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Description of document: **US Department of Justice (DOJ) Civil Division Ethics Waivers, 2005-2009**

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Released date: 10-December-2010

Posted date: 10-January-2011

Date/date range of documents: 05-April-2005 – 11-September-2009

Source of documents: Freedom of Information/Privacy Act Office  
Civil Division  
Room 7304  
20 Massachusetts Avenue, NW  
Department of Justice  
Washington, D.C. 20035  
Fax: (202) 616-8202

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## U.S. Department of Justice

### Civil Division

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*Washington, D.C. 20530*

JMK: jmk# 145-FOI-10347

December 10, 2010

In responding to your Freedom of Information Act (FOIA) request, dated August 1, 2010, the Justice Management Division (JMD) identified records responsive to your request, which originated within the Civil Division. On October 25, 2010, these records were referred to my office for review pursuant to the FOIA with a direct response to you. The referral of your request was received in my office on October 29, 2010.

The referral documents consist of 27 pages. These records were reviewed pursuant to the FOIA resulting in my determination to redact names, titles, and financial amounts under exemption 6 (5 U.S.C. § 552 (b)(6)) to protect personal privacy. All of the redactions in the attached copies of the records are made pursuant to (b)(6).

FOIA exemption 6 permits the withholding of information about individuals, in personnel and other files when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. The determination to withhold documents under this exemption was made after balancing the subject individual's interest in privacy against the public interest in disclosure.<sup>1</sup> I balanced the significant privacy interest of the subject individuals in maintaining their privacy, against the public interest, which I determined to be minimal, with the result being my decision to assert exemption 6 to preclude disclosure.

If you are dissatisfied with my action on your request, you have a right to appeal to the Director, Office of Information Policy (OIP), United States Department of Justice, 1425 New York Avenue, NW, Suite 11050, Washington, DC 20530-0001. See 28 CFR § 16.9 (2008). Please note that your appeal must be received by OIP within sixty calendar days of the date of this letter or it will be untimely.

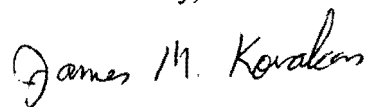
Thereafter, judicial review would be available in the U.S. District Court in the district in which you reside or have your principal place of business or in which the agency records are situated or in the United States District Court for the District of Columbia.

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<sup>1</sup>Note that public interest has been defined by judicial interpretation to be the disclosure of documents which increases the public's understanding of the operations of the federal government.

If you have any questions, please contact our FOIA Requester Service Center at (202) 514-2319.

Sincerely,

A handwritten signature in black ink that reads "James M. Kovakas". The signature is written in a cursive style with a large, stylized "J" and "K".

James M. Kovakas  
Attorney In Charge  
FOI/ PA Unit, Civil Division

enclosures:



U. S. Department of Justice

Civil Division

Assistant Attorney General

Washington, D.C. 20530

In addition to the Bristol Myers Squibb matters for which a waiver pursuant to 18 U.S.C. § 208(b)(1) and 5 C.F.R. § 2635.402(d)(2) and 2640.301 currently exists, I hereby authorize [REDACTED] pursuant to 18 U.S.C. § 208(b)(1) and 5 C.F.R. § 2635.402(d)(2) and 2640.301, to participate in the following additional matter involving Bristol Myers Squibb, [REDACTED] Civil Action No [REDACTED] (NMG) (D. Mass.) (UNDER SEAL), on the grounds that his financial interest in the matter is not so substantial as to be deemed likely to affect the integrity of the services that the Government may expect from him.

PETER D. KEISLER  
Assistant Attorney General

9-30, 2005

U.S. Department of Justice

Civil Division


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Washington, DC 20530



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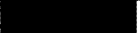
MEMORANDUM

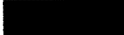


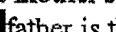



TO: PETER D. KEISLER  
Assistant Attorney General  
Civil Division

FROM:  JAMIE ANN YAVELBERG  
Staff Attorney  
Commercial Litigation Branch

RE: Request for a Waiver Under 18 U.S.C. § 208(b)(1)

  
 seeks a third addendum to an existing individual waiver from the Government's conflict-of-interest statute, 18 U.S.C. §208, pursuant to 18 U.S.C. §208(b)(1) and 5 C.F.R. §§2635.402(d)(2) and 2640.301, in order to participate in matters involving Bristol Myers Squibb (BMS).

On May 29, 2003, a waiver was granted to cover all existing investigations being handled by the Civil Fraud Section against BMS, and on May 4, 2005, an addendum to cover additional matters that had been filed against BMS since that date was approved. On August 2, 2005, a second addendum was approved to cover an older matter that had not named BMS as a defendant, but the waiver was requested because BMS became implicated in the investigation later. This request is for a third addendum to the May 2003 waiver in order to permit  to participate in , Civil Action No. , (NMG) (D. Mass.) (UNDER SEAL). Because the case was filed on May 5, 2005, it was not included in the May 2003 and May 2005 waivers.

