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UNITED STATES COURT OF APPEALS  
*for the*  
FOR THE FIRST CIRCUIT

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Case Nos. 04-2291 and 04-1801  
(consolidated)

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RUBEN CARNERO,  
PLAINTIFF - APPELLANT,

- v. -

BOSTON SCIENTIFIC CORPORATION,  
DEFENDANT - APPELLEE.

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Appeal from the United States District Court  
For the District of Massachusetts

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**APPELLANT'S REPLY BRIEF**

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BOLATTI & GRIFFITH  
*Counsel for Plaintiff-Appellant*  
32 Old Slip, Fifth Floor  
New York, New York 10004  
(212) 363-3780  
(212) 363-3790 (fax)

Of Counsel:

EDWARD GRIFFITH  
SILVIA BOLATTI

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## PRELIMINARY STATEMENT

BSC's assertion that the *Foley* presumption applies to Sarbanes-Oxley's whistleblower section is fundamentally flawed because it fails to acknowledge that Congress' purpose in enacting that provision was to protect shareholders of securities listed on US securities exchanges. Since extraterritorial enforcement of the whistleblower section would clearly advance that statutory purpose, the *Foley* presumption does not apply under this Court's holding in *US v. Leon*, 270 F.3d 90 (2001). BSC ignores the *Leon* decision, even though it is one of this Court's few precedents discussing the *Foley* presumption.

In addition, BSC's analysis requires that sections of the Act with virtually identical language be given different extraterritorial reach. In particular, BSC concedes that Congress used essentially the same language to define the scope of the Act's whistleblower section as it did to define the scope of many of the Act's other sections. The SEC has consistently interpreted those other sections to apply extraterritorially. [Appellant's Brief at 34-38](#). BSC does not seriously challenge the SEC's interpretation of this statutory language. Instead, BSC asserts that the whistleblower section should be interpreted more restrictively than the Act's other sections, despite its use of virtually identical language, because it is a "labor regulation" rather than a "security law."

BSC's semantic argument fails for several reasons. First, the whistleblower section is just as much a "securities law" as any other section of the Sarbanes-Oxley Act. Like other securities laws, the Act uses many different methods to regulate corporate conduct in order to achieve its purpose of protecting investors in US capital markets. While the whistleblower section uses a labor regulation to achieve that purpose, other sections of the Act use corporate governance regulations, professional conduct standards and other means to regulate corporate conduct in order to achieve the same purpose.

Second, BSC is mistaken in its assertion that the *Foley* presumption applies to all labor regulations without regard to the regulation's underlying purpose. Nothing in the case law supports that assertion. On the contrary, such a "per se" rule against extraterritorial application of any labor regulation, notwithstanding its underlying purpose, is inconsistent with the Supreme Court's decision in *Aramco*, which was based on a careful analysis of the specific statutory language, legislative history and legislative purpose of the Title VII employment discrimination statute. *Foley* and its progeny require that any departure from the plain meaning of a statute be supported by a substantive analysis of the language of the statute, its statutory scheme and its legislative history in order to insure that the presumption against extraterritoriality correctly reflects Congress' actual intent.

Finally, the fact that Congress appointed the DOL rather than the SEC to enforce the Act's whistleblower section does not imply that Congress had a different purpose for enacting the whistleblower section. The DOL is responsible for enforcing dozens of federal whistleblower statutes. While Congress' selection of the DOL reflects an understanding that enforcement issues may be similar for all whistleblower statutes, it does not suggest that the underlying purpose of the whistleblower section was different than the purpose of the other sections of the Act.

BSC's other arguments in support of affirming the district court's decisions fail for the reasons set forth below and in Appellant's Opening Brief.

