remove the temporal restriction and instead focus on complaints of discrimination or retaliation against Christopher Young, Ryan Van der Aa, Michael Chetwyn, Patrick Andre, Vincent Boisdequin, Alan Charnock, and Roel van der Sluis.

This email confirms that you do not have any information regarding the specific cost for the benefits provided to Roy, as sought in our requests.

Interrogatory No. 1 sought the identity and **location** of individuals with discoverable knowledge, which we are entitled to as basic discovery under Rule 26. Request No. 10 sought personnel files for the individuals identified above. To recap Plaintiff's position, we believe the burden is on Defendants to explain why a foreign law blocks production. While I am not sure the GDPR applies, even if it did, we believe there are exceptions that apply and, in any event, a protective order should resolve the issue. I do not see how other data privacy laws, including the UK DPA, change this analysis.

Further, Plaintiff's position is that Vesuvius USA has the ability to obtain the information that we have requested that may be held by sister or parent companies, perhaps those in Europe, and as such has a duty to produce it.

In addition to Interrogatory No. 1 and Document Request No. 10, we noticed that the "possession, custody, and control" argument was also made in response to Document Request No. 25, which seeks crucial information regarding Plaintiff's failure to promote claim. This same argument was advanced with respect to the following discovery requests: Interrogatory Number 2, Interrogatory Number 3, Interrogatory Number 4, Interrogatory Number 26, Interrogatory Number 29, Interrogatory Number 30, Interrogatory Number 31, Request Number 1, Request Number 2, Request Number 4, Request Number 7, Request Number 8, Request Number 13, Request Number 19. Again, our position is that any responsive information held by sister or parent companies should be produced in response. Defendants "cannot be allowed to shield crucial documents from discovery by parties with whom it has dealt in the United States merely by storing them with its affiliate abroad. Nor can it shield documents by destroying its own copies and relying on customary access to copies maintained by its affiliate abroad. If defendant could so easily evade discovery, every United States

company would have a foreign affiliate for storing sensitive documents." *Cooper Industries, Inc. v. British Aerospace, Inc.*, 102 F.R.D. 918, 920 (S.D.N.Y. 1984).

That being said, if Defendants want to identify which affiliates have which information, we can explore ways get that information from those affiliates. But Plaintiff reserves the right to weigh the relative cost and burden of navigating any cumbersome methods of obtaining discovery against what we believe is the actual, legal posture of the case, in which the current Defendants have a present obligation to produce it.

We also discussed Document Request No. 23, but it sounded like Defendants' position on this issue may change. In the event Defendants' position does not change, we believe that Ohio law is clear that agreements between employees and employers are assets of the constituent company (Foseco), that transfer automatically by operation of law in a statutory merger from the constituent company to the surviving company (Vesuvius) and are enforceable according to their original terms. As such, we feel we are entitled to the documents memorializing that merger, as they will likely say, *inter alia*, what type of merger occurred, whether liabilities were retained, whether the severance obligations were explicitly mentioned, and other salient issues.

Please let me know Defendants' position on these items by Friday, May 3. In the meantime, if another call would be helpful, let me know.

Jack E. Moran ▪ Principal ▪ McCarthy, Lebit, Crystal & Liffman Co., LPA
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From: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
Sent: Friday, April 19, 2019 6:07 PM
To: Moran, Jack E. <JEM@mccarthylebit.com>
Cc: Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>; Ahern, Ann Marie <AMA@mccarthylebit.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Saghy, Joy D. <jds@mccarthylebit.com>
Subject: RE: Phillips v. Vesuvius USA Corporation, et al.

Sure. Thanks.

Patrick O. Peters
Attorney at Law
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Cleveland, OH 44131
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From: Moran, Jack E. <JEM@mccarthylebit.com>
Sent: Friday, April 19, 2019 6:07 PM
To: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
Cc: Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>; Ahern, Ann Marie <AMA@mccarthylebit.com>;

Mazzone, Charlene M. <CMM@mccarthylebit.com>; Saghy, Joy D. <jds@mccarthylebit.com>
Subject: Re: Phillips v. Vesuvius USA Corporation, et al.

I will call at 9am on Wednesday then. Call your cell?

Jack E. Moran
(216) 696-1422

On Apr 19, 2019, at 5:52 PM, Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com> wrote:

> I can do a call at 9 but I won't be able to meet live at the office on Wednesday (I work remotely on Wednesdays).
>
> **Patrick O. Peters**
> Attorney at Law
> **Jackson Lewis P.C.**
> Park Center Plaza I, Suite 400
> 6100 Oak Tree Blvd.
> Cleveland, OH 44131
> Direct: (216) 750-4338 | Main: (216) 750-0404 | Mobile: (216) 288-9972
> Patrick.Peters@jacksonlewis.com | www.jacksonlewis.com
> ***Jackson Lewis P.C. is honored to be recognized as the "Innovative Law Firm of the Year" by the International Legal Technology Association (ILTA) and is a proud member of the CEO Action for Diversity and Inclusion initiative***
>
> **From:** Moran, Jack E. <JEM@mccarthylebit.com>
> **Sent:** Friday, April 19, 2019 5:51 PM
> **To:** Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
> **Cc:** Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>; Ahern, Ann Marie <AMA@mccarthylebit.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Saghy, Joy D. <jds@mccarthylebit.com>
> **Subject:** Re: Phillips v. Vesuvius USA Corporation, et al.
>
> If you can meet at your office at 9 am on Wednesday I will meet you there.
>
> Jack E. Moran
> (216) 696-1422
>
> On Apr 19, 2019, at 5:31 PM, Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com> wrote:
>
> > I am available any time on Wednesday after 9 other than 1-2, or Thursday any time after 1.
> >
> > **Patrick O. Peters**
> > Attorney at Law
> > **Jackson Lewis P.C.**
> > Park Center Plaza I, Suite 400
> > 6100 Oak Tree Blvd.
> > Cleveland, OH 44131
> > Direct: (216) 750-4338 | Main: (216) 750-0404 | Mobile: (216) 288-9972

Patrick.Peters@jacksonlewis.com | www.jacksonlewis.com
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From: Moran, Jack E. <JEM@mccarthylebit.com>
Sent: Friday, April 19, 2019 5:16 PM
To: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
Cc: Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>; Ahern, Ann Marie <AMA@mccarthylebit.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Saghy, Joy D. <jds@mccarthylebit.com>
Subject: Phillips v. Vesuvius USA Corporation, et al.

Pat:

I am traveling on Monday of next week, but then I am relatively free the next few days. If you think a meeting to discuss discovery would be worthwhile, please let me know your schedule and we can arrange that.

Jack E. Moran ▪ Principal ▪ McCarthy, Lebit, Crystal & Liffman Co., LPA
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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ROYSTON PHILLIPS,	)	CASE NO. CV 18 904574
	)	
Plaintiff,	)	JUDGE PETER J. CORRIGAN
	)	
v.	)	
	)	
VESUVIUS U.S.A. CORPORATION, et al.,	)	**DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR COMPEL**
	)	
Defendants.	)	
	)	

Defendants Vesuvius USA Corporation ("Vesuvius" or the "Company") and Christopher Young ("Young") (collectively "Defendants") respectfully request that this Court deny Plaintiff Royston Phillips' ("Plaintiff") Motion to Compel as the majority of the issues it raises are moot, and any production of documents related to the remaining discovery dispute violate the General Data Protection Regulation and could carry severe fines for Vesuvius.

I. RELEVANT FACTUAL BACKGROUND

A. Plaintiff's Employment with Vesuvius

Plaintiff began his employment with Vesuvius in 2008 when Vesuvius acquired Plaintiff's then-employer Foseco. In 2013, Plaintiff took a two-year position with Vesuvius in China. Due to a delay in finding Plaintiff's replacement, Vesuvius asked Plaintiff to remain in his position for another year. Plaintiff agreed but also requested a plan for his return to the United States, with a stated intention to retire soon. When the Company discussed Plaintiff's next placement with Vesuvius,

> "... informed Roel that [he] wanted to work for two more years after return from China. Roel therefore took it upon him[self] to look for opportunities for [Plaintiff] to do so. The global Flux job ... has a heavy emphasis on line and P&L management (experience [Plaintiff] did not have, at least not recently) and would have required [Plaintiff] to relocate to Europe, something [he] did not want to do at that time. This

> was the reason the job was not offered to [Plaintiff]; [his] age did not have anything to do with it." ***See Exhibit A.***

Given Plaintiff's refusal to remain outside the United States or to travel frequently, the Company created a one-year position for Plaintiff in Cleveland in recognition of his long-tenured service with the Company and stated intention to retire shortly after his return to the United States. ***See Exhibit B***. Plaintiff assumed this position in March of 2017. Plaintiff openly admitted during his time in the position created for him that he "lack[ed] motivation" and that he was willing to negotiate an exit package. ***See Exhibit C.***

In May of 2017, Young met with Plaintiff to inform him that the position would not extend past 2018 and offered Plaintiff the Company's standard severance package: 12 months' severance pay, 18 months of COBRA, and his Company car. Plaintiff demanded two years' severance instead and for the first time stated that he believed he was discriminated against on the basis of his age. Young relayed Plaintiff's response to Company management and investigated Plaintiff's complaints of age discrimination. Following his discussions with Company officials, who denied any consideration of Plaintiff's age and explained the process for placing Plaintiff in his current position, Young called Plaintiff the next day to discuss his severance offer. Young described the Company's position, and Plaintiff responded that he now would accept nothing less than three years' severance pay. Young informed Plaintiff that the Company would not agree to three years' severance pay, and that his position would come to an end in early 2018. Plaintiff reiterated that he would accept nothing less than three years' severance.

In March of 2018, at the Company's direction, Young again met with Plaintiff to discuss his interest in a severance package as his position would be concluding soon. Young again reiterated the severance package proposed to Plaintiff in March 2017: 12 months' severance pay,

18 months of COBRA, and his Company car. Plaintiff stated that his response was the same, and that anything less than three years' severance pay would be unacceptable.[1] ***See Exhibit D.***

On May 7, 2018, Young met with Plaintiff to inform him that his position with the Company would end on May 31, 2018. Due to Plaintiff's lack of appreciation for the Company's efforts to help Mr. Phillips relocate back to the US after his placement in China, the Company decreased its severance offer to three months' severance pay, three months of COBRA, and his Company car. Plaintiff asked for a termination date of June 30, 2018 to provide him with additional time to consult with a lawyer. The Company granted his request, but when Plaintiff in turn requested the 12 months' severance pay previously offered, the Company informed him that the 12-month offer was no longer on the table. In mid-June, Plaintiff met with Young to inform him that he would not be signing the separation agreement.

B. Discovery Correspondence

Despite Plaintiff's allegations of delay and "foot-dragging," Plaintiff's lengthy description of the discovery dispute in this case fails to acknowledge that Defendants have already produced nearly 700 pages of documents in this case, along with responses and supplemented responses to Plaintiff's requests for admissions, requests for production, and interrogatories.

Further, as promised in Defendants' counsel's May 16, 2019 email to Plaintiff's counsel and as stated in footnote two of Plaintiff's memorandum in support of his motion to compel, Defendants' counsel provided a substantive response to each of Plaintiff's stated outstanding discovery issues on Friday, May 17, 2019. ***See Exhibit E.*** Plaintiff's counsel

[1] Notably, contrary to Plaintiff's allegations in his Memorandum in Support of his Motion to Compel, Vesuvius' severance offer was the same both before *and after* his allegations of age discrimination. As such, there is no evidence to support Plaintiff's allegation that the later-decreased severance offer was made in retaliation for Plaintiff's protected activity.

responded to Defendants' counsel's email on Wednesday, May 22, 2019 and attempted to regress on the discovery requests which had previously been revised to be narrowly tailored to the discovery of admissible evidence. ***Id.*** Defendants' counsel responded on Thursday, May 23, 2019. ***Id.*** Plaintiff then responded a few hours later on Thursday, May 23, 2019. ***Id.*** As the Parties appeared to be making progress toward resolving the two outstanding issues, Defendants' counsel asked if Plaintiff would be amenable to an extension of time to respond to Plaintiff's motion to compel in an effort to resolve the remaining issues amicably and without additional Court involvement. ***Id.*** Plaintiff's counsel and Defendants' counsel spoke by phone in the late afternoon on Thursday, May 23, at which time Plaintiff's counsel indicated that an extension was not agreeable unless Defendants would agree to produce all the personnel files and information at issue within the week. Plaintiff's counsel further declined Defendants' request that Plaintiff indemnify them for the fines and levies associated with any potential violations of European privacy laws in connection with Plaintiff's discovery requests.

As such, Defendants have fully complied with their discovery obligations, and view this motion as moot in light of the resolution of the majority of the discovery issues in this case. From Defendants' perspective, the only open discovery issue pertaining to documents in existence are the personnel files of European citizens, as addressed below.

II. LAW AND ARGUMENT

A. The Personnel Files and Location Information Sought by Plaintiff Are Largely Irrelevant and Protected Pursuant to the General Data Protection Regulation

The primary issue of dispute between the Parties as to production of documents and information remains the issue of whether Defendants can, as a matter of law, produce the personnel files and addresses of European citizens without their consent, as prohibited by the GDPR.

Citizens of the European Union have certain privacy rights under the General Data Protection Regulation (GDPR) enacted on May 25, 2018. The residential addresses and contents of personnel files would be defined as personal data relating to the Vesuvius employees in Europe (the 'data subjects'). For the avoidance of doubt at this stage, the UK has enacted the GDPR as the Data Protection Act 2018, and whether the UK remains in the European Union or not, this UK legislation is in line with and has the same obligations as GDPR and will apply to UK citizens. European Union subjects have a right to privacy over their personal data, including the processing of such data. Retrieval of personal data (i.e. a third-party request of another person's personal data) is processing. Retrieval of that data can only be done on a lawful basis. There is no exception under the law for civil discovery requests in American courts. Relative to our most recent attempt to negotiate a resolution of this purported discovery dispute, please also see *In re Hansainvest Hanseatische Investment-GmbH*, a case in which the Court's order did specify that the requesting party must pay the costs of compliance and indemnify the producing party from any potential breaches of foreign privacy laws. 2018 U.S. Dist. LEXIS 222098 (S.D.N.Y. Dec. 17, 2018). Though there is limited case law due to the law's relatively recent enactment, the GDPR's strength lies in its ability to heavily tax companies that fail to comply with its mandate. The GDPR poses the risk of substantial fines in producing said documents and information. ***See Exhibits F, G, and H for a discussion of fines assessed under the GDPR.*** For example, Google was recently fined $57 million for its alleged violation of the GDPR.