The potential financial conflict arises because  is a co-trustee and  residual beneficiary of a trust derived from his late mother's estate, and the trust currently owns about  worth of BMS stock.  father is the income beneficiary of the trust. Although eventually entitled only to half of the stock in the trust, under 18 U.S.C. § 208, the full amount is attributed to  for purposes of analyzing potential conflicts of interest. The stock represents approximately  of  total assets.

For the reasons set forth in the memorandum submitted in connection with the May 2003, May 2005, and August 2005 waivers (attached), I believe that a waiver would be appropriate because the financial interest is not so substantial as to be deemed likely to affect the integrity of the services that the Government may expect from [REDACTED]

I consulted with the Departmental Ethics Office (DEO) regarding this recommendation for an addendum to the existing waiver for [REDACTED] and it concurs.



U. S. Department of Justice

Civil Division

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Assistant Attorney General

Washington, D.C. 20530

In addition to the Bristol Myers Squibb matters for which a waiver pursuant to 18 U.S.C. § 208(b)(1) and 5 C.F.R. § 2635.402(d)(2) and 2640.301 currently exists, I hereby authorize [REDACTED] pursuant to 18 U.S.C. § 208(b)(1) and 5 C.F.R. § 2635.402(d)(2) and 2640.301, to continue to participate in the following additional matter involving Bristol Myers Squibb, [REDACTED] Civil Action No. [REDACTED] (E.D. Pa.) (UNDER SEAL), on the grounds that his financial interest in the matter is not so substantial as to be deemed likely to affect the integrity of the services that the Government may expect from him.

PETER D. KEISLER  
Assistant Attorney General

8-2

, 2005

U.S. Department of Justice  
Civil Division

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Washington, DC 20530

AUG -- 1 2005

MEMORANDUM

TO: PETER D. KEISLER  
Assistant Attorney General  
Civil Division

FROM: *AC* JAMIE ANN YAVELBERG  
Staff Attorney  
Commercial Litigation Branch

RE: Request for a Waiver Under 18 U.S.C. § 208(b)(1)

[REDACTED]  
[REDACTED] seeks a second addendum to an existing individual waiver from the Government's conflict-of-interest statute, 18 U.S.C. §208, pursuant to 18 U.S.C. §208(b)(1) and 5 C.F.R. §§2635.402(d)(2) and 2640.301, in order to participate in matters involving Bristol Myers Squibb (BMS).

On May 29, 2003, a waiver was granted to cover all existing investigations being handled by the Civil Fraud Section against BMS, and on May 4, 2005, an addendum to cover additional matters that had been filed against BMS since that date was approved. This request is for a second addendum to the May 2003 waiver in order to permit [REDACTED] to participate in [REDACTED] Civil Action No. [REDACTED] (E.D. Pa.) (UNDER SEAL). Because BMS is not a named defendant in that matter, it was not included in prior waivers. However, the ongoing investigation has potentially implicated BMS in the alleged scheme, and BMS may be subject to further investigation or added as a defendant in the case at a later date.

The potential financial conflict arises because [REDACTED] is a co-trustee and [REDACTED] residual beneficiary of a trust derived from his late mother's estate, and the trust currently owns about [REDACTED] worth of BMS stock. [REDACTED] father is the income beneficiary of the trust. Although eventually entitled only to half of the stock in the trust, under 18 U.S.C. § 208, the full amount is attributed to [REDACTED] for purposes of analyzing potential conflicts of interest. The stock represents approximately [REDACTED] of [REDACTED] total assets.

For the reasons set forth in the memorandum submitted in connection with the May 2003 and May 2005 waivers (attached), I believe that a waiver would be appropriate because the financial interest is not so substantial as to be deemed likely to affect the integrity of the services that the Government may expect from [REDACTED]

I consulted with the Departmental Ethics Office (DEO) regarding this recommendation for an addendum to the existing waiver for [REDACTED] and it concurs.



U. S. Department of Justice

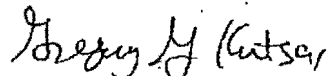
Civil Division

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Assistant Attorney General

Washington, D.C. 20530

I hereby authorize [REDACTED] to participate in United States Aviation Underwriters, Inc., et al. v. United States, on the grounds that her financial interest in these cases is not so substantial as to be deemed likely to affect the integrity of the services that the Government may expect from her.