## **ARGUMENT**

### **I. THE DISTRICT COURT'S DISMISSAL OF THE WHISTLEBLOWER CLAIM SHOULD BE REVERSED.**

#### **A. The *Foley* Presumption Does Not Apply.**

##### ***1. Congress Enacted the Whistleblower Section To Protect Investors in US Securities Markets.***

BSC's *Foley* analysis is fundamentally flawed because it fails to acknowledge that (i) the stated purpose of Sarbane-Oxley's whistleblower section is to protect shareholders of securities listed on US exchanges; and (ii) extraterritorial enforcement of the section would advance that purpose. BSC mistakenly suggests that Congress' purpose in enacting the whistleblower section

was to improve general working conditions for American workers. Indeed, BSC seems to assert that Congress' inclusion of the whistleblower section within the structure of the Sarbanes-Oxley Act was mere coincidence.

BSC tries to support this mistaken view by truncating Senator Leahy's remarks about the purpose of the Act's whistleblower section. In particular, BSC quotes Senator Leahy as stating that the purpose of the whistleblower section is to

provide whistle blower protection to employees of publicly traded companies.

[Appellee's Brief at 26](#) (quoting [Senator Leahy's July 26, 2002 remarks reported at 148 Cong. Rec. S7418](#)). BSC fails to acknowledge that Senator Leahy went on to say that the purpose of providing such protection to the employees of publicly traded companies *was to protect investors and the integrity of US securities markets*. Senator Leahy's complete statement of Congress' intent in passing the Act's whistleblower section is:

The [whistleblower section] was intentionally written to sweep broadly, protecting any employee of a publicly traded company who took such reasonable action *to try to protect investors and the market*.

[See 149 Cong.Rec. S1725-01](#) (January 29, 2003 statement of Sen. Leahy, reproduced at A-155) (emphasis added).

The fact that Senator Leahy did not explicitly address the question of extraterritoriality is not surprising since that issue has never been presented to him or to Congress. His statement confirms that (i) Congress enacted the whistleblower section to protect investors in US capital markets; and (ii) Congress intends the section to be interpreted broadly *in order to achieve that purpose*.

**2. BSC Ignores this Court's Decision in Leon.**

In *United States v. Leon*, 270 F.3d 90 (2001), this Court considered whether a federal criminal statute could be applied extraterritorially, even though the statutory language alone did not disclose Congress' intent regarding the territorial reach of the statute. [Appellant's Brief at 33](#). The statute makes it a crime for an alien who has previously been deported to enter or attempt to enter the United States. All of the defendant's conduct in *Leon*, however, took place outside of the United States, since he had been arrested on a boat in international waters under circumstances that established that the boat was bound for the United States.

Acknowledging the policy reasons underlying *Foley*, the Court nevertheless found the presumption against extraterritoriality not to apply since extraterritorial enforcement in those circumstances was consistent with statute's purpose. The Court explained:

In the ordinary situation, Congress has little reason to care whether citizens in other countries behave in ways that would be forbidden in this country. But where the crime involves a prior deportee's effort to re-enter the United States illegally [committed outside of the United States], *the federal interest is just about the same* as that which leads Congress to punish [a prior deportee who enters or is found within the United States].

270 F.3d at 93 (emphasis added).

The same analysis applies to the Sarbanes-Oxley Act, including the Act's whistleblower section. In the ordinary situation, Congress has little reason to care about extraterritorial enforcement of labor regulations designed to improve working conditions in the United States. But where Congress enacts a labor regulation in order to encourage the disclosure of corporate accounting misconduct that threatens the integrity of US capital markets, the federal interest is just about the same regardless of where such disclosure takes place. Under the *Leon* analysis, the *Foley* presumption does not apply to the Sarbanes-Oxley's whistleblower section. BSC makes no attempt to distinguish *Leon* or otherwise argue that its holding does not apply.

**3. *The Foley Presumption Does Not Apply to All Labor Regulations.***

BSC is mistaken that the *Foley* presumption applies to all labor regulations, regardless of their underlying purpose. Such a "per se" rule against

extraterritoriality is not supported by the case law and is inconsistent with the Supreme Court's careful analysis of the specific statutory language and legislative intent in both *Foley* and *Aramco*.