Defendants informed Plaintiff on May 17, 2019 that they are open to coming to an agreement regarding the production of only relevant information regarding European employees, if Plaintiff agrees to a protective order regarding the use and dissemination of said information and agrees to indemnify Defendants should any levies or fines be assessed against them for producing

this information. *See In re Hansainvest Hanseatische Investment-GmbH,* 2018 U.S. Dist. LEXIS 222098 (S.D.N.Y. Dec. 17, 2018) (court requiring indemnification as a condition of production).

Plaintiff will not agree to indemnify Defendants for any portion of the potential fees the Company could face. Plaintiff expects Defendants to bear the entire risk of fines associated with GDPR violations and yet is unwilling to assume the risk himself, which implies that Plaintiff acknowledges the risk associated with producing said documents. Without said protections, Defendants run the risk of incurring substantial fines under the GDPR and should not be required to produce documents whose relevance has not been established without such protections.

B. All Other Discovery Issues Identified by Plaintiff Have Been Resolved

Despite alleging additional tangential disputes in his memorandum in support of his motion to compel, the primary outstanding discovery disputes among the Parties, beyond the privacy restrictions of the GDPR, are appropriately laid out in the Parties' correspondence in Exhibit E. ***See Exhibit E.*** As outlined in Defendants' counsel's May 17, 2019 correspondence to Plaintiff's counsel, the documents repeatedly requested by Plaintiff in large part do not exist. Where information is requested, Defendants have supplemented their responses where appropriate. Regarding the specific minutia of the requests, Defendants reiterate their response from May 17, 2019.

Plaintiff sought the identity of individuals who reviewed Plaintiff's job performance, beyond those identified in the performance reviews themselves. Defendants do not have any information beyond that contained in the performance reviews produced regarding who reviewed Plaintiff's performance.

Regarding Interrogatory Nos. 7 and 27, Defendants provided a response to Plaintiff's request for information regarding the Company's reason for decreasing its severance offer to

Plaintiff. With respect to Interrogatory Nos. 9 and 11, Defendants confirmed that no other individuals "expressed interest," in the listed positions as the positions were filled through internal succession planning.

Regarding Plaintiff's revised Request for Production No. 18, pursuant to Plaintiff's agreement to Defendants confirmed that the Company did not have any record of complaints of discrimination or retaliation, other than Plaintiff's, made against Christopher Young, Ryan Van der Aa, Michael Chetwyn, Patrick Andre, Vincent Boisdequin, Alan Charnock, and Roel van der Sluis, and therefore, the Company possesses no responsive documents. Defendants again confirmed that they do not have any information in their custody or control that delineates the specific cost to Vesuvius for benefits provided to Mr. Phillips.

Regarding Plaintiff's requests for documents related to the merger, Defendants are no longer taking the position that Vesuvius did not assume the agreement between Foseco and Plaintiff attached to the Complaint when Vesuvius and Foseco merged. While Vesuvius maintains that it fulfilled its obligations under the Agreement, it will no longer contest Vesuvius' assumption of the same.

Finally, Defendants made a diligent search for responsive information regarding personnel files for the requested individuals, and the Company is not aware of any information outside of the personnel information identified above that is responsive to Plaintiff's discovery requests and held by a foreign affiliate. In other words, Defendants are not storing responsive documents with foreign affiliates in order to evade discovery.

As any outstanding discovery requests are now moot, Defendants respectfully request this Court deny Plaintiff's motion to compel as the above issues have been resolved.

III. CONCLUSION

For each of the foregoing reasons, Defendants respectfully request this Court deny Plaintiff's motion to compel as moot as the majority of the discovery disputes have been resolved. As to the only remaining discovery dispute, the privacy issues related to GDPR, Defendants respectfully request that Plaintiff's motion to compel be denied unless Plaintiff agrees to a protective order and to indemnify Defendants for any potential violation of the GDPR that may arise from the production of relevant documents.

Respectfully submitted,

JACKSON LEWIS P.C.

/s/ Patrick O. Peters
Patrick O. Peters (0079539)
Sabrina L. Brown (0096700)
Park Center Plaza I, Ste. 400
6100 Oak Tree Boulevard
Cleveland, OH 44131
Phone: (216) 750-0404; Fax: (216) 750-0826
Email: Patrick.Peters@jacksonlewis.com
Sabrina.Brown@jacksonlewis.com

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of May 2019, a true and accurate copy of the foregoing was electronically filed with the Cuyahoga County Court of Common Pleas. Notice of this filing will be sent to all parties of record via the Court's electronic notification system.

/s/ Patrick O. Peters
Patrick O. Peters (0079539)

One of the Attorneys for Defendants

4834-5540-1879, v. 1

Exhibit A

From: Ryan van der Aa
Sent: Thursday, May 24, 2018 10:09 AM
To: Roy Phillips <Shared.Roy.Phillips@vesuvius.com>; Roel Van der sluis <Roel.van.der.Sluis@vesuvius.com>
Cc: Chris Young <Chris.Young@vesuvius.com>
Subject: RE: Severance

Dear Roy,

Thanks you for sending the "Severance Arrangements For The Foseco Businesses In The USA". I remember that they were put in place in early 2008 when Foseco was in the process of being acquired by Cookson Plc. The rationale for this document was that Foseco management in the USA would have agreed severance terms in case the acquisition would result in redundancies and to ensure that, if eligible employees wanted to leave, they had to observe a notice period of six months which guaranteed continuity during the acquisition process.
I have discussed the document internally in Vesuvius and we have come to the conclusion that this document was drawn up and signed in the name of Foseco Metallurgical Inc, a company that ceased existence after the acquisition in 2008, and therefore the terms do not longer apply.

Yours sincerely,

Ryan

VESUVIUS PLC

Ryan van der Aa
Chief HR Officer

Vesuvius plc
165 Fleet Street
London EC4A 2AE
Tel: +442078220014
Ryan.van.der.Aa@vesuvius.com

www.vesuvius.com

From: Roy Phillips
Sent: 18 May 2018 09:12
To: Ryan van der Aa <Ryan.van.der.Aa@vesuvius.com>; Roel Van der sluis <Roel.van.der.Sluis@vesuvius.com>
Subject: RE: Severance

Dear Ryan,

Thank you for your response.

I need to bring to your attention the 'Severance Arrangements For The Foseco Businesses In The USA'.
For your convenience I attach a copy.
I believe this should act as a basis for a final resolution.

Regards,
Roy

From: Ryan van der Aa
Sent: Wednesday, May 16, 2018 2:53 PM
To: Roy Phillips <Roy.Phillips@vesuvius.com>; Roel Van der sluis <Roel.van.der.Sluis@vesuvius.com>
Subject: RE: Severance

Dear Roy,

Thanks for your mail below and let us use this opportunity to give our views on your situation.

We do not in any way want to give you the impression that we do not appreciate your performance during your career in Foseco and Vesuvius over the years. While working in China, you informed Roel that you wanted to work for two more years after return from China. Roel therefore took it upon him to look for opportunities for you to do so. The global Flux job that you are referring to in your mail, has a heavy emphasis on line and P&L management (experience you did not have, at least not recently) and would have required you to relocate to Europe, something you did not want to do at that time. This was the reason that the job was not offered to you; your age did not have anything to do with it. Your feedback about the job that was discussed with you by Vincent Boisdequin, the Global Development Manager, was that this also required relocation to Europe, which you were not interested in and the travel connected to the role was, in your opinion too demanding.

To enable you to work from the United States, the job of Special Projects Director was created, it did not exist before. Since then the company has changed significantly and in that process the role has become redundant for legitimate business reasons. The offer that we have made, takes into account that the company went to considerable lengths to accommodate you to provide you with a job in the United States after you returned from China and therefore we think that the offer is fair and are not prepared to improve on it.
From your point of view this may seem unsatisfactory but we feel that we have treated you fairly in this respect.

Regards,

Ryan

VESUVIUS PLC
Ryan van der Aa
Vice President Human Resources

Tel: +442078220014
Mob: +447587039776
Ryan.van.der.Aa@vesuvius.com

www.vesuvius.com

From: Roy Phillips
Sent: 10 May 2018 15:04
To: Roel Van der sluis <Roel.van.der.Sluis@vesuvius.com>
Cc: Ryan van der Aa <Ryan.van.der.Aa@vesuvius.com>
Subject: Severance

Dear Roel,

Having got the latest response from Chris Young, I wanted to explain my perspective.
I believe Ryan is on vacation this week so I put him in copy.

First of all I want to apologize if I have, in any way, offended you in this process. It was absolutely not my intention.
I respect you both far too much for that.

The background for me asking for more severance from the March 28 offer (12 months severance plus 18 months COBRA) lies in my interactions with my peers both here and overseas. Although not able to give me specifics, several of them indicated they had been given a much better agreement. With no local manager that I could gain insights from, this set my thinking and expectations.

Looking back at our relationship, I believe we worked very well together in China and North Asia and I hope you agree I helped make a significant contribution to the regions success. This despite a very difficult first 2 years when the then Sales Director did everything he could to undermine our efforts.

Taken in it's entirety I believe that over my nearly 40 years of history with Foseco / Vesuvius I have been a consistently high performer.
I have taken on assignments when others could not, or would not, accept the challenge.
Japan was sight unseen for Lucy who was expecting our first child.
Then to the USA with a 3 year old and a newborn. There we had no established business to work with, so we started Flux from scratch.
Most challenging was the China based job when I volunteered to take on a position the company was really struggling to fill. Lucy gave up her career in order to accompany and support me.

I would like to express my gratitude to you, once again, for trying to find me a suitable position upon my return to the USA last year. The global Flux job would have been especially attractive in fitting my skills and experience, but I can't help but feel that I was passed up for the opportunity due to my age.

The job I accepted as Special Projects Director, was appreciated. However it turned out to be somewhat frustrating as I was not able to organize as many training sessions as I would have liked. The Flux support part of the job had limited impact as it was difficult to get the global involvement needed (although I have tried to be a strong resource for the NAFTA business).

In summary, my feeling is that that the current offer on the table is inadequate for someone of my longevity and accomplishments. Especially as, at age 63, it will be extremely difficult to find another suitable job, let alone in 3 months time.
I therefore respectfully request that you consider reissuing the March 28 offer.

I'd hate to end my successful 40 year career with Vesuvius on negative terms.
It's my sincerest wish that we can work together to resolve this amicably.

I appreciate that you are extremely busy but would it be possible for me to call you or Ryan to discuss this at your earliest convenience?

Respectfully yours,
Roy

Exhibit B

VESUVIUS

PRIVATE AND CONFIDENTIAL

Roy Phillips

Via email

February 24, 2017

Dear Roy,

As originally stated in your appointment letter, November 1st 2013, I confirm that your temporary assignment in the role of M&T Director Steel China/North Asia, will end effective 28 February 2017. On the assignment end date, all assignment allowances and benefits will cease. I would like to take this opportunity to thank you for your contribution to Vesuvius China, Suzhou.

I am pleased to inform you that effective March 1, 2017, you will start your new role as Special Projects Director, Flow Control, based in Cleveland, USA.

It is anticipated that this new role will be 50% Flux Business Development & Integration Support and 50% FC HeaTt training support, and you will report to Mike Chetwyn and Vincent Boisdequin respectively. You will be provided with a detailed job description for this new role and the position will be graded in the next month.

We anticipate that the new grade will most likely be GG16. In that case there will be no changes to your general terms and conditions, including base salary, bonus participation level, medical, pension and other general benefits. You are entitled to a company car in category X.

In addition, the company will provide you with tax assistance for your US and Chinese tax returns for 2017.

Roy, I wish you all the best in your future endeavours.

Sincerely,

Chris Young

Vice President HR Foundry & Americas

Vesuvius USA

From: Roel Van der sluis
Sent: Tuesday, April 17, 2018 6:31 PM

Exhibit B

To: Ryan van der Aa <Ryan.van.der.Aa@vesuvius.com>; Chris Young <Chris.Young@vesuvius.com>
Subject: Fwd: Roy

Sent from my iPhone

Begin forwarded message:

From: Vincent Boisdequin <Vincent.Boisdequin@vesuvius.com>
Date: 17 April 2018 at 11:15:24 PM GMT+2
To: Roel Van der sluis <Roel.van.der.Sluis@vesuvius.com>
Subject: RE: Roy

Roel,

As per your request, find here below different emails about Roy's role.
There are 3 blocks of email string :

- Feedback of discussion I had with Roy and were he declined the Development Role
- Job Description discussion with Sophie & Mike
- His request to get a car and clarity on his role
- Exchange with Ryan & Chris about his contract

As discussed, it has been a very delicate situation since day one and we have limited document about this as per my several contacts with Chris.

Best regards,

Vincent

VESUVIUS
Vincent Boisdequin
Vice President M&T Flow Control
Vesuvius GH
Rue de Douvrain, 17
Ghlin
Tel: + 32 65 400 836
Mob: + 32 475 48 59 81
Fax: + 32 65 311 474
vincent.boisdequin@vesuvius.com
www.vesuvius.com

----- Forwarded by Vincent Boisdequin/GH/VESUVIUS on 17/04/2018 22:48 -----

From: Vincent Boisdequin/GH/VESUVIUS
To: Roel.vander.Sluis@vesuvius.com
Cc: Patrick.Andre@vesuvius.com
Date: 12/01/2017 06:06
Subject: Roy

Roel,

Happy New Year 2017 !

As per our discussion end December we reviewed the opportunities to use Roy in FC

We came to the conclusion that :
- The FC Development Director hiring will be postponed to H2/2017 while we are still working on the R&D organisation details, footprint and project allocation per site.
Meantime, I'm working with Mark Snyder, Tony Pikos and Vincent Leroux to coordinate the management of the Development sites.