  
GREGORY G. KATSAS  
Assistant Attorney General

July 3, 2008

U.S. Department of Justice  
Civil Division

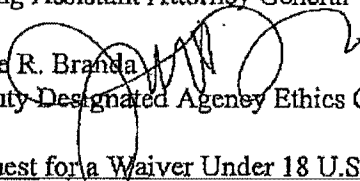
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Washington, DC 20530


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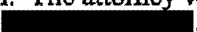
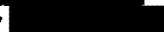



MEMORANDUM

TO: Gregory G. Katsas  
Acting Assistant Attorney General

FROM: Joyce R. Brande   
Deputy Designated Agency Ethics Official

RE: Request for a Waiver Under 18 U.S.C. § 208(b)(1)

 seeks an individual waiver from the Government's conflict-of-interest statute, 18 U.S.C. §208, pursuant to 18 U.S.C. §208(b)(1) and 5 C.F.R. §§2635.402(d)(2) and 2640.301, in order to participate in United States Aviation Underwriters, Inc., et al. v. United States. For the reasons set forth below, I recommend that you grant her request.

The case involves claims arising out of an airplane crash. One of the plaintiffs in the case is AIG, a large insurance company, which is seeking \$1 million in damages. In the district court, we avoided liability by invoking the discretionary function exception of the Federal Tort Claims Act. AIG has now appealed that decision. The attorney who had been handling the case for the Department has left the Department, and  supervisor wishes to reassign the case to her. However, a waiver is needed to allow  to participate in this case because she and her husband own roughly  worth of AIG stock. This stock represents roughly  of their total assets and  of their investment assets.

Title 18 U.S.C. §208(a) bars a federal employee from participating personally and substantially in a particular matter in which the employee has a financial interest, if the matter will have a direct and predictable effect on that interest. A particular matter would have a "direct and predictable effect" on a financial interest only if there is a "close causal link" between an action and any expected effect on the financial interest. See 5 C.F.R. §§2635.402(b)(1)(i) & 2640.103(a)(3). The bar imposed by §208(a) can be waived if the affected employee "makes full disclosure of the financial interest and receives in advance a written determination . . . that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such . . . employee." 18 U.S.C. §208(b)(1).

I believe that a waiver would be appropriate in this case for several reasons. First, the case is unlikely to have a material impact on AIG's stock price. AIG's claims in this case are worth a maximum of \$1 million, but the company's revenues in the last year were over \$93 billion. Given the size of the company, this case is not financially significant for AIG. [REDACTED] has indicated that she believes that it is relatively unlikely that she will be asked to work on other AIG cases in the future. Second, the stock represents a relatively small portion of [REDACTED] assets. Third, [REDACTED] is one of the most experienced people in her office on the issues in the case. Fourth, all of [REDACTED] work on this case will be reviewed.

I have consulted with the Departmental Ethics Office, which concurs in my recommendation that you grant a waiver to [REDACTED] under these circumstances. I have consulted with the Office of Government Ethics and will provide them with a draft of this memorandum if it is approved.



U. S. Department of Justice

Civil Division

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*Assistant Attorney General*

*Washington, D.C. 20530*

I hereby authorize [REDACTED] to continue participating in the Spent Nuclear Fuel cases on the grounds that his financial interest in these cases is not so substantial as to be deemed likely to affect the integrity of the services that the government may expect from him.

A handwritten signature in dark ink, appearing to read "Peter D. Keisler".

Peter D. Keisler  
Assistant Attorney General

2/12/07, 2007

U.S. Department of Justice

Civil Division

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Washington, DC 20530

JAN 4 2007

MEMORANDUM

TO: PETER D. KEISLER  
Assistant Attorney General  
Civil Division

FROM: MICHAEL F. HERTZ  
Deputy Designated Agency Ethics Official

RE: Request for a Waiver Under 18 U.S.C. § 208(b)(1)

██████████ seeks an individual waiver from the Government's conflict-of-interest statute, 18 U.S.C. §208, pursuant to 18 U.S.C. §208(b)(1) and 5 C.F.R. §§2635.402(d)(2) and 2640.301, in order to continue participating in the Spent Nuclear Fuel Cases. Two of these cases have been brought by General Electric (GE), and ██████████ just discovered that his wife and children own ██████████ of GE stock. This stock represents less than ██████████ of the family's total assets, and roughly ██████████ of their investments.

Title 18 U.S.C. §208(a) bars a federal employee from participating personally and substantially in a particular matter in which the employee has a financial interest, if the matter will have a direct and predictable effect on that interest. A particular matter would have a "direct and predictable effect" on a financial interest only if there is a "close causal link" between an action and any expected effect on the financial interest. See 5 C.F.R. §§2635.402(b)(1)(i) & 2640.103(a)(3). The bar imposed by §208(a) can be waived if the affected employee "makes full disclosure of the financial interest and receives in advance a written determination . . . that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such . . . employee." 18 U.S.C. §208(b)(1).