BSC is also mistaken that extraterritorial enforcement of the whistleblower section may give rise to a conflict with foreign labor laws. There is no doubt that some labor regulations, such as minimum wage laws or laws prohibiting discrimination based on cultural background or gender, could raise conflicts with foreign labor laws or foreign cultural norms. The Sarbanes-Oxley Act's whistleblower section, however, merely extends an additional protection to overseas employees of companies listed on US securities exchanges, namely the right to bring a claim before the United States DOL challenging an adverse employment decision taken in retaliation for their reporting of corporate accounting misconduct.

It is hard to image a foreign law that would conflict with extending such an additional right to overseas employees. Would such a conflicting foreign law require employees to conceal from their supervisors corporate conduct that violates US law? Perhaps BSC believes that some foreign laws require supervisors to ignore reports of corporate misconduct from their employees? Even if such laws exist, would Congress be concerned with extending deference to them in circumstances where such deference might prevent disclosure of corporate

misconduct by companies listed on US securities exchanges? Despite BSC's rhetoric about the potential for conflict with foreign law, it fails to cite to a single foreign labor law that could possibly conflict with extending Sarbanes-Oxley whistleblower protection to overseas employees.

In contrast, there is no doubt that extraterritorial enforcement of other sections of the Sarbanes-Oxley Act will directly conflict with foreign law. For example, the sweeping changes in corporate governance and accounting oversight required by Sarbanes-Oxley directly conflict with both foreign law and foreign corporate culture in these areas. The SEC has recognized this conflict, but nevertheless has held that these sections of the Act must apply extraterritorially in order to give effect to the Act's plain meaning and clear Congressional purpose. [Appellant's Brief at 36 n.16](#). For example, the SEC explicitly rejected objections that Sections 406 and 407 of the Act would "overlap or conflict with the audit committee requirements and corporate governance code of ethics provisions in the issuer's home jurisdictions," holding that giving effect to the statute's purpose trumped any concern over conflicting foreign laws. *Id.* (citing [SEC Release Nos. 33-8177; 34-47235 \(at § II.C\)](#), 68 F.R. 5110, 5120 (January 31, 2003)).

**4. *Congress Did Not Intend for Identical Language to Be Interpreted Differently.***

BSC is mistaken in its assertion that Congress' technical reference to companies listed on US securities exchanges does not indicate an awareness that such companies include hundreds of foreign companies. By defining the scope of the Act with such precision, Congress was well aware that the Act would apply extraterritorially to hundreds of foreign companies in the same manner as other securities laws.<sup>1</sup>

The fact that the whistleblower section applies to "employees" of such companies does not distinguish it from other sections of the Act that the SEC has interpreted must be applied extraterritorially. On the contrary, many of the Act's sections refer to individuals or groups that are somehow connected with the public

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<sup>1</sup>In addition, Congress did not unintentionally apply "boiler-plate" language to define the scope of the whistleblower section. On the contrary, the technical language defining that scope excludes a small class of companies that are subject to most of the other sections of the Act. In particular, although companies that have filed with the SEC a registration statement that has not yet become effective are subject to most of the Act's sections, Congress carefully excluded such companies from the scope of the whistleblower section. [Appellant's Brief at 35 n.15](#). Congress may have excluded such companies from the scope of the whistleblower section because they may be subject to strict prohibitions against public disclosures during the time period before their registration becomes effective. In any case, the exclusion of such companies from the scope of the whistleblower section indicates that Congress carefully considered the precise meaning of the language that it used to define the scope of that section.

companies that are subject to the Act. [Section 306](#) of the Act, for example, applies to “directors or executive officers” of such companies. BSC does not offer any coherent justification for restricting the scope of the word “employee” to US workers yet extending the scope of “directors or executive offers” to individuals working overseas.

