

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

MARVIN PEARLSTEIN, Individually and  
On Behalf of All Others Similarly Situated,

Plaintiff,

v.

BLACKBERRY LIMITED, THORSTEN  
HEINS, BRIAN BIDULKA, and STEVE  
ZIPPERSTEIN,

Defendants.

No. 13 Civ. 7060 (TPG)  
(Consolidated)

**ECF CASE**

ORAL ARGUMENT REQUESTED

**DECLARATION OF STEVEN E. ZIPPERSTEIN IN SUPPORT OF DEFENDANTS'  
OPPOSITIONS TO PLAINTIFFS' MOTIONS TO COMPEL**

I, Steven E. Zipperstein, declare:

1. I am the former Chief Legal Officer, Chief Risk Officer, and Chief Compliance Officer for BlackBerry Limited ("BlackBerry"). I was employed by BlackBerry in those roles between 2012 and my retirement on August 31, 2018.

2. I submit this Declaration in response to Plaintiffs' Motion to Compel Defendants to Produce Documents on Their Privilege Log and Motion to Compel Defendants to Produce Documents Related to Defendant Steve Zipperstein ("Plaintiffs' Motions to Compel"). This Declaration is based on my personal knowledge and if called as a witness, I would so testify.

**My Professional Background**

3. I graduated in 1979 with honors from the University of California at Los Angeles. I then attended the University of California at Davis Law School ("U.C. Davis"), where I served

as Executive Editor of the U.C. Davis Law Review. I graduated from U.C. Davis as a member of the Order of the Coif.

4. Following law school, after several years at a private law firm, in 1987 I joined the U.S. Attorney's Office for the Central District of California where I worked until 1996. During that time, I was promoted to serve as the Chief of Criminal Appeals in Los Angeles and ultimately as the Chief Assistant United States Attorney. For a portion of that time, I worked at the Department of Justice in Washington, D.C., where I served in 1992 as Special Counsel to the Assistant U.S. Attorney General for the Criminal Division, Robert Mueller, in 1993 as Special Counsel to the Office of the Acting Assistant U.S. Attorney General for the Criminal Division, and in 1995 as Counselor to Attorney General Janet Reno.

5. In late 1996, I was recruited by former United States Attorney General William Barr to join GTE Corporation. Following the merger between GTE Corporation and Bell Atlantic to form Verizon Communications Inc., I served as a Deputy General Counsel for Verizon between 2000 and 2003.

6. Between 2003 and 2011, I served as the General Counsel of Verizon Wireless. I was responsible for all legal, regulatory, public policy, government affairs, compliance and corporate security functions during my time there.

7. I also have taught at Loyola Law School and published several law review and legal articles. I have testified before the United States Congress on telecommunications policy issues. I am a member of the American Law Institute and a Life Fellow of the American Bar Foundation.

8. In my role as BlackBerry's Chief Legal Officer, I provided advice to BlackBerry and its Board of Directors on a wide range of legal issues. My responsibilities included

worldwide legal, government relations, compliance, regulatory, corporate security, internal audit, and corporate risk functions. I supervised and managed a team of in-house attorneys that also provided legal advice and counsel to BlackBerry, as well as numerous outside law firms that BlackBerry retained for various legal needs.

9. As BlackBerry's Chief Legal Officer, I regularly consulted with BlackBerry employees in order to inform my legal opinions regarding various legal matters. Without the information gathered at my direction, I would not have been able to properly provide BlackBerry with legal advice in my role as its Chief Legal Officer.

#### **The Detwiler Report**

10. Plaintiffs' Motions to Compel largely focus on documents and communications prepared after and in response to an April 11, 2013 report issued by Detwiler Fenton & Co. ("Detwiler") regarding purported return rates of the then recently-launched BlackBerry Z10 smartphone (the "Detwiler Report"). Following the release of the Detwiler Report, I communicated with BlackBerry senior executives, members of BlackBerry's Board of Directors, BlackBerry's internal public relations team, and other BlackBerry employees about the subject of a response to the Detwiler Report.

11. News media reported that Detwiler had stated that BlackBerry's "key retail partners ha[d] seen a significant increase in Z10 returns to the point where, in several cases, returns [were] now exceeding sales." Following the initial media reports, BlackBerry's stock price declined significantly in intra-day trading. As BlackBerry later stated publicly, Detwiler refused to share its report or methodology with BlackBerry, despite being informed that its report was false. In light of potential manipulation of BlackBerry's stock price, I considered a full range of options to address with BlackBerry's management and Board of Directors, including

contacting regulatory authorities, taking affirmative steps to respond publicly to the Detwiler Report, and potential litigation against Detwiler.