I believe that a waiver would be appropriate in this case for several reasons. First, the stock represents a small portion ██████████ of his family's assets. Second, the cases are not likely to have a substantial effect on the value of their stock. GE is seeking roughly \$200 million in the two Spent Nuclear Fuel cases at issue. By contrast, GE's revenues in the last year were roughly \$160 billion, and its gross profits were roughly \$83 billion. Thus, these cases are unlikely to have a material impact on GE's stock price. Third, there is a large team handling the Spent Nuclear Fuel cases, and all of ██████████ work on these cases will be reviewed.

I have consulted with the Departmental Ethics Office, which concurs in my recommendation that you grant a waiver to [REDACTED] under these circumstances. I have consulted with the Office of Government Ethics and will provide them with a draft of this memorandum if it is approved.



U.S. Department of Justice  
Civil Division


MEH:JA Yavelberg

Washington, D.C. 20530






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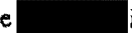

MEMORANDUM

TO: PETER D. KEISLER  
Assistant Attorney General  
Civil Division

FROM:  MICHAEL F. HERTZ  
Deputy Designated Agency Ethics Official  
Civil Division

RE: Request for a Waiver Under 18 U.S.C. § 208(b)(1)

 seeks an individual waiver from the Government's conflict-of-interest statute, 18 U.S.C. § 208, pursuant to 18 U.S.C. § 208(b)(1) and 5 C.F.R. §§ 2635.402(d)(2) and 2640.301, in order to participate in a civil False Claims Act investigation of  Medical Center located in  that involves alleged kickbacks that  paid to doctors employed by the hospital in order to induce referrals from those physicians. The investigation has been ongoing since June 2005. The hospital has claimed that the high payments to the subject physicians are due to the high revenues generated from services provided by the subject physicians billed across all payors, including private insurance companies. In August 2005, HHS-OIG issued administrative subpoenas to three private insurance companies, including John Deere Health Care, for billing data relating to  claims for services provided by the subject physicians.

The waiver issue arises because  is in the interview process for a position as an assistant general counsel at UnitedHealth Group, located in Minneapolis, MN, and on December 7, UnitedHealth announced that it had agreed to acquire John Deere Health Care in a \$500 million stock-purchase transaction to be completed by April 1, 2006.  promptly notified the appropriate Civil Division ethics official to discuss the potential conflict issue, and he has suspended work on the  investigation pending the resolution of this waiver request.  had a telephone interview with UnitedHealth Care on December 21, and another interview is scheduled in January at UnitedHealth's offices in Minneapolis.

Title 18 U.S.C. §208(a) bars a federal employee from participating personally and substantially in a particular matter in which, to his knowledge, he or she has a financial interest, if the matter will have a direct and predictable effect on that interest. Under the statute, an employee is considered to have a financial interest in a particular matter if it involves an organization with whom he or she is negotiating prospective employment. It is the existence of that financial interest, regardless of the dollar amount of the interest, that triggers the conflict-of-interest rules, and the Office of Government Ethics (OGE) has advised in similar circumstances involving third-party subpoenas<sup>2</sup> that it believes that the prohibition still applies – even though the financial interest itself is de minimis and highly attenuated – unless a waiver is granted. A waiver to work on the matter may be granted if the employee "makes full disclosure of the financial interest and receives in advance a written determination . . . that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from" the employee. 18 U.S.C. §208(b)(1); see 5 C.F.R. § 2640.301 (listing criteria for issuing waiver); 5 C.F.R. 2635.401.

The Department typically grants waivers under 18 U.S.C. § 208(b) when an employee has a limited financial holding that would otherwise prohibit an employee's participation in a matter. However, the Department typically does not grant waivers when the financial interest is based on the employee's relationship with a prospective employer because it cannot conclude that an employee's interest in that future employment, which generally involves a party to a matter, is not so substantial. Nonetheless, the Departmental Ethics Office (DEO) has advised that it would support a waiver under 18 U.S.C. § 208(b) here based on the multiple, unique factors in this case discussed below.

I believe that a waiver would be appropriate in this case because the financial interest is not so substantial as to be deemed likely to affect the integrity of the services that the Government may expect from [REDACTED] for the following reasons:

1. The subject of the investigation is [REDACTED] and certain doctors employed by the hospital, not John Deere Health Care or the future owner of that company's stock, UnitedHealth Group. John Deere is not even a third-party witness to the scheme under investigation; it merely has documents that might be useful in rebutting an explanation offered by [REDACTED] for the high payments it made to the subject doctors. At most, a custodian of records at John Deere may need to be a witness if its documents are used to confirm [REDACTED]'s billings to the private insurer relating to the subject doctors. The issuance of a subpoena to John Deere and other third parties is a routine aspect of the investigative process; Division

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As noted above, although UnitedHealth Group has not yet acquired John Deere Health Care, we are treating this situation as if UnitedHealth was the prospective employer that received the subpoena.

attorneys frequently seek comparative billing records to assess whether an investigated entity's practices are consistent with the arguments put forth by its defense counsel.