**5. *Section 1107 of the Act Does Not Explicitly Refer to Extraterritoriality.***

BSC is mistaken in its assertion that [Section 1107](#) of the Act reflects a Congressional intent to limit extraterritorial application to only those sections that explicitly so state. Nothing in [Section 1107](#) explicitly refers to the issue of extraterritoriality. That section merely amends a pre-existing criminal statute that includes an explicit statement of the statute’s extraterritorial scope. [Section 1107](#) itself is silent as to its extraterritorial effect, just as every other section of the Act.

**6. *DOL Enforcement Does Not Reflect an Intent Against Extraterritorial Scope.***

Congress’ selection of the DOL to oversee enforcement of the Sarbanes-Oxley whistleblower section does not suggest that Congress intended the whistleblower section to be limited to domestic application. While Congress’ purpose in enacting the Sarbanes-Oxley whistleblower section is different than

Congress' purpose in enacting other whistleblower statutes, the practical issues that arise in connection with the enforcement of any whistleblower statute are similar.

Since the DOL oversees enforcement of dozens of federal whistleblower statutes, it is not surprising that Congress would select the DOL to enforce Sarbanes-Oxley's whistleblower statute. Using the DOL's experience in whistleblower enforcement in no way suggests an intent to restrict the territorial scope of the statute, however, especially when such a restriction is contrary to the statute's underlying purpose.

Similarly, Congress' decision to use the claims procedures and *McDonnell Douglas* burden shifting analysis that apply to employment discrimination claims under the Aviation Investment Reform Act has no bearing on whether Congress' intended the whistleblower section to apply extraterritorially. Those claims procedures, which have proven effective in enforcing many types of employment claims, would be just as effective adjudicating Mr. Carnero's whistleblower claim as they would be in adjudicating the whistleblower claim of an employee working in the United States.

**7. *The SEC's Interpreting Regulations Are Entitled to Deference.***

BSC concedes that the SEC is the only administrative agency that has issued regulations regarding the extraterritorial scope of the Sarbanes-Oxley Act. The

DOL has explicitly declined to do so, stating that the purpose of its regulations is not to provide for “statutory interpretation.” [Appellant’s Brief at 38 n. 19](#) (citing [DOL Guidelines at 69 F.R. 52104, 52105 \(at § IV\) \(August 24, 2004\)](#)).

Agency regulations promulgated in the exercise of authority delegated by Congress to make rules carrying the force of law are entitled to deference under [Chevron v. NRDC, 467 U.S. 837 \(1984\)](#). Accordingly, the SEC’s regulations interpreting sections of the Sarbanes-Oxley Act to have extraterritorial scope are entitled to deference.

Although the SEC regulations interpret sections of the Act other than the whistleblower section, the language of the whistleblower section defining its scope is virtually identical. Accordingly, this Court should extend deference to the SEC’s determination that such language mandates extraterritorial application of the Act.

**8. *The DOL’s Administrative Decisions Are Not Entitled to Deference.***

BSC is mistaken in its assertion that the DOL’s preliminary decisions in Mr. Carnero’s claim and in the [Concone](#) claim are entitled to deference. As set forth in Mr. Carnero’s Opening Brief and in this Reply Brief, the DOL’s analysis that the [Foley](#) presumption applies to the whistleblower section is not consistent with either Congress’ intent in enacting the whistleblower section or the analysis mandated by [Foley](#) and its

progeny for disregarding the plain meaning of a statute. *See, e.g., Aramco*, 499 U.S. at 257-58 (poorly reasoned EEOC decision not entitled to significant deference).

In addition, Congress intended the federal courts to resolve *de novo* any issue of law arising from a Sarbanes-Oxley whistleblower claim. Where, as here, the DOL fails to issue a final decision within 180 days of the commencement of the claim, the federal courts have jurisdiction to review the claim *de novo*. 18 U.S.C. § 1514A(b)(1)(B). Similarly, the federal Court of Appeals has direct appellate review over final determinations issued by the DOL. 49 U.S.C. § 42121(b)(4)(A) (made applicable to Sarbanes-Oxley's whistleblower section pursuant to 18 U.S.C. § 1514A(b)(1)(C)).