- Roy's experience could be used in FC to help Mike Chetwyn in the Flux organisation and to help Sophie Orban (and myself on technical/marketing side) to boost the M3 (M4) training to customer facing people (as trainer and contributor to the addition of a more marketing flavour (EVC,...)).
Roy could work with Albert also on this and we could get the benefit of their huge experience to transfer it, through Heatt, to many people during life training sessions.

I discussed today with Roy as a follow up of our before Christmas discussion.

- Roy confirmed he put a lot of thought to the possibility to run the Development team and wanted to decline.
Actually he would not be able to relocate with his family in Europe, would like to limit his travelling all over the world and the pressure of a heavy operational responsibility.

- He confirmed he is interested in helping Mike Chetwyn for the flux and FC to improve the Heatt program content and roll it out as trainer.

I confirmed him that for FC, Flux and Heatt Support are the 2 tasks we would be happy to get his support on a 12 months period.

He apparently did not get any other possible activity/request from other BU.

He would like to get now more details about what would be the content of his tasks, if he would be 100% for FC, his reporting line and contract so that on the 25th of February, when he will fly out of China, he will know what to do and for whom.

I don't know how you want to take it from here now.

We can also discuss it further when we will be together with Patrick in Brussels in 10 days.

Best regards,

Vincent

VESUVIUS

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vincent.boisdequin@vesuvius.com
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----- Forwarded by Vincent Boisdequin/GH/VESUVIUS on 17/04/2018 23:05 -----

From: Sophie Orban/BX/VESUVIUS
To: Chris Young/CD/VESUVIUS@MSO365

Exhibit B

Cc: Mike Chetwyn/BB/VESUVIUS@MSO365, Vincent Boisdequin/GH/VESUVIUS@VESUVIUS
Date: 20/03/2017 18:41
Subject: Roy Phillips - HeaTt

Hi Chris,

Please find hereunder the description of what is expected from Roy as regarding the HeaTt part of his job.

Background

In Flow Control, Technical training for level 3 is required for sales people who need to be trained technically so that they have the ability to quickly understand the technical problems a customer is facing and feel comfortable proposing technical solutions. Level 3 should include an understanding of what competition is doing and how Vesuvius differentiates, what material to use and when (kind of selling guidelines) - installation techniques - pricing approach (such as good understanding of the RFQ system) - problem solving.

Technical level 4 which is more technical, is intended for product managers, technical specialists, R&D people. It could include sales people who would want/need to further strengthen their technical background.

For Flow Control, level 3 has been created for all product lines except fluxes. Level 4 exist for some product lines.

Job description

1. Create a brand new Mould flux HeaTt level 3 and 4 as nothing exist today.

2. Take the lead for creating a level 3 and a level 4 for another brand new module called EVC. This module wouldn't be limited to one PLN but would give our sales people a good understanding of the EVC by application (ladle, tundish and mold) encompassing Flow Control, Advanced Refractories and Technical Services. In this Roy could get the help of Albert Dainton.

3. After creating the training module, train people and train future trainers for the Fluxes and the EVC modules.

4. Roy will also be involved in the review of the existing material for level 3 to ensure these modules which are being revised are designed for customer facing people.

I have discussed this with him.

Let me know if you need more information.

Best regards,
Sophie

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----- Forwarded by Vincent Boisdequin/GH/VESUVIUS on 17/04/2018 23:02 -----

From: Vincent Boisdequin/GH/VESUVIUS
To: Sophie Orban/BX/VESUVIUS@VESUVIUS, Mike.Chetwyn@vesuvius.com
Date: 13/02/2017 11:33
Subject: Re: Fw: Roy's Job Description

Mike,

I did not discuss anything specific with Roy except that based on his experience in Flux he could help you to build a new strong Flux organisation, TOT, Marketing, Portfolio definition, Branding,...

Patrick's view was a 50/50 Flux/Heatt support. This proportion is theoritical and could be adjusted based on needs.

Best regards,

Vincent

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From: Sophie Orban/BX/VESUVIUS
To: Vincent Boisdequin/GH/VESUVIUS@VESUVIUS
Date: 13/02/2017 11:23
Subject: Fw: Roy's Job Description

Seems I was the only addressee

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Sophie Orban
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----- Forwarded by Sophie Orban/BX/VESUVIUS on 13-02-17 11:23 -----

From: Mike Chetwyn/BB/VESUVIUS
To: Sophie Orban/BX/VESUVIUS
Date: 13-02-17 09:56
Subject: RE: Roy's Job Description

Vincent,
As I have not had any discussions with Roy about this can you provide me some insight as to what has been discussed with him so far with regards to this role?

Sophie,
Do we have any other examples of job descriptions for someone in a consultation type role that you could send me? I'm looking for examples of wording that is used to describe providing support and assistance wherever it is required.

Thanks.
Mike
From: Vincent Boisdequin
Sent: 02 February 2017 03:23
To: Mike.Chetwyn@vesuvius.com; Sophie.Orban@vesuvius.com
Subject: Roy's Job Description
Mike, Sophie,

In the frame of the support we will get from Roy for the next 12 months, starting March 1st, could you fill in the Job Description regarding the respective contribution he will do for you ?

The base of the planned contract is :
- 50% Flux Support
- 50% Heatt Support : Typically EVC update on M3 & M4 & Trainer

Thanks,

Vincent

VESUVIUS
Vincent Boisdequin
Vice President M&T Flow Control

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----- Forwarded by Vincent Boisdequin/GH/VESUVIUS on 17/04/2018 23:11 -----

From: Mike Chetwyn/BB/VESUVIUS
To: Vincent Boisdequin/GH/VESUVIUS
Date: 06/03/2017 21:44
Subject: Fwd: Company Car

Vincent,

I have something drafted out for the fluxes part. I'll tidy it up and review with Roy later this week.

Best regards,

Mike

Sent from my iPhone

Begin forwarded message:

From: <Roy.Phillips@vesuvius.com>
Date: 6 March 2017 at 21:28:46 GMT+1
To: <Mike.Chetwyn@vesuvius.com>, <Vincent.Boisdequin@vesuvius.com>
Subject: Fw: Company Car

Mike,
See below.

Any progress on arranging your trip to USA?

Vincent,
I'm told you are preparing a JD (I assume with Mike).
Please let me know when it is ready for review so we can discuss. Also start to develop plans for future activities.

Thanks and regards

VESUVIUS

Roy Phillips
M&T Director Steel China/North Asia

Vesuvius Advanced Ceramics (China). Co., Ltd
221 Xing Ming Street China-Singapore Suzhou Industrial Park
Suzhou
Tel: (86) (0)512-6741-2088
Mob: (86) 1386 258 5639
Fax: (86) (0)512-6741-1700
roy.phillips@vesuvius.com

www.vesuvius.com

---- Forwarded by Roy Phillips/SZ/VESUVIUS on 03/07/2017 04:25 AM ----

From: Michelle Hire/CP/VESUVIUS
To: Roy Phillips/SZ/VESUVIUS
Date: 03/07/2017 03:38 AM
Subject: RE: Company Car

Roy,

Just waiting on Mike and then Vincent to approve:

From: Roy.Phillips@vesuvius.com [mailto:Roy.Phillips@vesuvius.com]
Sent: Monday, March 06, 2017 1:35 PM
To: Michelle.Hire@US.vesuvius.com
Subject: Company Car

Michelle,
I would like to order my new company car.
Can you find out where we are at with approval etc.?

Thanks and regards

VESUVIUS

Roy Phillips
M&T Director Steel China/North Asia

Vesuvius Advanced Ceramics (China). Co., Ltd
221 Xing Ming Street China-Singapore Suzhou Industrial Park
Suzhou
Tel: (86) (0)512-6741-2088
Mob: (86) 1386 258 5539
Fax: (86) (0)512-6741-1700
roy.phillips@vesuvius.com
www.vesuvius.com

----- Forwarded by Vincent Boisdequin/GH/VESUVIUS on 17/04/2018 22:45 -----

From: Vincent Boisdequin/GH/VESUVIUS
To: Roy Phillips/SZ/VESUVIUS@VESUVIUS
Date: 13/03/2017 15:35
Subject: Re: Company Car

Roy,

I just approved the car capex today. I was approved on thursday by Mike and then got it on friday.

All this takes time...sorry.

I'll remind Sophie once more to call you. I already talked to her mid last week.

Best regards,

Vincent

VESUVIUS

Vincent Boisdequin
Vice President M&T Flow Control
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Ghlin
Tel: + 32 65 400 836
Mob: + 32 475 48 59 81
Fax: + 32 65 311 474
vincent.boisdequin@vesuvius.com
www.vesuvius.com

From: Roy Phillips/SZ/VESUVIUS
To: Vincent Boisdequin/GH/VESUVIUS@VESUVIUS
Date: 13/03/2017 15:13
Subject: Re: Company Car

Vincent,
Still no call from Sophie on this topic.

Also, I am still awaiting your approval for my company car.
Please do ASAP.

Many thanks

VESUVIUS
Roy Phillips
M&T Director Steel China/North Asia
Vesuvius
20200 Sheldon Road
Cleveland
Tel: (1) 440-863-2734
Mob: (1) 216-618-1642
Fax: (1) 440-826-7987
roy.phillips@vesuvius.com
www.vesuvius.com

From: Roy Phillips/SZ/VESUVIUS
To: Vincent Boisdequin/GH/VESUVIUS@VESUVIUS
Date: 03/08/2017 02:18 AM
Subject: Re: Company Car

Okay.
Thanks Vincent

VESUVIUS
Roy Phillips
M&T Director Steel China/North Asia
Vesuvius Advanced Ceramics (China). Co., Ltd
221 Xing Ming Street China-Singapore Suzhou Industrial Park
Suzhou
Tel: (86) (0)512-6741-2088
Mob: (86) 1386 258 5539
Fax: (86) (0)512-6741-1700
roy.phillips@vesuvius.com
www.vesuvius.com

From: Vincent Boisdequin/GH/VESUVIUS
To: Roy Phillips/SZ/VESUVIUS@vesuvius
Cc: Mike Chetwyn/BB/VESUVIUS@mso365
Date: 03/07/2017 04:44 AM
Subject: Re: Company Car

Roy,

Good to see you back. I understood the contractual part is now clear.

We will need to organize a call with Sophie to discuss the expectations on Heatt.

I'll call you later this week but will ask Sophie to get in touch with you already.

Best regards,

Vincent

Sent from my iPhone

On 6 Mar 2017, at 21:28, Roy Phillips <Roy.Phillips@vesuvius.com> wrote:

> Mike,
> See below.
>
> Any progress on arranging your trip to USA?
>
> Vincent,
> I'm told you are preparing a JD (I assume with Mike).
> Please let me know when it is ready for review so we can discuss. Also start to develop plans for future activities.
>
> Thanks and regards
>
> <0.362.gif>**Roy Phillips**
> M&T Director Steel China/North Asia
>
> Vesuvius Advanced Ceramics (China). Co., Ltd
> 221 Xing Ming Street China-Singapore Suzhou Industrial Park
> Suzhou
> Tel: (86) (0)512-6741-2088
> Mob: (86) 1386 258 5539
> Fax: (86) (0)512-6741-1700
> roy.phillips@vesuvius.com
>
> <0.130A.gif>
>
> ----- Forwarded by Roy Phillips/SZ/VESUVIUS on 03/07/2017 04:25 AM -----
>
> From: Michelle Hire/CP/VESUVIUS
> To: Roy Phillips/SZ/VESUVIUS
> Date: 03/07/2017 03:38 AM
> Subject: RE: Company Car
>
> Roy,
>
> Just waiting on Mike and then Vincent to approve:
>
> <0.1FD8.png>
>
> **From:** Roy.Phillips@vesuvius.com [mailto:Roy.Phillips@vesuvius.com]
> **Sent:** Monday, March 06, 2017 1:35 PM
> **To:** Michelle.Hire@US.vesuvius.com
> **Subject:** Company Car

Exhibit B

Michelle,
I would like to order my new company car.
Can you find out where we are at with approval etc.?

Thanks and regards

<0.7B06.gif>**Roy Phillips**
M&T Director Steel China/North Asia

Vesuvius Advanced Ceramics (China). Co., Ltd
221 Xing Ming Street China-Singapore Suzhou Industrial Park
Suzhou
Tel: (86) (0)512-6741-2088
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roy.phillips@vesuvius.com

<0.889E.gif>

----- Forwarded by Vincent Boisdequin/GH/VESUVIUS on 17/04/2018 22:40 -----

From: Vincent Boisdequin/GH/VESUVIUS
To: Ryan van der Aa/BK/MOBILEEU/VESUVIUS@vesuvius
Cc: Chris Young/CD/VESUVIUS@mso365
Date: 02/03/2017 14:12
Subject: Re: Roy Phillips 'contract

Ryan, Chris,

For sure, the transfer of experience is very important and using Roy, Albert,...in non operational role is a great way to maximize this.

I also agree with this approach.

Regarding duration, I trust you to manage it the best way in the mutual interest of Roy and Vesuvius.

Best regards,

Vincent

Sent from my iPhone

On 2 Mar 2017, at 16:26, Ryan van der Aa <Ryan.van.der.Aa@vesuvius.com> wrote:

Vincent,

I support this approach. It is the best and most cost effective way to use Roy's skills and experience in a cost effective way. Over the year we will manage him towards retirement.