2. [REDACTED] is interviewing with UnitedHealth Group and the entity that received the subpoena for documents is John Deere Health Care. Although UnitedHealth Group has announced its intention to acquire John Deere Health Care, it does not yet own that company's stock. As noted above, the merger is expected to take place in April 2006.
3. The financial interest at issue here for John Deere Health Care is the de minimis expense associated with producing to the Government the documents responsive to the subpoena.
4. [REDACTED] is in the early stages of interviewing for a position at UnitedHealth Group. He has not accepted a position with the company or negotiated any terms regarding future employment with the company.
5. [REDACTED] has been working on the [REDACTED] matter for six months and for staffing purposes, his office would prefer that he retain the matter rather than reassign it to another DOJ attorney.

Given John Deere's peripheral role in this litigation, it is highly unlikely that [REDACTED] participation in this case could affect substantively John Deere's financial interests.

As stated, I have consulted with the DEO, and they, in turn, have consulted with the Office of Government Ethics. Both offices concur in my recommendation that you grant a waiver to [REDACTED] as long as John Deere Health Care's role in this matter does not change beyond the description provided herein.




U. S. Department of Justice

Civil Division

Assistant Attorney General

Washington, D.C. 20530

I hereby authorize [REDACTED] pursuant to 18 U.S.C. § 208(b)(1), to continue to participate in a civil False Claims Act investigation of [REDACTED] Medical Center on the grounds that his financial interest in this matter is not so substantial as to be deemed likely to affect the integrity of the services that the Government may expect from him.



PETER D. KEISLER  
Assistant Attorney General

Att.ij

December 27, 2005

U.S. Department of Justice  
Civil Division

JRB:DTCohen

Washington, DC 20530

**MEMORANDUM**

TO: DAVID MARGOLIS  
Associate Deputy Attorney General  
Office of the Deputy Attorney General

FROM: JOYCE R. BRANDA  
Deputy Designated Agency Ethics Official  
Civil Division

RE: Request for a Waiver Under 18 U.S.C. § 208(b)(1)

[REDACTED] seeks an individual waiver from the Government's conflict-of-interest statute, 18 U.S.C. § 208, pursuant to 18 U.S.C. § 208(b)(1) and 5 C.F.R. §§ 2635.402(d)(2) and 2640.301, in order to participate in In re: National Security Agency Telecommunications Records Litigation, notwithstanding his ownership of stock in two telecommunications companies, AT&T and Verizon. This matter is a large multidistrict litigation matter encompassing over forty cases involving alleged National Security Agency (NSA) surveillance practices. Many of these cases involve actions allegedly taken by telecommunications companies in support of the NSA. For the reasons set forth below, I recommend that you grant a waiver to [REDACTED]

One group of cases within the MDL involve lawsuits brought against telecommunications carriers, including AT&T and Verizon, accusing them of unlawfully assisting the government's alleged surveillance efforts. A motion to dismiss these cases is now pending, and depending on when and how the court acts on that motion, the Department may need to make significant decisions about these cases within the next several weeks.

The MDL also includes a group of five cases brought by the United States against state governments to halt state investigations of whether or not telecommunications carriers assisted the United States in alleged intelligence activities, including the alleged collection of communications records. The Government's motion for summary judgment in these cases is also pending.

The MDL also includes Jewel, et al. v. National Security Agency, et al., in which a

number of plaintiffs have accused the government of improper surveillance activities. Although the telecommunications carriers are not named as defendants in this action, their conduct is certainly at issue in the case. The Government's response to the complaint is presently due on February 2, 2009, although the government has sought an extension of this deadline.

Within the Civil Division, all of these cases are being handled by the Federal Programs Branch. In his capacity as [REDACTED] [REDACTED] would not normally be involved in these cases. However, [REDACTED] he has responsibility for overseeing these cases. This raises an ethics issue because a trust account for [REDACTED] children, for which he is a trustee, holds [REDACTED] shares of AT&T stock (currently worth roughly [REDACTED] and [REDACTED] shares of Verizon stock (currently worth roughly [REDACTED]. Because [REDACTED] is a trustee for this trust, its holdings are imputed to him for conflict of interest purposes. These holdings represent less than [REDACTED] of [REDACTED] total assets, and less than [REDACTED] of his liquid assets.