**B. The Claim is Timely.**

BSC is mistaken that the district court's dismissal of the whistleblower claim may be affirmed on an alternate ground, not addressed by the district court, that the claim is time barred. *Appellee's Brief at 38-43*. In fact, the undisputed evidence establishes that the claim is timely because Mr. Carnero has alleged discriminatory conduct that both parties concede took place within the 90 day limitations period. In particular, Count II of Mr. Carnero's complaint alleges that BSC's commencement of a frivolous lawsuit in Argentina for defamation constitutes "an attempt to intimidate, threaten and harass Mr. Carnero and to prevent him from pursuing his rights under [the Sarbanes-Oxley Act]." *A-20 (Count II of DOL Complaint); A-5 (SOX*

Complaint) at ¶ 6 (incorporating allegations of DOL Complaint). It is undisputed that BSC commenced its Argentine defamation lawsuit against Mr. Carnero on May 30, 2003, *see* A-196 (Bolatti Declaration) at ¶ 7, only 33 days before Mr. Carnero filed his DOL complaint on July 2, 2003, A-5 (SOX Complaint) at ¶ 6. *See also* Appellant's Brief at Statement of Facts § E (pp. 14-15) (describing BSC's frivolous defamation lawsuit). Accordingly, Mr. Carnero's whistleblower claim is timely.<sup>2</sup>

BSC is also mistaken that the district court could have dismissed as untimely Count I of his whistleblower complaint, which alleges that BSC's April 3, 2002 termination constitutes discriminatory conduct protected by the Act. Under *Delaware State College v. Ricks*, 449 U.S. 250 (1980) and the other authority on which BSC relies, the limitations period for a claim for discriminatory discharge begins to run when the decision to discharge is both made and *unequivocally* communicated to the complainant. *See, e.g., Zebedeo v. Martin E. Segal Co*, 582 F. Supp. 1394 (D. Conn. 1984).

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<sup>2</sup>BSC's unjustified opposition to Mr. Carnero's request for statutory termination benefits under Argentine law during the 90 day limitations period also constitutes discriminatory conduct that entitles Mr. Carnero to relief under the Act. *See* A-191-193 (Carnero Dec.) at ¶¶ 27-33 (describing BSC's unjustified opposition to his claim for termination benefits through June 12, 2003).

Here, it is undisputed that BSC's telegrams dated March 25 and 27, 2003 offered Carnero reinstatement in a comparable position, albeit at a third of his salary at the time he was terminated (BSC's offer was based on payment in devalued Argentine Pesos). [A-274 \(March 25 telegram\)](#). At the very least, that offer raised uncertainty as to BSC's intention to terminate Carnero. [A-176-177 \(Sup. Carnero Dec.\) at ¶¶ 6-7](#). That uncertainty was not resolved until at least April 3, 2003, the date on which BSC sent its telegram explicitly terminating Carnero's employment contract with BSC's Argentine subsidiary. [A-176-178 \(Sup. Carnero Dec.\) at ¶¶ 4-9](#) (describing BSC's inconsistent communications regarding Mr. Carnero's termination and the uncertainty that it raised in his mind as to when and whether he had been terminated).<sup>3</sup>

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<sup>3</sup>Mr. Carnero asserts that the limitations period did not begin to run until April 9, 2003, the date on which he received BSC's final telegram rejecting his claim to be reinstated at his prior salary. [A-177 \(Sup. Carnero Dec.\) at ¶¶ 8-9](#). Prior to that time, it was not clear to Mr. Carnero whether the parties' dispute over salary level would be resolved. At the very least, the timing of the parties' respective understanding as to whether Mr. Carnero was terminated or not presents a factual issue on which Mr. Carnero should be permitted to take discovery before judicial consideration of this issue on a motion for summary judgment. Mr. Carnero expressly opposed BSC's motion for summary judgment on this ground. [See Plaintiff's Memorandum in Opposition to BSC's Motion to Dismiss and for Summary Judgment](#) (Docket Item No. 10 for District Court Case No. 1:04-cv-10031-RWZ) at 18 n.7; [Fed. R. Civ. P. 56\(f\)](#) (authorizing such discovery before responding to motion for summary judgment).