Regards,

Ryan

Sent from my iPhone

On 2 Mar 2017, at 03:45, Chris Young <Chris.Young@vesuvius.com> wrote:

> Vincent
> Understood – we will need an alternative role or project in 12 months.
>
> The point is that Roy has 38 years continuous service so if we tell him that we have no role for him in 12 months then FC will pay an exceptionally high severance liability – fact. I am trying to help the FC business avoid this by being smart and letting Roy drive his retirement, and for a short time manage his return to the USA.
>
> Personally I think that we should utilize the knowledge and skills of someone with a wealth of experience before they retire, and I believe he will personally elect to retire in the next 12 to 18 months.
> Regards
> Chris
> **From:** Vincent.Boisdequin@vesuvius.com [mailto:Vincent.Boisdequin@vesuvius.com]
> **Sent:** Wednesday, March 1, 2017 10:28 PM
> **To:** Chris Young <Chris.Young@vesuvius.com>
> **Cc:** Michael Chetwyn <Mike.Chetwyn@vesuvius.com>; Ryan van der Aa <Ryan.van.der.Aa@vesuvius.com>
> **Subject:** Re: Roy Phillips 'contract
>
> Chris,
> Thanks for the info.
> Patrick Andre wanted to make clear since day one of this proposal that FC is ok for only 1 year as I've been reporting below since end January and I guess Patrick did as well.
> I'll call you to better understand your comment about the 12 months as a way or another, a solution should be found for him in March 2018 (other BU job, termination,...).
> Regarding reporting, I'm ok to support Sophie for Heatt but this will be driven by Sophie ie she will interact with Roy and prioritize his tasks and support.
> Best regards,
> Vincent
>
> Sent from my iPhone

On 2 Mar 2017, at 11:11, Chris Young <Chris.Young@vesuvius.com> wrote:

Dear Vincent

Yes Roy is back in the USA and I met with him on Monday. Prior to the meeting I had agreed the terms with Ryan and I enclose the letter given to Roy.

As Roy has 38 years continuous service if we end the contract in the US after 12 months then we will have a substantial severance liability, which we do not want to initiate.

The best outcome is that Roy elects to retire and then we can manage any liability.

Roy will have an office in Cleveland and is on board with the new arrangements.

I can explain the 12 month issue in more detail if you wish – we can discuss- easier if we speak rather than lengthy emails.

Regards

Chris

From: Vincent.Boisdequin@vesuvius.com [mailto:Vincent.Boisdequin@vesuvius.com]
Sent: Tuesday, February 28, 2017 10:38 AM
To: Chris Young <Chris.Young@vesuvius.com>
Subject: RE: Roy Phillips 'contract

Chris,

I understand that Roy is now back to USA.

Also, Randy Fenger is asking for cost allocation.

Could you share the final contract for review by FC ?

Is that clear for Roy that it is a 1 year assignement ?

Thanks,

Vincent

<image001.png>**Vincent Boisdequin**
Vice President M&T Flow Control

Vesuvius GH
Rue de Douvrain, 17
Ghlin
Tel: + 32 65 400 836
Mob: + 32 475 48 59 81
Fax: + 32 65 311 474
vincent.boisdequin@vesuvius.com

<image002.png>

<image003.png>**Chris Young---23/02/2017 06:43:53---Vincent I have sent the draft offer to Ryan for his review.**

From: Chris Young/CD/VESUVIUS
To: Vincent Boisdequin/GH/VESUVIUS
Date: 23/02/2017 06:43
Subject: RE: Roy Phillips ´contract

Vincent

I have sent the draft offer to Ryan for his review.

Thanks

Chris

<image004.png>**Chris Young**
Vice President HR Foundry & Americas

Vesuvius USA
20200 Sheldon Road
Cleveland
Tel: 4408632804
Mob: 4124172849
chris.young@us.vesuvius.com

<image002.png>
<image005.jpg>

From: Vincent.Boisdequin@vesuvius.com
[mailto:Vincent.Boisdequin@vesuvius.com]

Sent: Tuesday, February 21, 2017 2:09 PM
To: Chris Young <Chris.Young@vesuvius.com>
Subject: Re: Roy Phillips 'contract

Chris,

Any progress on this ?

Did you talk to Roy ?

I'll be in China next week and will most likely see him.(not sure his exact flight date and whether he took some days off just before to finalize packing but would like to be ready to talk.)

Thanks,

Best regards,

Vincent

Sent from my iPhone

On 16 Feb 2017, at 19:13, Chris Young <Chris.Young@vesuvius.com> wrote:
Vincent

Ryan and I have a call tomorrow to discuss – once we are in agreement then the contract can be finalized quickly.

Regards

Chris

<image001.gif>**Chris Young**
Vice President HR Foundry & Americas

Vesuvius USA
20200 Sheldon Road
Cleveland
Tel: 4408632804
Mob: 4124172849
chris.young@us.vesuvius.com

<image002.gif>
<image003.jpg>

From: Vincent.Boisdequin@vesuvius.com
[mailto:Vincent.Boisdequin@vesuvius.com]

Exhibit B

Sent: Thursday, February 16, 2017 12:02 PM
To: Chris.Young@US.vesuvius.com
Subject: Fw: Roy Phillips 'contract

Chris,

Any progress on Roy's contract ?

Best regards,

Vincent

<image004.gif>**Vincent Boisdequin**
Vice President M&T Flow Control

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Tel: + 32 65 400 836
Mob: + 32 475 48 59 81
Fax: + 32 65 311 474
vincent.boisdequin@vesuvius.com
<image002.gif>

----- Forwarded by Vincent Boisdequin/GH/VESUVIUS on 16/02/2017 18:01 -----

From: Vincent Boisdequin/GH/VESUVIUS
To: Ryan van der Aa/BK/MOBILEEU/VESUVIUS@vesuvius
Cc: Deana Giuliani/PW/VESUVIUS@mso365, Chris Young/CD/VESUVIUS@mso365, Nicola Thomas/LD/VESUVIUS@vesuvius, Roel van der Sluis/SZ/VESUVIUS@vesuvius
Date: 07/02/2017 20:10
Subject: Re: Roy Phillips 'contract

Ryan, Chris,

I discussed this topic with Roel over the weekend.

We agreed that Chris could build the proposed contract as described below ie 50% flux support / 50% FC Heatt support for 12 months.

Mike and Sophie are working on the job description but I don't think we should wait for it to initiate contract drafting as Roy is flying back end of February from China.

Exhibit B

Once built, thanks to share the proposal as I'll need to get approval from Patrick.

Chris should then approach Roy to make the official offer.

Considering legal aspect, it is suggested that Chris keeps the contact for now with Roy.

Best regards,

Vincent

Sent from my iPhone

On 2 Feb 2017, at 09:32, Ryan van der Aa <Ryan.van.der.Aa@vesuvius.com> wrote:

Vincent,

I am copying Roel on this email to close the loop. Roel, did you have any discussions with Roy about his new job and expectations. If not, we need to clarify the level of the new role with Roy as soon as possible.

Regards,

Ryan

<0.322.gif>**Ryan van der Aa**
Vice President Human Resources

Vesuvius Plc
165 Fleet Street
London
Tel: +442078220014
Mob: +447587039776
ryan.van.der.aa@vesuvius.com
<0.DD8.gif>
<0.155E.jpeg>

Vincent Boisdequin---01/02/2017 14:02:48---Ryan, I'm not clear about what Roy was finally told by Roel.

From: Vincent Boisdequin/GH/VESUVIUS
To: Ryan van der Aa/BK/MOBILEEU/VESUVIUS@VESUVIUS

Cc: Deana Giuliani/PW/VESUVIUS@MSO365, Chris Young/CD/VESUVIUS@MSO365, Nicola Thomas/LD/VESUVIUS@VESUVIUS
Date: 01/02/2017 14:02
Subject: RE: Roy Phillips 'contract

Ryan,

I'm not clear about what Roy was finally told by Roel.

I had a discussion with Roy before Christmas as per Roel's suggestion to evaluate different options for him.
I explained Roy our view for FC, agreed with Patrick i.e.
- 50% Flux Business Development & Integration support - reporting to Mike Chetwyn
- 50% Heatt training support : Update the M3 & M4 with EVC aspects and be a trainer - reporting to Sophie Orban. Albert Dainton will also help in this respect.

So overall, I would not be directly involved in his new role (except discussion about Heatt construction) and I've not seen official OK from his side except a recent email inquiring about his car.
I don't know if other BU would have propose him something either.

Patrick confirmed he is willing to have 1 year support - not more.
So, I don't know the type of contract you had in mind for him/what was promised by Roel : 1 year fix term contract ? Consultant contract ?
Normal employee with agreement to stop in 1 year unless other BU would like to extend ?

I'll ask Mike and Sophie to fill the Job Description in more details if we need to run a new grading exercise.

I'll can call Roy to get a bit more feedback from his side but it sounds a bit strange it would come from me.
Shouldn't you call him to clarify this a bit more and then I'm happy to follow up/coordinate his transition to FC as per above conditions (1 year / 50% Flux / 50% Flux) ?

Best regards,

Vincent

<7.5C4.gif>**Vincent Boisdequin**
Vice President M&T Flow Control

Vesuvius GH
Rue de Douvrain, 17
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Tel: + 32 65 400 836
Mob: + 32 475 48 59 81
Fax: + 32 65 311 474
vincent.boisdequin@vesuvius.com
<7.152A.gif>

Ryan van der Aa---01/02/2017 09:04:12---Vincent, This is a new job, so we should not guess at the grade.

From: Ryan van der Aa/BK/MOBILEEU/VESUVIUS
To: Vincent Boisdequin/GH/VESUVIUS@VESUVIUS
Cc: Deana Giuliani/PW/VESUVIUS@MSO365, Chris Young/CD/VESUVIUS@MSO365, Nicola Thomas/LD/VESUVIUS@VESUVIUS
Date: 01/02/2017 09:04
Subject: RE: Roy Phillips 'contract

Vincent,

This is a new job, so we should not guess at the grade.

Nicola, can you please organise for a job description to be written and graded, so we know for sure?

Vincent, just as an aside; is Roy aware that this role will be lower grade wise than his current job (which is 17) so he will get a difference in perks? before he left the USA for his China assignment I think his grade was 16.

Regards,

Ryan

<7.23EC.gif>**Ryan van der Aa**
Vice President Human Resources

Vesuvius Plc
165 Fleet Street
London
Tel: +442078220014
Mob: +447587039776
ryan.van.der.aa@vesuvius.com
<7.2E48.gif>
<7.35CE.jpeg>

Vincent Boisdequin---01/02/2017 02:39:11---Deana, Yes, he should be based in Cleveland.

From: Vincent Boisdequin/GH/VESUVIUS
To: Deana Giuliani/PW/VESUVIUS@MSO365
Cc: Chris Young/CD/VESUVIUS@MSO365, Ryan van der Aa/BK/MOBILEEU/VESUVIUS@VESUVIUS
Date: 01/02/2017 02:39
Subject: RE: Roy Phillips ´contract

Deana,

Yes, he should be based in Cleveland.

Yes, I guess GG15 would be in line with his next activity and experience.

Thanks to share a first draft for discussion once ready.

Best regards,

Vincent

<16.4B90.gif>**Vincent Boisdequin**
Vice President M&T Flow Control

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Rue de Douvrain, 17
Ghlin
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Mob: + 32 475 48 59 81
Fax: + 32 65 311 474
vincent.boisdequin@vesuvius.com
<17.E3E.gif>

Deana Giuliani---26/01/2017 14:21:19---Vincent, I will speak with Chris and draft the "offer" letter. I want to be sure we word it so it i

From: Deana Giuliani/PW/VESUVIUS
To: Vincent Boisdequin/GH/VESUVIUS
Cc: Chris Young/CD/VESUVIUS, Ryan van der Aa/BK/MOBILEEU/VESUVIUS
Date: 26/01/2017 14:21
Subject: RE: Roy Phillips 'contract

Vincent,

I will speak with Chris and draft the "offer" letter. I want to be sure we word it so it isn't deemed a "contract" in the U.S. to fall in line with our "employer at will" status.

I can have a draft over for review early next week. I think Roy may have an issue with a car allowance rather than a car. The allowance is a set amount regardless of what category the employee falls under and it is taxable. He would not be able to expense maintenance and fuel with an allowance. I will speak with Chris and see what his thoughts are. We have very few employees in the U.S.. that have the allowance. Based on what you mention below in his role, it appears this may be a GG14 or 15 role so there is a car category that covers 14/15.

Can you tell me where he will be based? I am assuming Cleveland? I need to put that in the offer letter.

Best Regards,
Deana

<17.1F22.png>**Deana Giuliani**
HR Director Flow Control NAFTA

Vesuvius
250 Park West Drive, RIDC Park West
Pittsburgh
Tel: +1.412.859.6976
Mob: +1.412.298.0783
VOIP: 2006976
Fax: +1.412.429.3448
Deana.Giuliani@vesuvius.com
<18.338.png>
<18.1D38.jpeg>

From: Vincent.Boisdequin@vesuvius.com [mailto:Vincent.Boisdequin@vesuvius.com]
Sent: Thursday, January 26, 2017 7:57 AM
To: Ryan van der Aa <Ryan.van.der.Aa@vesuvius.com>
Cc: Chris Young <Chris.Young@vesuvius.com>; Deana Giuliani <Deana.Giuliani@vesuvius.com>
Subject: Re: Roy Phillips 'contract

Thanks Ryan,

This is actually the kind of topics we need to agree and formalize.

Chris, Deanna,

When do you think you will be able to send me the contract draft ?

Roy is flying back from China end of February and we should have all this finalized and signed before he will be back.

Fyi, I'll be in PI next week.

Best regards,

Vincent

Sent from my iPhone

On 26 Jan 2017, at 12:30, Ryan van der Aa <Ryan.van.der.Aa@vesuvius.com> wrote:
Vincent,

As I understand this this is a local US contract. Basically Roy will return to his US conditions (based on job grade). This contract will be prepared by Chris and Deanna. As Roy will be working for a restricted period of time before he retires, would it make sens to pay him a car allowance

Exhibit B

instead of buying/leasing a car for him?

Regards,

Ryan

<0.398.gif>**Ryan van der Aa**
Vice President Human Resources

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165 Fleet Street
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Tel: +442078220014
Mob: +447587039776
ryan.van.der.aa@vesuvius.com
<0.E4E.gif>
<0.15D4.jpeg>

Vincent Boisdequin---26/01/2017 10:51:37---Chris, Deana, Ryan, I've been in contact with Roy about his new role in the organization and I'm get

From: Vincent Boisdequin/GH/VESUVIUS
To: Chris Young/CD/VESUVIUS@mso365, Deana Giuliani/PW/VESUVIUS@mso365, Ryan van der Aa/BK/MOBILEEU/VESUVIUS@vesuvius
Date: 26/01/2017 10:51
Subject: Roy Phillips 'contract

Chris, Deana, Ryan,

I've been in contact with Roy about his new role in the organization and I'm getting some questions about his car,...