Title 18 U.S.C. §208(a) bars a federal employee from participating personally and substantially in a particular matter in which the employee has a financial interest, if the matter will have a direct and predictable effect on that interest. A particular matter would have a "direct and predictable effect" on a financial interest only if there is a "close causal link" between an action and any expected effect on the financial interest. See 5 C.F.R. §§2635.402(b)(1)(i) & 2640.103(a)(3). The bar imposed by §208(a) can be waived if the affected employee "makes full disclosure of the financial interest and receives in advance a written determination . . . that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such . . . employee." 18 U.S.C. §208(b)(1).

I believe that a waiver would be appropriate in this case for several reasons. First, [REDACTED] holdings in these two companies represent a relatively small portion of his total assets. Second, these are important cases in need of high-level oversight, [REDACTED] [REDACTED] Third, his involvement in these cases is likely to be temporary, and is expected to terminate [REDACTED] [REDACTED]

I have consulted with the Departmental Ethics Office, which concurs in my recommendation that you grant a waiver to [REDACTED] under these circumstances. I have also consulted with the Office of Government Ethics, and will provide them with a copy of this memorandum if the waiver is approved. This waiver only covers the stock holdings discussed above, and would not apply if [REDACTED] purchased additional shares in any telecommunications companies.

I hereby authorize [REDACTED] pursuant to 18 U.S.C. § 208(b)(1), to participate in In re: National Security Agency Telecommunications Records Litigation, on the grounds that his financial interest in this matter is not so substantial as to be deemed likely to affect the integrity of the services that the Government may expect from him. This waiver is based on the understanding that [REDACTED] oversight of these cases will terminate once new Civil Division political appointees are selected and confirmed.

  
DAVID MARGOLIS  
Acting Deputy Attorney General

2-7-09, 2009



U.S. Department of Justice

Civil Division

Office of the Assistant Attorney General

Washington, D.C. 20530

In addition to the Bristol Myers Squibb matters for which a waiver pursuant to 18 U.S.C. § 208(b)(1) and 5 C.F.R. § 2635.402(d)(2) and 2640.301 currently exists, I hereby authorize [REDACTED] pursuant to 18 U.S.C. § 208(b)(1) and 5 C.F.R. § 2635.402(d)(2) and 2640.301, to continue to participate in the following additional matters involving Bristol Myers Squibb:

[REDACTED] (Mass.)  
[REDACTED] (Mass.)  
[REDACTED] (E.D. Pa.)  
[REDACTED] (E.D. Pa.)  
[REDACTED] (E.D. Pa.)  
[REDACTED] (E.D. Pa.)  
[REDACTED] (Mass.)  
[REDACTED] (E.D. Tex.)

on the grounds that his financial interest in the matters is not so substantial as to be deemed likely to affect the integrity of the services that the Government may expect from him.

PETER D. KEISLER  
Assistant Attorney General

5-4

, 2005

U.S. Department of Justice  
Civil Division

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Washington, DC 20530

MAY 2 - 2005

MEMORANDUM

TO: PETER D. KEISLER  
Assistant Attorney General  
Civil Division

FROM: JAMIE ANN YAVELBERG  
Staff Attorney  
Commercial Litigation Branch

RE: Request for a Waiver Under 18 U.S.C. § 208(b)(1)

██████████ seeks an addendum to an existing individual waiver from the Government's conflict-of-interest statute, 18 U.S.C. §208, pursuant to 18 U.S.C. §208(b)(1) and 5 C.F.R. §§2635.402(d)(2) and 2640.301, in order to participate in matters involving Bristol Myers Squibb (BMS).

On May 29, 2003, a waiver was granted to cover all existing investigations being handled by the Civil Fraud Section against BMS, and we submit this addendum to cover additional matters that have been filed since that date.

The potential financial conflict arises because ██████████ is a co-trustee and ██████████ residual beneficiary of a trust derived from his late mother's estate, and the trust currently owns about ██████████ worth of BMS stock. ██████████ father is the income beneficiary of the trust. Although eventually entitled only to half of the stock in the trust, under 18 U.S.C. § 208, the full amount is attributed to ██████████ for purposes of analyzing potential conflicts of interest. The stock represents approximately ██████████ of ██████████ total assets.

For the reasons set forth in the memorandum submitted in connection with the May 2003 waiver (attached), I believe that a waiver would be appropriate because the financial interest is not so substantial as to be deemed likely to affect the integrity of the services that the Government may expect from ██████████

I consulted with the Departmental Ethics Office (DEO) regarding this recommendation for an addendum to the existing waiver for ██████████ and it concurs.

