

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. Charles Edward Ramos PART 53

People of the State

INDEX NO.

401620/04

MOTION DATE

Richard A. Grasso

MOTION SEQ. NO.

03804

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

J.S.C.

This memo supplements this Court's decision on the record directing the New York Stock Exchange (NYSE) to produce to defendants Grasso and Langone the Report to the New York Stock Exchange on Investigation Relating to the Compensation of Richard A. Grasso, referred to by the parties as the "Webb Report". A copy of said report was delivered to this Court for its in camera review after argument of this motion.

This Court directed the release of the Webb Report to the defendants, subject to an as yet unexecuted confidentiality stipulation and order on the ground that the NYSE had by its actions, including the delivery of copies of said report to the New York State Attorney General's Office and the Securities and Exchange Commission, waived the attorney client privilege. For the purposes of said ruling, this Court assumed that the document was otherwise a privileged communication.

This Court has now reviewed said report and is unable to

-OVER-

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE DATED: _____

Dated: _____

Check one: FINAL DISPOSITION

FINAL DISPOSITION

NON-FINAL DISPOSITION

J.S.C.

conclude that the Webb Report is entitled to any privileged status. In order to qualify for the privilege "the communication from an attorney to the client must be made 'for the purpose of facilitating the rendition of legal advice, in the course of a professional relationship.' (Rossi v Blue Cross & Blue Shield, 73 NY 2d 588, 593.) The communication itself must be primarily or predominately of a legal character (id., at 594)." (Spectrum v Chemical, 78 NY2d 371, 378.)

The Webb Report contains no legal analysis or advice. The defendants have challenged the confidential nature of the Webb Report and Langone asserts that he was told by the NYSE that the report would be a public document. The report itself states:

"There are a number of legal issues that the NYSE may wish to consider in light of our investigation and Report. This Report, while providing a summary and analysis of the information and facts generated in the investigation, does not directly address the legal issues relating to those facts or provide any legal advice or analysis on those issues. We will separately provide the NYSE with legal advice and analysis on issues that the NYSE wishes to consider relating to the matters addressed in this Report."

Webb Report, footnote 6.

In contrast to the report in *Spectrum*, supra, the Webb Report merely presents facts. It does not set forth an assessment regarding a legal claim or defense, its potential magnitude or relative strength. The report is not of a legal character does not integrate legal advice with non-privileged fact recitation and specifically evidences counsel's intention not to convey legal advice. The Webb Report merely offers a factual analysis and recommendations or comments for desirable future business practices. As such, it is discoverable.

This shall constitute the decision and order of this Court.

Dated : January 27, 2005



J.S.C.

CHARLES E. RAMOS