We agreed with Patrick that he would be used full time by FC for 1 year to support Flux and Heatt boost.

I also discussed it with Roel some weeks ago.

We would like to get the chance to review the contract before it would be finalized as it would concern FC.

Who could send me the contract draft ?

Best regards,

Vincent

Sent from my iPhone

<Phillips Roy New USA Assignment Letter.docx>

From: Roel Van der sluis
Sent: dimanche 15 avril 2018 14:34
To: Vincent Boisdequin <Vincent.Boisdequin@vesuvius.com>
Subject: Roy

Vincent
We offered Roy a job when he came back from China before we gave him the role he does now.
What was the title and what was his reason he refused . Can you share all communication you had with him on this?
Thank you
Roel

Sent from my iPhone

Exhibit C

From: Roel Van der sluis
Sent: Thursday, February 1, 2018 1:30 AM
To: Vincent Boisdequin <Vincent.Boisdequin@vesuvius.com>; Chris Young <Chris.Young@vesuvius.com>
Cc: Deana Giuliani <Deana.Giuliani@vesuvius.com>; Candice Bosteels <Candice.Bosteels@vesuvius.com>; Michael Chetwyn <Mike.Chetwyn@vesuvius.com>
Subject: RE: Roy Ph.

Vincent

Very disappointing and unprofessional I must say

Roel

VESUVIUS

Roel van der Sluis
President Vesuvius North Asia

Vesuvius SZ
221 Xing Ming Street
Suzhou Industrial Park
Tel: +86 512 6741 2088
Mob: +86 158 2133 3231
Fax: +86 512 6741 1700
roel.vander.sluis@vesuvius.com

From: Vincent Boisdequin
Sent: 01 February 2018 06:08
To: Chris Young <Chris.Young@vesuvius.com>
Cc: Deana Giuliani <Deana.Giuliani@vesuvius.com>; Roel Van der sluis <Roel.van.der.Sluis@vesuvius.com>; Candice Bosteels <Candice.Bosteels@vesuvius.com>; Michael Chetwyn <Mike.Chetwyn@vesuvius.com>
Subject: Roy Ph.

Chris,

I had dinner tonight with Roy to discuss his progress in supporting the new Flux/VISG project and EVC training module.

Exhibit C

He expressed clearly his lack of motivation in contributing in anything due essentially to the mismatch between his view and the Vesuvius new orientation/evolution.
He then confirmed his willingness to negotiate an exit package.

It sounds he is not willing to engage in anything anymore and in practice, over the last few weeks, while he was supposed and had agreed to coach and assist Alessandro Prenazzi in developing a business case for the Flux/Viso project, we have not seen much impact of it. Also, he is not really in line with our NPI approach and doesn't understand why we are not happy about what Prenazzi presented,...
Regarding the EVC training module, his recent contribution has been very limited.
For my side a disappointing performance for the profile he has/is that he justified by the lack of motivation above mentioned.

I don't know what his activity and performance regarding Flux PLN for Mike has been recently.

I explained him I was not qualified to negotiate anything along those lines and would then need to refer to you for any further step.

Best regards,

Vincent

VESUVIUS

Vincent Boisdequin
Vice President M&T Flow Control

Vesuvius GH
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Tel: + 32 65 400 836
Mob: + 32 475 48 59 81
Fax: + 32 65 311 474
vincent.boisdequin@vesuvius.com

www.vesuvius.com

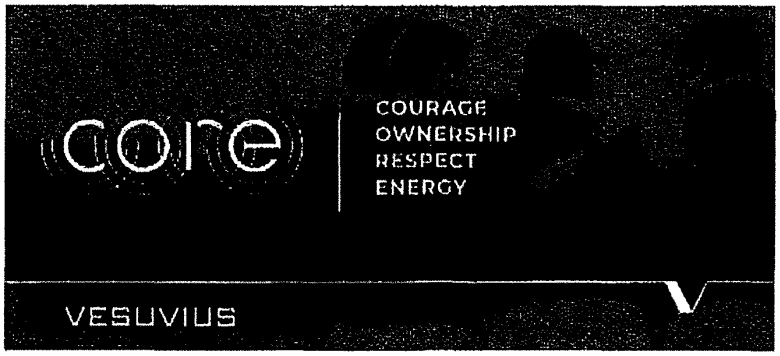
Exhibit D

From: Chris Young
Sent: Sunday, October 7, 2018 9:04 PM
To: Chris Young <Chris.Young@vesuvius.com>
Subject: FW: Roy Phillips

Chris Young
Vice President HR Foundry & Americas

Vesuvius USA
20200 Sheldon Road
Cleveland
Tel: 4408632804
Mob: 4124172849
chris.young@us.vesuvius.com

Exhibit D



From: Roel Van der sluis
Sent: Friday, April 6, 2018 7:51 AM
To: Chris Young <Chris.Young@vesuvius.com>
Cc: Ryan van der Aa <Ryan.van.der.Aa@vesuvius.com>
Subject: RE: Roy Phillips

Chris

Lets see when Ryan is available

Roel

VESUVIUS
Roel van der sluis
President Flow Control

Vesuvius
Rue de Douvrain 17
Ghlin 7011
Tel: +8615821333231
Mob: +32477983843
Roel. van. der. Sluis@vesuvius. com

www.vesuvius.com

From: Chris Young
Sent: 06 April 2018 13:48
To: Roel Van der sluis <Roel.van.der.Sluis@vesuvius.com>
Cc: Ryan van der Aa <Ryan.van.der.Aa@vesuvius.com>
Subject: RE: Roy Phillips

Exhibit D

Roel

OK - thanks. The response from Roy was the same as previously when this issue was raised – no progress really. There are some issues that I would rather deal with via VC or phone, and not in email. As this is a senior person Ryan would like to be involved.

Can we talk via phone if VC is not possible – I am available in the factory today and will be around next week also.

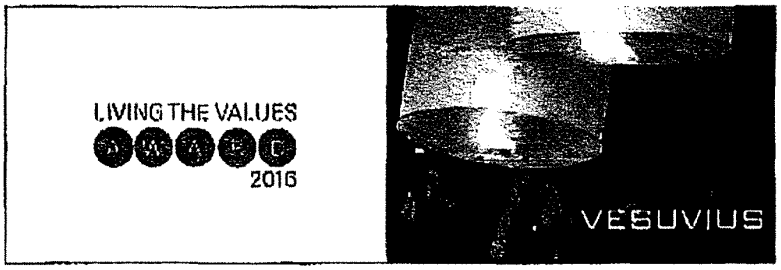
Chris

FOSECO

Chris Young
Vice President HR Foundry & Americas

Vesuvius USA
20200 Sheldon Road
Cleveland
Tel: 4408632804
Mob: 4124172849
chris.young@us.vesuvius.com

www.vesuvius.com



From: Roel Van der sluis
Sent: Friday, April 6, 2018 7:42 AM
To: Chris Young <Chris.Young@vesuvius.com>
Cc: Ryan van der Aa <Ryan.van.der.Aa@vesuvius.com>
Subject: RE: Roy Phillips

Chris

I be in India next week so not easy to have a VC

Roel

VESUVIUS

Roel van der sluis
President Flow Control

Vesuvius
Rue de Douvrain 17
Ghlin 7011
Tel: +8615821333231
Mob: +32477983843
Roel.van.der.Sluis@vesuvius.com

Exhibit D

www.vesuvius.com

From: Chris Young
Sent: 06 April 2018 13:40
To: Roel Van der sluis <Roel.van.der.Sluis@vesuvius.com>
Cc: Ryan van der Aa <Ryan.van.der.Aa@vesuvius.com>
Subject: FW: Roy Phillips

Roel

Further to your email – please see below. I met with Roy and would like to have a VC with you and Ryan. I am in Cleveland next week.

It is better to speak via VC and not email – I can explain when we talk.

Thanks

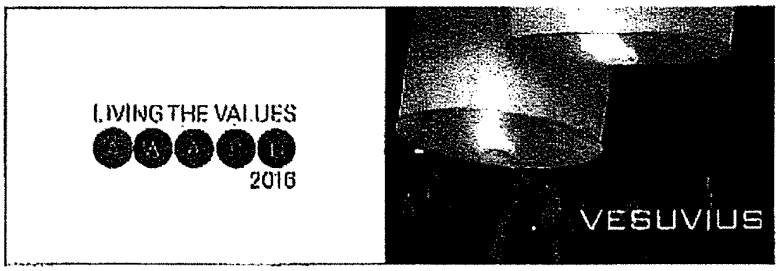
Chris

FOSECO

Chris Young
Vice President HR Foundry & Americas

Vesuvius USA
20200 Sheldon Road
Cleveland
Tel: 4408632804
Mob: 4124172849
chris.young@us.vesuvius.com

www.vesuvius.com



From: Chris Young
Sent: Wednesday, March 28, 2018 9:54 PM
To: Roel Van der sluis <Roel.van.der.Sluis@vesuvius.com>

Exhibit D

Cc: Candice Bosteels <Candice.Bosteels@vesuvius.com>
Subject: RE: Roy Phillips

Dear Roel and Candice

I met with Roy and would like to discuss - preferably with you both.

Would you be available for a VC meeting next week?

Thank you.

Chris

FOSECO

Chris Young
Vice President HR Foundry & Americas

Vesuvius USA
20200 Sheldon Road
Cleveland
Tel: 4408632804
Mob: 4124172849
chris.young@us.vesuvius.com

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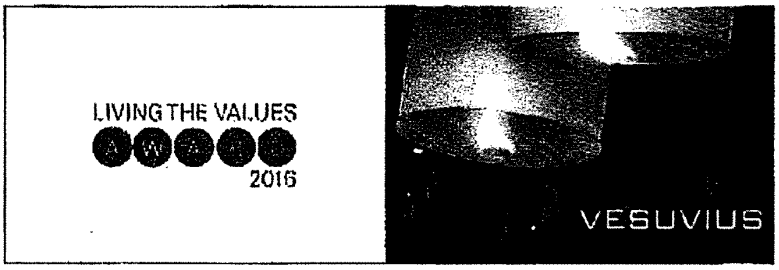

From: Chris Young
Sent: Monday, March 19, 2018 9:02 PM
To: Roel Van der sluis <Roel.van.der.Sluis@vesuvius.com>
Cc: Candice Bosteels <Candice.Bosteels@vesuvius.com>
Subject: Roy Phillips

Roel

As per our discussion I will make a reasonable offer to Roy. If Roy retires then we will offer:

1. 12 months' severance to be paid in a lump-sum
2. 18 months COBRA (continued participation in the company medical plan)
3. Give him his company car (he will pay taxes as this is a benefit)
4. Bonus Plans will be paid as per the plan rules
5. Laptop and I-Phone

I will speak to Roy as soon as I return to the CO office and let you know the outcome.

Exhibit D

Regards

Chris

FOSECO

Chris Young
Vice President HR Foundry & Americas

Vesuvius USA
20200 Sheldon Road
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Tel: 4408632804
Mob: 4124172849
chris.young@us.vesuvius.com

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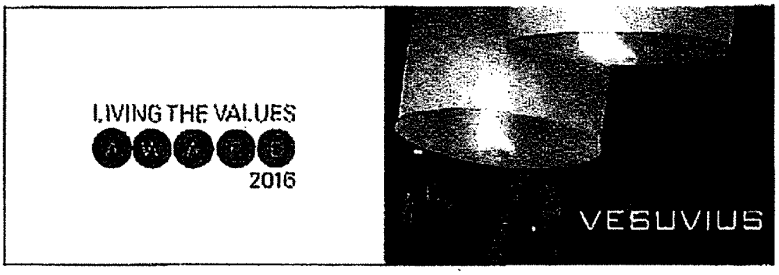

Exhibit E

From: Peters, Patrick O. (Cleveland)
Sent: Thursday, May 23, 2019 4:35 PM
To: Moran, Jack E.; Brown, Sabrina L. (Cleveland)
Cc: Ahern, Ann Marie; Mazzone, Charlene M.; Gillberg, Anita K.
Subject: Re: Phillips v. Vesuvius USA Corporation, et al.

Hi Jack,

Thanks for the call just now.

As we discussed, given that a week's extension will likely not result in our producing the European personnel files and information at issue in this case to you, you will not agree to jointly move the court to extend the response date to your client's motion to compel. You further indicated that your client will not agree to indemnify ours for any fines or levies resulting from a violation of the GDPR and UK regulations on account of our client producing this information.

As I mentioned, I am working through our client's European privacy counsel and will respond to your analysis of the relevant regulations below. Perhaps we will be able to come to a resolution on this issue prior to the Court's ruling.

Thanks again,
Pat

On: 23 May 2019 15:43,

Patrick O. Peters
Attorney at Law
Jackson Lewis P.C.
Park Center Plaza I, Suite 400
6100 Oak Tree Blvd.
Cleveland, OH 44131
Direct: (216) 750-4338 | Main: (216) 750-0404 | Mobile: (216) 288-9972
Patrick.Peters@jacksonlewis.com | www.jacksonlewis.com

"Moran, Jack E." <JEM@mccarthylebit.com> wrote:

Can you speak this afternoon?

Jack E. Moran • Principal • McCarthy, Lebit, Crystal & Liffman Co., LPA
101 W. Prospect Ave., Suite 1800 • Cleveland, OH 44115 • Phone: 216.696.1422
jem@mccarthylebit.com • www.mccarthylebit.com • Download my vCard
LinkedIn • Twitter • Google+ • Facebook • IR Global Member Firm

Electronically Filed 05/23/2019 17:38 / BRIEF / CV 18 904574 / Confirmation Nbr. 1719012 / BATCH

Exhibit E

From: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
Sent: Thursday, May 23, 2019 12:00 PM
To: Moran, Jack E. <JEM@mccarthylebit.com>; Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>
Cc: Ahern, Ann Marie <AMA@mccarthylebit.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Gillberg, Anita K. <akg@mccarthylebit.com>
Subject: RE: Phillips v. Vesuvius USA Corporation, et al.