[REDACTED]

From: [REDACTED]  
Sent: [REDACTED]  
To: [REDACTED]  
Subject: 502 Waiver - ETH [REDACTED]

Dear [REDACTED]

Let me apologize that this memorialization of your 502 waiver comes so late. As you know, we approved you verbally via telephone on [REDACTED] to continue to participate in the matters pending in your office as of that date involving the [REDACTED] and the [REDACTED] notwithstanding the fact that you have relatives who work for those companies. However, this opinion, prepared simultaneously, was not emailed to you but rather was inadvertently filed in a "Drafts" file. Nonetheless, we view your 502 waiver as effective as of [REDACTED]

#### I. Facts

You have provided the following facts to date. In addition to your AUSA duties, you also serve as the [REDACTED] and the office's [REDACTED] i.e. the [REDACTED]. The [REDACTED] duties require that you generally know the status of every national security case in the office as well as matters handled by the FBI without referral to your office. Two national laboratories in your district are the basis for the existence of an [REDACTED] in the [REDACTED], specifically, [REDACTED] and [REDACTED]

As of [REDACTED] investigations/cases were pending in your office involving both [REDACTED] and [REDACTED]. The [REDACTED] investigation was assigned to you. As of [REDACTED] you remained in an oversight position of an case involving [REDACTED] because of your status as the national security point of contact.

Further, your brother-in-law (married to your wife's sister) works [REDACTED] personnel/human resources department. He is in not in any manner involved in the [REDACTED] investigation assigned to you nor is his department in any manner at issue in the [REDACTED] investigation. In addition, your sister-in-law's son was also working at [REDACTED] as an intern as of [REDACTED]. Neither of these individuals is or is likely to become a subject of the investigation at issue.

You also have a nephew, in his forties, who works for [REDACTED] and, within the last 2-3 years, that nephew married another [REDACTED] employee. Neither of these individuals is or is likely to become a subject of the investigation.

You do not have a close personal relationship with any of the family members identified above.

#### II. Conflict-of-Interest Analysis

An employee is prohibited from participating in an official capacity in any particular matter in which, to his knowledge, he or a family member with whom he has a covered relationship has a financial interest, if the particular matter will have a direct and predictable effect on that interest. 18 U.S.C. § 208(a). Specifically, financial interests of a family member, e.g., a spouse, are imputed to the federal employee. See 5 C.F.R. § 2635.402(b)(2)(i). The intent of the statute is to prevent an employee from allowing personal interests to affect his official actions and to protect government processes from actual or apparent conflicts of interests. See 5 C.F.R. § 2635.402(a), ("Disqualifying financial interests").

Notwithstanding the fact that you do not have a covered relationship with any of the family members identified above (see 5 C.F.R. § 2635.502(b)(1)), the appearance of a conflict of interest does exist that may cause a reasonable person, knowing the relevant facts, to question your impartiality with respect to the pending investigations. See 5 C.F.R. § 2635.502(a).

"Where an employee's participation in a particular matter involving specific parties would not violate 18 U.S.C. § 208(a) but would raise a question in the mind of a reasonable person about his impartiality, the agency designee [here, the ██████████] may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). Accordingly, the six factors that ██████████ considered in determining whether to authorize your continued participation in these matters follow in detail:

(1) The nature of the relationship involved.

You have advised that your relationships with the family members identified above are cordial but do not qualify as covered relationships as they are not "relative(s) with whom [you have] a close personal relationship." See 5 C.F.R. § 2635.502(b)(1)(ii).

(2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship.

It does not appear that the resolution of either the ██████████ investigations is likely to affect the financial interests of the family members at issue.

(3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter.

You play a substantive role in both the ██████████ and ██████████ investigation given your position as the ██████████ however, we further note that your decision-making is subject to review at several levels including at the level of the ██████████

(4) The sensitivity of the matter.

The investigations/cases are high-profile and sensitive, as have prior investigations in the past involving these entities.

(5) The difficulty of reassigning the matter to another employee.

Reassignment to another AUSA of either these matters would not be ideal given your ██████████ expertise. Further, ██████████ notes that even if you were replaced as ██████████ there would be a substantial likelihood that the same attenuated appearance issues would arise with another AUSA given the fact ██████████ has approximately 12,000 employees and ██████████ has approximately 7,500 employees in the District raising the likelihood that some of these employees are likely to be related to AUSAs in the office.

(6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

There are no available adjustments to your duties to mitigate the appearance issue, aside from disqualification.

Finally, the [REDACTED] supports your continued participation in these matters.

### III. Authorization to Participate

In light of all the relevant circumstances surrounding this matter, the [REDACTED] has authorized you to participate in the investigations pending against both laboratories as of [REDACTED] because the interest of the Government in your participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. We note that we cannot provide (and you have not requested) a blanket waiver, as each particular investigation/case arising out of [REDACTED] or [REDACTED] can not in advance be ruled out for a disqualifying conflict of interest.

While participating on these matters, you are obligated to consult with your supervisors and seek their decision, where required, to minimize the likelihood that a reasonable person would question your impartiality.

### IV. Conclusion

Based upon the foregoing facts and analysis, and pursuant to 5 C.F.R. § 2635.502(d), you are hereby authorized to participate in the above-described investigations/cases through completion.