**Work performed by BlackBerry employees at direction of counsel**

12. One of the many BlackBerry employees I communicated with on April 11 and 12, 2013 concerning the Detwiler Report was John Powell, BlackBerry's Senior Vice President for Quality and Customer Care at the time. I asked Mr. Powell to gather information necessary for my evaluation of BlackBerry's legal options in response to the Detwiler Report. This information included collecting sales and return data from BlackBerry's carrier partners (e.g., Verizon) for the Z10. I also asked Mr. Powell to work directly with BlackBerry's then head of litigation, Mary Huser.

13. I understood from my discussions with Mr. Powell that he would be working with other members of his team to request and gather the information I had requested.

14. The information gathered to assist counsel by Mr. Powell and members of his team was essential to my work as Chief Legal Officer in advising BlackBerry in connection with its response to the Detwiler Report. The information gathered at my direction and at the direction of other lawyers at BlackBerry was necessary to enable me to advise BlackBerry's senior management and its Board of Directors regarding the various legal avenues the company might pursue in response to the Detwiler Report.

**Work performed by consultant Aaron Curtiss at direction of counsel**

15. On April 11, I also asked Aaron Curtiss, from strategic communications firm G.F. Bunting & Co., to assist the legal team in connection with our evaluation and coordination of BlackBerry's response to the Detwiler Report. I was aware that Mr. Curtiss had previously assisted BlackBerry counsel in an unrelated confidential matter. I believed that Mr. Curtiss'

background and skills would prove valuable to the legal team in advising BlackBerry on potential responses to the Detwiler Report and preparing a response to the Detwiler Report.

16. During the night of April 11 and early the morning of April 12, I participated in several telephone calls with Mr. Curtiss regarding the Detwiler Report. I also exchanged numerous emails with Mr. Curtiss regarding BlackBerry's potential responses to the Detwiler Report and the drafting of a press release to respond to the Detwiler Report. These communications and drafts of the press release were intended to be kept confidential and were for the clear and stated purpose of assisting me in advising BlackBerry regarding its response to the Detwiler Report.

**The Documents Challenged By Plaintiffs**

17. I have reviewed the 36 documents from April 11 and April 12, 2013 concerning my work with Mr. Curtiss related to BlackBerry's response to the Detwiler Report that are the subject of Plaintiffs' Motions to Compel. (Log Entry Nos. 199, 201-212, 244, 246-258, 261-268, 283.) I hereby confirm that each of these documents reflect confidential communications with Mr. Curtiss and/or work performed by me or Mr. Curtiss at my direction for the purpose of providing legal advice to BlackBerry regarding BlackBerry's response to the Detwiler Report.

18. I also have reviewed Log. Entry No. 245, which reflects my communications with BlackBerry's Board of Directors on April 11 and April 12, 2013 concerning BlackBerry's response to the Detwiler Report. I confirm that this document reflects my confidential communications with Board members regarding various legal options BlackBerry could pursue in response to the Detwiler Report.

19. Beginning on April 11, 2013 and continuing for weeks thereafter, I continued to work with other members of BlackBerry's in-house legal team in advising on all aspects of

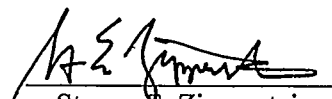
BlackBerry's response to the Detwiler Report. We were also assisted in that effort by BlackBerry's outside counsel, including lawyers at Skadden and McDermott Will & Emery in the United States, and Torys in Canada.

20. I have reviewed the other five documents concerning my work related to BlackBerry's response to the Detwiler Report over which BlackBerry has asserted privilege, the validity of which is being challenged by Plaintiffs. (Log Entry Nos. 289, 298, 303, 315, 316.) I hereby confirm that each of these documents reflect communications with me or work performed by or at the direction of counsel for the purpose of providing legal advice concerning the Detwiler Report.

21. I have reviewed the remaining three documents concerning my work related to other legal matters over which BlackBerry has asserted privilege, the validity of which is being challenged by Plaintiffs. I and/or other members of the BlackBerry legal department reviewed from a legal perspective draft press releases before they were issued by BlackBerry, as well as scripts to be used by our Chief Executive Officer during quarterly conference calls, including the documents identified on Defendants' privilege log as Log Nos. 149, 163, 178. Each of these documents was sent to me and another member of the BlackBerry legal department for the purpose of obtaining legal advice.

22. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: London, England  
November 8, 2018

  
Steven E. Zipperstein