Thanks, Jack. I'm still puzzled with your request for documents relative to other claims when we've confirmed that none of those claims involve any of the individuals involved in this case. Are there particular documents you are looking for? I read your April 26 email to indicate that you would accept this representation in lieu of any further production. I'm honestly not sure what it is you are looking for, other than to continue to look for reasons to be dissatisfied with our clients' discovery responses.

As to the GDPR, I am not licensed to practice law in Europe nor am I able to advise our clients on their obligations with respect to these regulations. I am relying on European privacy counsel who indicates that we cannot produce this personnel information for the reasons stated. (Although I do read Article 4 as stating that: "(2) 'processing' means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;").

That said, I will pass along your analysis of the GDPR to our clients' privacy counsel and provide you with a response. Given the hour (it is 5:00 pm in the UK and I am just now getting to this email during a break in deposition) I do not expect I will have an answer for you prior to today's filing deadline. If you would consent to a week's extension for our response to the motion to compel, I would appreciate it. Given that we recently agreed to extend discovery by 90 days (and your motion to amend the complaint remains pending), I do not think this brief extension will prejudice anyone.

Please let me know at your first opportunity.

Thanks again,
Pat

Patrick O. Peters
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Jackson Lewis P.C.
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Cleveland, OH 44131
Direct: (216) 750-4338 | Main: (216) 750-0404 | Mobile: (216) 288-9972
Patrick.Peters@jacksonlewis.com | www.jacksonlewis.com

From: Moran, Jack E. <JEM@mccarthylebit.com
Sent: Thursday, May 23, 2019 9:23 AM
To: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>; Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>
Cc: Ahern, Ann Marie <AMA@mccarthylebit.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Gillberg, Anita

K. <akg@mccarthylebit.com>
Subject: RE: Phillips v. Vesuvius USA Corporation, et al.

Pat:

Thank you for following up on this so quickly. Please see my responses below in red. I felt a response in writing was helpful given the varied issues, but I am available this afternoon for a phone call if you would like.

Jack E. Moran • Principal • McCarthy, Lebit, Crystal & Liffman Co., LPA
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jem@mccarthylebit.com • www.mccarthylebit.com • Download my vCard
LinkedIn • Twitter • Google+ • Facebook • IR Global Member Firm

From: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
Sent: Thursday, May 23, 2019 6:43 AM
To: Moran, Jack E. <JEM@mccarthylebit.com>; Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>
Cc: Ahern, Ann Marie <AMA@mccarthylebit.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Gillberg, Anita K. <akg@mccarthylebit.com>
Subject: RE: Phillips v. Vesuvius USA Corporation, et al.

Hi Jack,

Please see our responses to your most recent email.

Regarding your most recent response to #1, Plaintiff's performance and who reviewed it are marginally relevant at best. His employment ended because Vesuvius did not have another role for him. To the extent his performance is relevant, Defendants have produced emails that indicate who reviewed and commented on his performance in his most recent role. Further, Vesuvius is not going to alter documents. Vesuvius has produced the documents in its possession as they exist. To our knowledge, there are no additional documents responsive to your request, nor is there any other way to identify additional persons who may have reviewed Plaintiff's performance. To make this as clear as possible to you: there is simply nothing for the Court to compel in this regard.

Regarding your most recent response to #4, I am concerned that a request modified to be tailored to only seek information reasonably calculated to the discovery of admissible evidence is suddenly no longer sufficient. If your more narrow request was sufficient on April 26 why is it not now? This indicates that your position is intended to harass Defendants and highlights that your complaints about discovery are not made in good faith.

My original request was tailored to seek information calculated to lead to the discovery of admissible evidence. I was willing to work with Defendants, as I wrote below, but that willingness was refused until after I had to spend considerable time and resources writing a motion to compel because Defendants could not comply with their own deadlines. Additionally, Defendants still have not satisfied even the terms of my proposed resolution, as they have not produced the EEOC documents that were a condition of that proposal (see below). If you produce those documents, I will not pursue this particular request any further.

Regarding your most recent response to #6, Defendants maintain their objections that your request for the personnel files of Vesuvius employees is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. That said, as I've previously explained to you, citizens of the European Union have certain privacy rights under the General Data Protection Regulation (GDPR) enacted on May 25, 2018. The residential addresses and contents of personnel files would be defined as personal data relating to the Vesuvius employees in Europe (the 'data subjects'). For the avoidance of doubt at this stage, the UK has enacted the GDPR as the Data Protection Act 2018, and whether the UK remains in the European Union or not, this UK legislation is in line with and has the same obligations as

GDPR and will apply to UK citizens. European Union data subjects have a right to privacy over their personal data, including the processing of such data. Retrieval of personal data (i.e. a third party request of another person's personal data) is processing. Retrieval of that data can only be done on a lawful basis. There is no exception under the law for civil discovery requests in American courts. Relative to our most recent attempt to negotiate a resolution of this purported discovery dispute, please also see *In re Hansainvest Hanseatische Investment-GmbH*, a case in which the Court's order did specify that the requesting party must pay the costs of compliance and indemnify the producing party from any potential breaches of foreign privacy laws. 2018 U.S. Dist. LEXIS 222098 (S.D.N.Y. Dec. 17, 2018).

To simplify the discussion, I will assume that Brexit doesn't apply. What section of the GDPR do you claim supports Defendants' position? Again, that would really be the starting point for this discussion. Since you haven't identified a section of the law, it is difficult for me to respond.

But, in the interest of working with you, Article 2, Section 1 of the GDPR states that the law "applies to the processing of personal data wholly or partly **by automated means** and to the processing other than by automated means of personal data which form part of a **filing system** or are intended to form part of a filing system." (Emphasis added.) We are not proposing that any processing occur by automated means, and the data we seek is simply a few personnel files (and thus it is not part of a "filing system," as defined in Article 4(6)). Because our requests do not seek to process data by automated means nor process data that forms a part of a filing system, it does not appear the GDPR even applies.

Plus, even if it did, Article 6(1)(c) states that processing is lawful if it is necessary for compliance with a legal obligation. The Ohio Rules of Civil Procedure place a legal obligation on Defendants to produce the information.

Plus, even if Defendants could somehow plausibly argue that the Ohio Rules of Civil Procedure did not impose a legal obligation on them, Article 49 permits the transfer of data to a foreign country when "necessary for the establishment, exercise or defence of legal claims." That is precisely why this information was requested.

I am belaboring this point because Defendants cannot identify a section of GDPR that supports their position and I have identified several sections of the law that seem to contradict their position. I understand Defendants are not going to rely heavily on Plaintiff's performance as a reason for termination. That being said, Plaintiff has the burden of establishing his qualifications and that his qualifications were similar or superior to others. Indeed, we believe that Plaintiff's qualifications were clearly superior to other candidates. Yet Defendants cannot identify the individuals that reviewed Plaintiff's performance. So, information about the areas in which he worked, the managers under which he worked, the performance of the departments he controlled, the performance of individuals who received positions ahead of him – is all relevant. To bypass the issue, would Defendants be willing to stipulate on certain issues related to qualifications (qualified for position, similar / superior qualifications, plainly superior candidate)?

Further, the residential address issue could be easily resolved by Defendants' counsel agreeing to accept subpoenas, in which case we would agree to redact residential addresses before production.

Finally, I appreciate the response to my question about indemnification. *In re Hansainvest Hanseatische Investment-GmbH* was, however, an application submitted by a German corporation to obtain discovery for use in a German proceeding pursuant to a US federal statute. As such, the court was confronted with a fairly unique situation and was concerned with, *inter alia*, whether the applicant was attempting an "end run around German law." While the court determined that no such "end run" was being attempted, it also acknowledged that it should, under the particular federal statute at issue, "reconcile whatever misgivings it may have about the impact of its participation in the foreign litigation by issuing a **closely tailored discovery order** rather than by simply denying relief outright." That is the analysis that led to the indemnification.

We are happy discuss terms of a protective order if it would help resolve this.

Regarding your most recent response to #7, while Defendants maintain the accuracy of their initial answers to Plaintiff's Complaint, given that Defendants believe they complied with the severance letter by twice offering the required terms,

for the sake of compromising over needless discovery disputes and to avoid the production of voluminous documents, Defendants agree to waive this argument going forward.

To be clear, Defendants are waiving any argument that the Severance Agreement is not an enforceable contract and are waiving any argument that Vesuvius did not assume the obligations under that contract from Foseco. Please clarify if incorrect.

Regarding your most recent response to #8, we're aware of no other responsive documents or documents being withheld based on ownership other than the personnel documents identified above.

Pursuant to footnote 2 of your Motion to Compel, we trust that our recent correspondence satisfies the concerns set forth in your motion to compel. As such, please confirm that you will be withdrawing the same.

Thank you,
Pat

Patrick O. Peters
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6100 Oak Tree Blvd.
Cleveland, OH 44131
Direct: (216) 750-4338 | Main: (216) 750-0404 | Mobile: (216) 288-9972
Patrick.Peters@jacksonlewis.com | www.jacksonlewis.com
Jackson Lewis P.C. is honored to be recognized as the "Innovative Law Firm of the Year" by the International Legal Technology Association (ILTA) and is a proud member of the CEO Action for Diversity and Inclusion initiative

From: Moran, Jack E. <JEM@mccarthylebit.com>
Sent: Wednesday, May 22, 2019 11:47 AM
To: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>; Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>
Cc: Ahern, Ann Marie <AMA@mccarthylebit.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Gillberg, Anita K. <akg@mccarthylebit.com>
Subject: RE: Phillips v. Vesuvius USA Corporation, et al.

Pat:

Please see my responses below in red. I am around this afternoon if you would like to talk.

Jack E. Moran • Principal • McCarthy, Lebit, Crystal & Liffman Co., LPA
101 W. Prospect Ave., Suite 1800 • Cleveland, OH 44115 • Phone: 216.696.1422
jem@mccarthylebit.com • www.mccarthylebit.com • Download my vCard
LinkedIn • Twitter • Google+ • Facebook • IR Global Member Firm

From: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
Sent: Friday, May 17, 2019 3:44 PM
To: Moran, Jack E. <JEM@mccarthylebit.com>
Cc: Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>; Ahern, Ann Marie <AMA@mccarthylebit.com>;

Mazzone, Charlene M. <CMM@mccarthylebit.com>; Gillberg, Anita K. <akg@mccarthylebit.com>
Subject: RE: Phillips v. Vesuvius USA Corporation, et al.

Hi Jack,

Thank you again for your patience and understanding as we have worked to respond to your concerns relative to our clients' discovery requests. As you know, Mr. Young retired from Vesuvius at the end of last year and is no longer employed with the Company. Consequently, he does not have access to many of the areas of information responsive to your requests. In addition, as you also know, while Vesuvius created the role of Special Projects Director to accommodate your client's wish to relocate back to the United States from China, he reported to individuals in Europe. I am currently in Atlanta having just completed two days of depositions in another case, but have had an opportunity to connect with the various individuals I need to and provide the following response:

1. Your understanding is correct that Defendants do not have any information beyond that contained in the performance reviews produced regarding who reviewed Plaintiff's performance. As previously discussed, certain fields auto-populate to current information. The information on these performance evaluations are inaccurate. Is it Defendants' position that we should proceed with known inaccurate information as its response to an interrogatory? I am concerned about what efforts if any were made to resolve the inaccuracy in this response.
2. Regarding Interrogatory Nos. 7 and 27, Defendants state that the severance offer to Mr. Phillips decreased due to the Plaintiff's lack of appreciation for the Company's efforts to help Mr. Phillips relocate back to the US after his placement in China.
3. With respect to Interrogatory Nos. 9 and 11, your understanding is correct. As the positions were filled through internal succession planning, no other individuals "expressed interest" in those positions.
4. Regarding Request for Production No. 18, pursuant to your agreement to revise Interrogatory No. 16 and Request for Production No. 18 to remove the temporal restriction and instead focus on complaints of discrimination or retaliation against Christopher Young, Ryan Van der Aa, Michael Chetwyn, Patrick Andre, Vincent Boisdequin, Alan Charnock, and Roel van der Sluis, we do not have any record of complaints of discrimination or retaliation, other than Plaintiff's, raised against Christopher Young, Ryan Van der Aa, Michael Chetwyn, Patrick Andre, Vincent Boisdequin, Alan Charnock, and Roel van der Sluis. We have confirmed that we do not have any documents, therefore, to produce in response to this Request. My email below stated that I would agree to resolve these discovery requests to "help resolve an impasse." Despite that offer, you did not produce anything after several extensions and thus we did not resolve the impasse. I was then forced to file a motion to compel, which I did based on the originally-drafted requests. Please produce the documents that are responsive to our requests as originally-made.
5. We further confirm that we do not have any information in our custody or control that delineates the specific cost to Vesuvius for benefits provided to Mr. Phillips.
6. Regarding information and documents requested from foreign entities and regarding foreign individuals, we maintain our position that the GDPR poses the risk of substantial fines in producing said documents and information. We further maintain our position that the GDPR prohibits the production of said information and documents. However, we are open to coming to an agreement regarding the production of only relevant information regarding European employees, if Plaintiff agrees to a protective order regarding the use and dissemination of said information and agrees to indemnify Defendants should any levies or fines be assessed against them for producing this information. You have not explained **how** the GDPR poses a risk or prohibits production in this case. Such an explanation, if it could be plausibly offered, should have been advanced back in January when the discovery was originally due. We are still unclear why it wasn't, especially since this is Defendants' burden and thus is the starting point for this discussion. Putting that aside, I have reviewed the GDPR and, while I of course concede relative unfamiliarity with European law (as opposed to say, Ohio law), it seems that the information we have requested may not even be covered by that law. So we truly do not understand this objection. Given that you have not established that the GDPR even applies, I think your proposal is premature. This proposal also is unclear as you have not identified what you consider to be "only relevant information." As mentioned before, we are willing to enter into a reasonable protective order. We do

not understand why we would ever agree to indemnify Vesuvius for any sort of liability that it may have with respect to a European law. My client has no control over how Defendants choose to maintain their information.