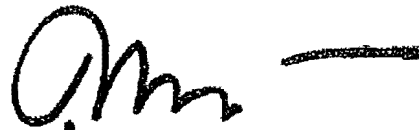
This waiver is based on the facts as presented. If any of those facts should change, please advise this office immediately.

Should you have questions or require anything further in this matter, please do not hesitate to contact me at the number below.

Regards,  
[REDACTED]

[REDACTED]

I hereby authorize [REDACTED] pursuant to 18 U.S.C. § 208(b)(1), to participate in *Authors' Guild et al. v. Google*, Civil No. 05-CV-8136 (S.D.N.Y.), on the grounds that his financial interest in this matter is not so substantial as to be deemed likely to affect the integrity of the services that the Government may expect from him.

A handwritten signature in black ink, appearing to read 'Tony West', followed by a horizontal line.

Tony West  
Assistant Attorney General

SEP 11 2009, 2009

U.S. Department of Justice  
Civil Division

JRB

Washington, DC 20530

MEMORANDUM

TO: Tony West  
Assistant Attorney General

FROM: Joyce R. Branda  
Deputy Designated Agency Ethics Official  
Civil Division

RE: Request for a Waiver Under 18 U.S.C. § 208(b)(1)

██████████ seeks an individual waiver from the Government's conflict-of-interest statute, 18 U.S.C. § 208, pursuant to 18 U.S.C. § 208(b)(1) and 5 C.F.R. §§ 2635.402(d)(2) and 2640.301, in order to participate in *Authors' Guild et al. v. Google*, Civil No. 05-CV-8136 (S.D.N.Y.), notwithstanding his ownership of stock in Microsoft, a potential objecting party to a proposed settlement in the litigation. For the reasons set forth below, I recommend that you grant a waiver to ██████████

This is a class action brought against Google for copyright infringement based on Google's scanning of books for its library project allowing online searches of these materials. There is a proposal to settle the litigation which the United States may, pursuant to the Class Action Fairness Act, raise objections to. Microsoft is a potential objecting party to the settlement, but is not a party to the action. ██████████ holds ██████████ shares of Microsoft worth approximately ██████████ which represents less than ██████████ of the total investment assets attributable to him, and less than ██████████ of his total assets.

Title 18 U.S.C. § 208(a) bars a federal employee from participating personally and substantially in a particular matter in which the employee has a financial interest, if the matter will have a direct and predictable effect on that interest. A particular matter would have a "direct and predictable effect" on a financial interest only if there is a "close causal link" between an action and any expected effect on the financial interest. See 5 C.F.R. §§ 2635.402(b)(1)(I) & 2640.103(a)(3). The bar imposed by § 208(a) can be waived if the affected employee "makes full disclosure of the financial interest and receives in advance a written determination . . . that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such . . . employee." 18 U.S.C. § 208(b)(1).

I believe that a waiver would be appropriate in this case because the financial interest is not so substantial as to be deemed likely to affect the integrity of the services that the Government may expect from [REDACTED].

First, these cases are not likely to have a material impact on the stock price of Microsoft. The amount of the Google settlement for past claims is about \$125 million. Given that Microsoft's annual revenues last year were roughly \$60 billion, the case is unlikely to materially affect Microsoft's stock price since the amount of money involved in the settlement would be small, even if Microsoft were a party to the litigation.

Second, [REDACTED] holdings in Microsoft represent a relatively small portion of his total assets, less than [REDACTED] of his total investments and less than [REDACTED] of his total assets.

Third, Microsoft is not a party to the litigation and proposed settlement, but a potentially objecting party to it. The settlement involves an agreement with publishers and authors that will allow Google to sell books online and library subscriptions that will provide libraries and other institutions with access to a large corpus of books. While Microsoft has great interest in the actions of Google, particularly as they involve the use of the internet to market products and services, it does not appear that Microsoft has any online books sales activity that would be directly impacted by this settlement. Thus, the effect of this settlement on Microsoft's future revenues is speculative.

Finally, it should be noted that the Government has a very strong interest in allowing [REDACTED] to work on these cases given his [REDACTED] his expertise in this area, as well as his familiarity with the Class Action Fairness Act and class action settlements in which the United States may have an interest, a process which has been monitored by the Commercial Litigation Branch for many years. It would work a hardship on the Department if [REDACTED] could not be involved in this matter.

I have consulted with the Departmental Ethics Office, which concurs in my recommendation that you grant a waiver to [REDACTED] under these circumstances. I have also consulted with the Office of Government Ethics, and will provide them with a copy of this memorandum if the waiver is approved. This waiver only covers the stock holdings discussed above, and would not apply if [REDACTED] purchased additional shares of Microsoft.