7. Defendants are no longer taking the position that Vesuvius did not assume the agreement between Foseco and Mr. Phillips attached to the Complaint when Vesuvius and Foseco merged. While Vesuvius maintains that it fulfilled its obligations under the Agreement, it will no longer contest Vesuvius' assumption of the same. Your filed Answer in this case denies that the Severance Letter is an enforceable contract and denies that Vesuvius assumed the obligations of Foseco (Par. 56 & 57). Should we now consider paragraphs 56 and 57 as **admitted**?
8. Finally, Defendants have made a diligent search for responsive information and is not aware of any information outside of the personnel information identified above that is responsive to your client's discovery requests and held by an foreign affiliate. In other words, Defendants are not storing responsive documents with foreign affiliates in order to evade discovery. Has this diligent search included a search of information held by sister and parent companies?

Please let me know if you would like to discuss further. We trust this satisfies the concerns set forth in your client's Motion to Compel and, pursuant to footnote 2 of that Motion, you will gladly withdraw the same. As our response to your client's Motion is due on Thursday, May 23, please confirm that you will be withdrawing your client's Motion by close of business Monday, May 20.

Have a nice weekend,
Pat

Patrick O. Peters
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Cleveland, OH 44131
Direct: (216) 750-4338 | Main: (216) 750-0404 | Mobile: (216) 288-9972
Patrick.Peters@jacksonlewis.com | www.jacksonlewis.com

From: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
Sent: Thursday, May 16, 2019 1:54 PM
To: Moran, Jack E. <JEM@mccarthylebit.com>
Cc: Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>; Ahern, Ann Marie <AMA@mccarthylebit.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Gillberg, Anita K. <akg@mccarthylebit.com>
Subject: RE: Phillips v. Vesuvius USA Corporation, et al.

Thanks, Jack. If you could hold off until Monday, I will have additional information for you. As I have explained multiple times, there are many layers involved. You can proceed as you see fit, but I can assure you that I am diligently working to address these issues and not for purposes of delay.

Patrick O. Peters
Attorney at Law
Jackson Lewis P.C.
Park Center Plaza I, Suite 400
6100 Oak Tree Blvd.
Cleveland, OH 44131

Direct: (216) 750-4338 | Main: (216) 750-0404 | Mobile: (216) 288-9972
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From: Moran, Jack E. <JEM@mccarthylebit.com>
Sent: Thursday, May 16, 2019 1:51 PM
To: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
Cc: Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>; Ahern, Ann Marie <AMA@mccarthylebit.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Gillberg, Anita K. <akg@mccarthylebit.com>
Subject: RE: Phillips v. Vesuvius USA Corporation, et al.

Pat:

With respect, you said that you would have more information for me by yesterday. Prior to that, you represented that you would have information by May 9. Prior to that, you represented you would have responses by May 7. This is a consistent and concerning pattern that has pervaded discovery since the beginning of the year. I am worried that your client simply does not take this case seriously.

Out of professional courtesy to you, I have allowed a great deal of latitude in terms of extension (after extension) to get substantive responses from your clients. That being said, I seem to be punished each time I provide such latitude, and I do not have much to show for the courtesies I've extended. This is obviously affecting the momentum of the case at this point, and thus adversely affecting my client. Neither my client nor I can permit it any longer – which is precisely why I wrote in my email to you three days ago that we would hold off on filing a motion to compel through Wednesday 5/15 but **we would not wait any longer than that**.

Moreover, I noticed that you are preparing a "response," but what troubles me is that you have not committed to actually producing any additional responsive information despite its obvious relevance and discoverability. As such, we will be filing a motion to compel, as we said we would.

Jack E. Moran • Principal • McCarthy, Lebit, Crystal & Liffman Co., LPA
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LinkedIn • Twitter • Google+ • Facebook • IR Global Member Firm

From: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
Sent: Thursday, May 16, 2019 11:20 AM
To: Moran, Jack E. <JEM@mccarthylebit.com>
Cc: Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>; Ahern, Ann Marie <AMA@mccarthylebit.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Saghy, Joy D. <jds@mccarthylebit.com>
Subject: RE: Phillips v. Vesuvius USA Corporation, et al.

Hi Jack,

I did speak with our clients yesterday and am preparing a response to your email. If you can give me until Monday as I am out of town at depositions, I would appreciate it.

Thanks,
Pat

Patrick O. Peters
Attorney at Law
Jackson Lewis P.C.
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Direct: (216) 750-4338 | Main: (216) 750-0404 | Mobile: (216) 288-9972
Patrick.Peters@jacksonlewis.com | www.jacksonlewis.com

From: Moran, Jack E. <JEM@mccarthylebit.com>
Sent: Monday, May 13, 2019 6:15 PM
To: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
Cc: Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>; Ahern, Ann Marie <AMA@mccarthylebit.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Saghy, Joy D. <jds@mccarthylebit.com>
Subject: RE: Phillips v. Vesuvius USA Corporation, et al.

Pat:

I understand. We will hold off on filing a motion to compel until then. However, we cannot wait any longer than this latest delay.

Jack E. Moran • Principal • McCarthy, Lebit, Crystal & Liffman Co., LPA
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From: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
Sent: Monday, May 13, 2019 2:52 PM
To: Moran, Jack E. <JEM@mccarthylebit.com>
Cc: Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>; Ahern, Ann Marie <AMA@mccarthylebit.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Saghy, Joy D. <jds@mccarthylebit.com>
Subject: RE: Phillips v. Vesuvius USA Corporation, et al.

Hi Jack,

I just hung up with our clients. We discussed the issues outlined in your letter but are scheduling a follow-up call for Wednesday. I should have more information for you then.

Thanks,
Pat

Patrick O. Peters
Attorney at Law
Jackson Lewis P.C.

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From: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
Sent: Wednesday, May 8, 2019 7:03 AM
To: Moran, Jack E. <JEM@mccarthylebit.com>
Cc: Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>; Ahern, Ann Marie <AMA@mccarthylebit.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Saghy, Joy D. <jds@mccarthylebit.com>
Subject: Re: Phillips v. Vesuvius USA Corporation, et al.

Hi Jack,

I am told I will have answers to your remaining questions Thursday. Thank you again for your courtesies. Of course we will work with you and the court to schedule depositions and extend the discovery cutoff if needed.

On: 03 May 2019 16:19,

Patrick O. Peters
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"Peters, Patrick O. (Cleveland)" <Patrick.Peters@jacksonlewis.com> wrote:

Hi Jack,

Thank you for your email – I appreciate your efforts to narrow the issues here and I think we are making progress. I was not able to finalize our response with our client this week, but am optimistic we will be in a position to respond substantively Monday or Tuesday.

I appreciate your courtesies and will get back to you early next week.

Thanks,
Pat

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From: Moran, Jack E. <JEM@mccarthylebit.com>
Sent: Friday, April 26, 2019 9:42 AM
To: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
Cc: Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>; Ahern, Ann Marie <AMA@mccarthylebit.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Saghy, Joy D. <jds@mccarthylebit.com>
Subject: RE: Phillips v. Vesuvius USA Corporation, et al.

Pat:

Thanks for speaking with me on Wednesday.

My understanding now is that Defendants do not have any information regarding the identity of individuals who reviewed Plaintiff's job performance, beyond the contents of the performance evaluations that have been produced. If that is not correct, please let me know.

During our call, we discussed Interrogatory Nos. 7 and 27, specifically with respect to the change in the terms of severance offered to Mr. Phillips. Plaintiff's position is that the documents that have been produced do not answer this question, and that we are entitled to a formal answer to this Interrogatory.

With respect to Interrogatory Nos. 9 and 11, we are looking for the identity of any person who expressed interest in the positions, formal or otherwise. My understanding is that there are no such individuals for the Global Development Director position, and that you will double-check on the Global Product Director position (other than Phillips and Chetwyn).

My understanding is that you *may* have some EEOC documents responsive to Request for Production No. 18. Please produce those if so. To help resolve an impasse, I will agree for now to revise Interrogatory No. 16 and Request for Production No. 18 to remove the temporal restriction and instead focus on complaints of discrimination or retaliation against Christopher Young, Ryan Van der Aa, Michael Chetwyn, Patrick Andre, Vincent Boisdequin, Alan Charnock, and Roel van der Sluis.

This email confirms that you do not have any information regarding the specific cost for the benefits provided to Roy, as sought in our requests.

Interrogatory No. 1 sought the identity and **location** of individuals with discoverable knowledge, which we are entitled to as basic discovery under Rule 26. Request No. 10 sought personnel files for the individuals identified above. To recap Plaintiff's position, we believe the burden is on Defendants to explain why a foreign law blocks production. While I am not sure the GDPR applies, even if it did, we believe there are exceptions that apply and, in any event, a protective order should resolve the issue. I do not see how other data privacy laws, including the UK DPA, change this analysis.

Exhibit E

Further, Plaintiff's position is that Vesuvius USA has the ability to obtain the information that we have requested that may be held by sister or parent companies, perhaps those in Europe, and as such has a duty to produce it.

In addition to Interrogatory No. 1 and Document Request No. 10, we noticed that the "possession, custody, and control" argument was also made in response to Document Request No. 25, which seeks crucial information regarding Plaintiff's failure to promote claim. This same argument was advanced with respect to the following discovery requests: Interrogatory Number 2, Interrogatory Number 3, Interrogatory Number 4, Interrogatory Number 26, Interrogatory Number 29, Interrogatory Number 30, Interrogatory Number 31, Request Number 1, Request Number 2, Request Number 4, Request Number 7, Request Number 8, Request Number 13, Request Number 19. Again, our position is that any responsive information held by sister or parent companies should be produced in response. Defendants "cannot be allowed to shield crucial documents from discovery by parties with whom it has dealt in the United States merely by storing them with its affiliate abroad. Nor can it shield documents by destroying its own copies and relying on customary access to copies maintained by its affiliate abroad. If defendant could so easily evade discovery, every United States company would have a foreign affiliate for storing sensitive documents." *Cooper Industries, Inc. v. British Aerospace, Inc.*, 102 F.R.D. 918, 920 (S.D.N.Y. 1984).

That being said, if Defendants want to identify which affiliates have which information, we can explore ways get that information from those affiliates. But Plaintiff reserves the right to weigh the relative cost and burden of navigating any cumbersome methods of obtaining discovery against what we believe is the actual, legal posture of the case, in which the current Defendants have a present obligation to produce it.

We also discussed Document Request No. 23, but it sounded like Defendants' position on this issue may change. In the event Defendants' position does not change, we believe that Ohio law is clear that agreements between employees and employers are assets of the constituent company (Foseco), that transfer automatically by operation of law in a statutory merger from the constituent company to the surviving company (Vesuvius) and are enforceable according to their original terms. As such, we feel we are entitled to the documents memorializing that merger, as they will likely say, *inter alia*, what type of merger occurred, whether liabilities were retained, whether the severance obligations were explicitly mentioned, and other salient issues.

Please let me know Defendants' position on these items by Friday, May 3. In the meantime, if another call would be helpful, let me know.

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From: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
Sent: Friday, April 19, 2019 6:07 PM
To: Moran, Jack E. <JEM@mccarthylebit.com>
Cc: Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>; Ahern, Ann Marie <AMA@mccarthylebit.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Saghy, Joy D. <jds@mccarthylebit.com>
Subject: RE: Phillips v. Vesuvius USA Corporation, et al.

Sure. Thanks.

Patrick O. Peters
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From: Moran, Jack E. <JEM@mccarthylebit.com>
Sent: Friday, April 19, 2019 6:07 PM
To: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
Cc: Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>; Ahern, Ann Marie <AMA@mccarthylebit.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Saghy, Joy D. <jds@mccarthylebit.com>
Subject: Re: Phillips v. Vesuvius USA Corporation, et al.

I will call at 9am on Wednesday then. Call your cell?

Jack E. Moran
(216) 696-1422

On Apr 19, 2019, at 5:52 PM, Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com> wrote:

> I can do a call at 9 but I won't be able to meet live at the office on Wednesday (I work remotely on Wednesdays).
>
> **Patrick O. Peters**
> Attorney at Law
> **Jackson Lewis P.C.**
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> 6100 Oak Tree Blvd.
> Cleveland, OH 44131
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>
> **From:** Moran, Jack E. <JEM@mccarthylebit.com>
> **Sent:** Friday, April 19, 2019 5:51 PM
> **To:** Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
> **Cc:** Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>; Ahern, Ann Marie <AMA@mccarthylebit.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Saghy, Joy D. <jds@mccarthylebit.com>
> **Subject:** Re: Phillips v. Vesuvius USA Corporation, et al.
>
> If you can meet at your office at 9 am on Wednesday I will meet you there.
>
> Jack E. Moran
> (216) 696-1422

On Apr 19, 2019, at 5:31 PM, Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com> wrote:

I am available any time on Wednesday after 9 other than 1-2, or Thursday any time after 1.

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Patrick.Peters@jacksonlewis.com | www.jacksonlewis.com

From: Moran, Jack E. <JEM@mccarthylebit.com>
Sent: Friday, April 19, 2019 5:16 PM
To: Peters, Patrick O. (Cleveland) <Patrick.Peters@jacksonlewis.com>
Cc: Brown, Sabrina L. (Cleveland) <Sabrina.Brown@Jacksonlewis.com>; Ahern, Ann Marie <AMA@mccarthylebit.com>; Mazzone, Charlene M. <CMM@mccarthylebit.com>; Saghy, Joy D. <jds@mccarthylebit.com>
Subject: Phillips v. Vesuvius USA Corporation, et al.

Pat:

I am traveling on Monday of next week, but then I am relatively free the next few days. If you think a meeting to discuss discovery would be worthwhile, please let me know your schedule and we can arrange that.

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Exhibit F

The New York Times

Google Is Fined $57 Million Under Europe's Data Privacy Law

By Adam Satariano

Jan. 21, 2019

LONDON — After European policymakers adopted a sweeping data privacy law last year, the big question was how regulators would use their newfound authority against the most powerful technology companies.

In the first major example, the French data protection authority announced Monday that it had fined Google 50 million euros, or about $57 million, for not properly disclosing to users how data is collected across its services — including its search engine, Google Maps and YouTube — to present personalized advertisements.

The penalty is the largest to date under the European Union privacy law, known as the General Data Protection Regulation, which took effect in May, and shows that regulators are following through on a pledge to use the rules to push back against internet companies whose businesses depend on collecting data. Facebook is also a subject of several investigations by the data protection authorities in Europe.

The ruling signals a new phase in enforcing the European law, which the region's lawmakers and privacy groups have cheered as a check against the growing power of technology companies, while for general consumers it has led mostly to a frustrating increase in the number of consent boxes to click. The fine against Google is just the fourth penalty against any company since the law took effect.

Europe's experience is being closely watched by policymakers in the United States, who are considering a new federal privacy law. Tim Cook, Apple's chief executive officer, last week called for new rules that closely follow Europe's.

Europe has become the world's most aggressive tech watchdog. In addition to the privacy rules, the region's regulators have set the bar with stricter enforcement of antitrust laws against Google and other tech behemoths and taken a tougher stance against the industry's tax policies. Google, a frequent target, was fined a record €4.3 billion last year for abusing its power in the mobile phone market.

Exhibit F

The ruling on Monday takes aim at Google's business model, which turns data on users into narrowly targeted ads.

A central element of Europe's new regulations is that companies must clearly explain how data is collected and used. France's data protection regulator, known as CNIL, said Google did not go far enough to get consent from users before processing data. Instead, it said, people are largely unaware of the data they are agreeing to share, or how Google plans to use the information.

In a statement, the regulator said Google's practices obscured how its services "can reveal important parts of their private life since they are based on a huge amount of data, a wide variety of services and almost unlimited possible combinations."

Google's size — it has about 20 different services — makes its data-collection practices "particularly massive and intrusive," the French authorities said.

Google defended its policies and said it was determining whether to appeal.

"People expect high standards of transparency and control from us," a Google spokesman said. "We're deeply committed to meeting those expectations and the consent requirements of the G.D.P.R. We're studying the decision to determine our next steps."

The case against Google stemmed from a complaint filed by privacy groups that accused the search giant of not properly adjusting its data-collection practices to account for Europe's stricter privacy rules.

"A lot of U.S. companies have dumped everything they do in a consent box and have people waive their rights," said Max Schrems, an Austrian lawyer who founded NOYB, one of the groups that filed the complaint, and is a longtime antagonist of American tech giants over data collection.

"No one who reads it understands," he added. "I don't know what they do with my data, and I'm a lawyer."

Raphaël Dana, a partner at the Paris law firm Frieh Associés who specializes in privacy law, said Silicon Valley companies should expect more penalties across Europe as a result of the data protection law.

"This is going to change the perspective between the profits that internet companies are able to make from the data of users, and the risk of being sanctioned with fines," Mr. Dana said.

The fine announced on Monday is far lower than the maximum penalty under the European privacy law, which is 4 percent of global revenue. For Google, that would be more than $4 billion.

"The fine is immaterial," said Johnny Ryan, the chief policy and industry relations officer at the web browser Brave. "But CNIL's decision is very significant because it means that Google must stop building advertising profiles about people until it has properly told them what it is doing and

Exhibit F

received their consent."

Mr. Ryan said the risk to Google was that people would be startled to see how their data was used.

"It is likely that many people will say no to being profiled by Google when they learn the truth," he said.

A version of this article appears in print on Jan. 22, 2019, on Page B1 of the New York edition with the headline: Google Is Fined 50 Million Euros Under Data Law

Exhibit F

Exhibit G

What are the GDPR Fines?

GDPR fines are designed to make non-compliance a costly mistake for both large and small businesses. In this article we'll talk about how much is the GDPR fine and how regulators determine the figure.

The European Union's General Data Protection Regulation (GDPR) was designed to apply to all types of businesses, from multi-nationals down to micro-enterprises. The fines imposed by the GDPR under Article 83 are flexible and scale with the firm. Any organization that is not GDPR compliant, regardless of its size, faces a significant liability.

Below we will look at the administrative fine structure, how fines are assessed, and which infringements can incur penalties. This is not a guide on how to avoid GDPR fines (you can find our GDPR compliance checklist here). Rather it's a brief primer on the financial exposure organizations face for non-compliance.

Two tiers of GDPR fines

The GDPR states explicitly that some violations are more severe than others.

The less severe infringements could result in a fine of up to €10 million, or 2% of the firm's worldwide annual revenue from the preceding financial year, whichever amount is higher. They include any violation of the articles governing:

- **Controllers and processors** (Articles 8, 11, 25-39, 42, and 43) — Organizations that collect and control data (controllers) and those that are contracted to process data (processors) must adhere to rules governing data protection, lawful basis for processing, and more. As an organization, these are the articles you need to read and adhere to.
- **Certification bodies** (Articles 42 and 43) — Accredited bodies charged with certifying organizations must execute their evaluations and assessments without bias and via a transparent process.
- **Monitoring bodies** (Article 41) — Bodies that have been designated to have the appropriate level of expertise must demonstrate independence and follow established procedure in handling complaints or reported infringements in an impartial and transparent manner.

The more serious infringements go against the very principles of the right to privacy and tl the heart of the GDPR. **These types of infringements could result in a fine of up to €20 mill annual revenue from the preceding financial year, whichever amount is higher.** These inclu governing:

- **The basic principles for processing** (Articles 5, 6 and 9) — Data processing must be dc transparent manner. It has to be collected and processed for a specific purpose, be k processed in a manner that ensures its security. Organizations are only allowed to pr ... political opinions,

Exhibit G

must decide that that country or organization ensures an adequate level of protection. The transfers themselves must be safeguarded.

They also include:

- **Any violation of member state laws adopted under Chapter IX** — Chapter IX grants EU member states the ability to pass additional data protection laws as long as they are in accordance with the GDPR. Any violation of these national laws also faces GDPR administrative fines.
- **Non-compliance with an order by a supervisory authority** — If an organization fails to comply with an order from the monitoring bodies of the GDPR, they have set themselves up to face a huge fine, regardless of what the original infringement was.

And these are just the administrative fines. Article 82 gives data subjects the right to seek compensation from organizations that cause them material or non-material damage as a result of a GDPR infringement.

How much is a GDPR fine?

Under the GDPR, fines are administered by the data protection regulator in each EU country. That authority will determine whether an infringement has occurred and the severity of the penalty. They will use the following 10 criteria to determine whether a fine will be assessed and in what amount:

- **Gravity and nature** — The overall picture of the infringement. What happened, how it happened, why it happened, the number of people affected, the damage they suffered, and how long it took to resolve.
- **Intention** — Whether the infringement was intentional or the result of negligence.
- **Mitigation** — Whether the firm took any actions to mitigate the damage suffered by people affected by the infringement.
- **Precautionary measures** — The amount of technical and organizational preparation the firm had previously implemented to be in compliance with the GDPR.
- **History** — Any relevant previous infringements, including infringements under the Data Protection Directive (not just the GDPR), as well as compliance with past administrative corrective actions under the GDPR.
- **Cooperation** — Whether the firm cooperated with the supervisory authority to discover and remedy the infringement.
- **Data category** — What type of personal data the infringement affects.
- **Notification** — Whether the firm, or a designated third party, proactively reported the infringement to the supervisory authority.
- **Certification** — Whether the firm followed approved codes of conduct or was previously certified.
- **Aggravating/mitigating factors** — Any other issues arising from circumstances of the case, including financial benefits gained or losses avoided as a result of the infringement.

If regulators determine an organization has multiple GDPR violations, it will only be penali
provided all the infringements are part of the same processing operation.

Data controller's responsibility

Many companies use third parties, like email or cloud storage services, to handle their dati
adhering to the GDPR if the third party has a higher technological capacity, it does not abs
controller) from ensuring that personal data is processed in accordance with the GDPR. Ur

The GDPR's stiff fines are aimed at ensuring best practices for data security are too costly not to adopt. While it remains to be seen how fines will be applied by different EU member states, these fines loom for any organization not making strides to ensure GDPR compliance.

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Ben Wolford
Editor In Chief, GDPR EU
A journalist by training, Ben has reported and covered stories around the world. the fight for data privacy.

Exhibit G

Exhibit G

Exhibit H

News (/corpcounsel/news/)

Larger GDPR Fines Are on the Way, Privacy Experts Say

As companies have to grapple with different regulations concerning data privacy, they also need to expect that European regulators will dole out higher fines on companies that violate the GDPR.

By Dan Clark (/author/profile/Dan-Clark/) | May 16, 2019 at 06:44 PM

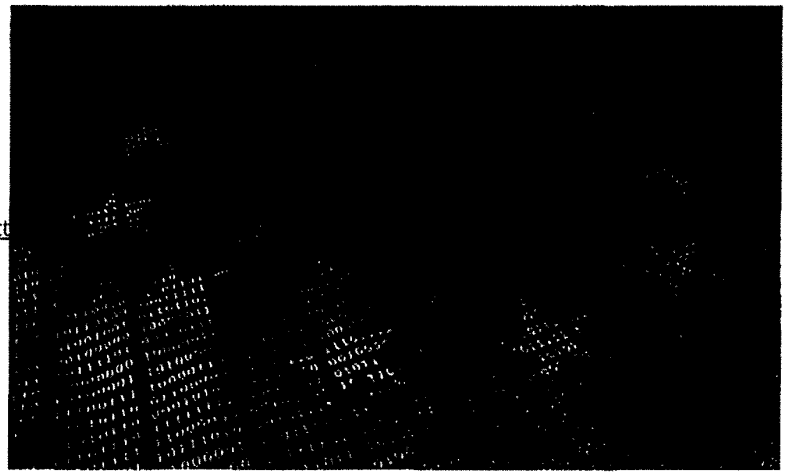

Photo: Shutterstock

Exhibit H

Just shy of one year into the European Union's General Data Protection Regulation, companies and their legal departments should double-check they are keeping up with the law or face fines and other punishments, according to experts.

The GDPR was implemented May 25, 2018, and in the first year fines were not as large as anticipated (https://www.law.com/corpcounsel/2018/05/25/everyones-worried-about-gdpr-but-it-may-be-the-y2k-of-data-privacy/).

Todd Marlin, a principal and forensic data analytics and data science leader at Ernst & Young, said the average fine has been approximately 70,000 euros. He would also expect the fines to grow in size as time goes on.

"The largest fine has been 50 million euros, which is pretty small considering the regulation's standards," Marlin said.

The smaller fines are a result of an unofficial grace period from European regulators, said Odia Kagan, a partner a Fox Rothschild (https://www.law.com/law-firm-profile/?id=109&name=Fox-Rothschild-LLP) in Philadelphia and chair of the firm's GDPR compliance and international privacy practice.

Kagan said larger fines and other punishments are coming.

"The regulators that were interviewed prior to the implementation of GDPR have said they're not going to enforce the new obligations right away," Kagan said.

Kagan said, however, bigger fines are coming. She said it takes time to go through the process of finalizing those large fines. In January, Google was slapped with a $57 million fine from the French regulator. It took some time for the regulator to investigate the complaint and issue a fine considering the complaint against Google was among the first made when the GDPR was implemented.

The fines are not the worst kind of punishment European regulators can enforce on a company. Kagan said if regulators are notified about a breach and find companies did not do enough to protect the data, they can tell a company it has 90 days to remedy the situation or the company faces not being able to use the data that it collects.

"Companies can just pay the fine because they make more money than the fine," Kagan said. "If they're told they can't use the data; that is big."

Going forward, European regulators will want to see continued compliance rather than just having boxes checked, Kagan said.

toughens-bar-pass-standar for-law-schools/)
LAW.COM (HTTPS://WWW.LAW.CO

4 Trump Administration Files Brief Urging SCOTUS to Overturn NYC Gun Law (https://www.law.com/new administration-files-brief-urging-scotus-to-overturn-n gun-law/)
NEW YORK LAW JOURNAL (/NEWYORKLAWJOURNAL/)

5 US Judge Backs House Subpoena for Trump Finan Records (https://www.law.com/natic backs-house-subpoena-for-trump-financial-records/)
NATIONAL LAW JOURNAL (/NATIONALLAWJOURNAL/)

Exhibit H

One of the ongoing challenges is that corporations will have to remain compliant with the GDPR while focusing on new privacy regulations from different jurisdictions.

Marlin said companies have to decide how to proceed. Whether they want to remain compliant with just the GDPR may make sense in the immediate future, but is not a good long-term plan. Data protection, Marlin said, has become more than just a legal issue.

"It is an ongoing business process. Data never sleeps," Marlin said. "More and more jurisdictions are coming out with privacy statutes."

Dan Clark

Dan covers cyber security, legal operations and intellectual property for Corporate Counsel. Follow him on Twitter @Danclarkalm.

(/author/profile/Dan-Clark/)

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Privacy (/topics/privacy/)

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Report: Executives Likely to Be Targeted for Cybercrime (https://www.law.com/corpcounsel/2019/05/13/report-executives-likely-to-be-targeted-for-cybercrime/)

DAN CLARK (/AUTHOR/PROFILE/DAN-CLARK/) | MAY 13, 2019

Cybercriminals are finding it more lucrative to scam executives and get money through business email compromise scams, cybersecurity attorneys say.

Legal Departments Must Keep Rising Email Scams on Their Radars (https://www.law.com/corpcounsel/2019/04/26/legal-departments-must-keep-rising-email-scams-on-their-radars/)

DAN CLARK (/AUTHOR/PROFILE/DAN-CLARK/) | APRIL 26, 2019

Business email compromise schemes and payroll diversion tactics led to total monetary losses of $1.3 billion in 2018, according to the FBI's Internet Crime Complaint Center 2018 Internet Crime Report published earlier this week.

LEGALTECH NEWS (HTTPS://WWW.LAW.COM/LEGALTECHNEWS/)

10 Steps to Navigating NDAs and DPAs to Protect Your 'Secret Sauce' (https://www.law.com/corpcounsel/2019/04/30/10-steps-to-navigating-ndas-and-dpas-to-protect-your-secret-sauce/)

ZACH WARREN (HTTPS://WWW.LAW.COM/LEGALTECHNEWS/AUTHOR/PROFILE/ZACH-WARREN/) | APRIL 30, 2019

A company naturally wants to make sure it protects its most valuable information. But the execution of a nondisclosure agreement, data protection agreement or other security or privacy agreements can be complex in today's legal world.

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