## II. THE DISTRICT COURT'S DISMISSAL OF THE STATE LAW CLAIMS SHOULD BE REVERSED AND REMANDED.

### A. The District Court's Decision Is Not "Well Grounded in Fact."

BSC is mistaken in its assertion that the district court's one-paragraph decision dismissing Mr. Carnero's state law claims is "well-grounded in fact." [Appellee's Brief at 43-44](#). The district court's factual findings that Mr. Carnero "had no contact with the defendant in Massachusetts" and "defendant [did not] in any way direct or control plaintiff [in his employment]" are directly contrary to the *uncontradicted* evidence that BSC employees in Massachusetts controlled all of the significant terms and conditions of Mr. Carnero's employment and that Mr. Carnero regularly traveled to Massachusetts to report to his supervisors and perform other job responsibilities. *See Appellant's Brief at 6-9 and 40-42; A-167-327* (Declarations and exhibits that Mr. Carnero submitted in opposition to BSC's Motion to Dismiss); [A-102-141](#) (Mr. Carnero's memorandum of law submitted to the district court in opposition to BSC's motion to dismiss).

BSC is also mistaken in its assertion that BSC's control over Mr. Carnero's employment and his other contacts with BSC's Massachusetts headquarters are "immaterial" because they do not provide a basis for him to bring a claim under Massachusetts law. [Appellee's Brief at 44](#). Neither BSC nor the district court

address Mr. Carnero's choice of law analysis under Massachusetts and Argentine choice of law rules. [A-102-140](#) (Mr. Carnero's memorandum of law submitted to the district court in opposition to BSC's motion to dismiss the state law claims) at [pp. 26-28](#) (Massachusetts choice of law rules select Massachusetts law); [A-198-220](#) (Declaration of plaintiff's expert on Argentine law, Dr. Mario Ackerman) at [¶¶ 13-16](#) (Argentine choice of law rules select US law).<sup>4</sup>

Finally, BSC makes no attempt to defend the sufficiency of the district court's decision to provide meaningful appellate review. Even if the district court's factual findings were not clearly erroneous, the decision does not set forth sufficient information to understand the legal basis for the district court's decision.

**B. The Proposed Alternative Grounds Do Not Support Affirmance.**

**1. *The Alternative Grounds Are Not Ripe for Appellate Review.***

BSC asserts that this Court should independently evaluate three alternative grounds for dismissal that the district court did not address: (i) *forum non conveniens*; (ii) international comity; and (iii) lack of diversity due to the necessity

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<sup>4</sup>BSC's assertion that there is no basis for Mr. Carnero to assert a claim under Massachusetts law is directly contrary to the express choice of law provision in Mr. Carnero's Stock Option Plan. That Plan, which is a written agreement between BSC and Mr. Carnero, provides that it shall be governed by Massachusetts law. [A-221-226](#) at [§ XII \(A-225\)](#).

of adding an indispensable party. BSC is mistaken, however, that these grounds raise purely legal issues that this Court reviews *de novo* on appeal. On the contrary, each of these grounds for dismissal require the district court to make factual determinations that are reviewed by this Court for abuse of discretion. *See, e.g., Iraborri v. International Elevator*, 203 F.3d 8, 12 (1<sup>st</sup> Cir. 2000) (forum non dismissal subject to review for abuse of discretion); *Diorinou v. Mezitis*, 237 F.3d 133, 139 (2d Cir. 2001) (international comity dismissal subject to review for abuse of discretion); *United States v. San Juan Bay*, 239 F.3d 400, 403 (1<sup>st</sup> Cir. 2001) (determination that party is indispensable under Rule 19(b) is reviewed for abuse of discretion).

Since the district court has not made any factual determinations with respect to BSC's proposed alternative grounds for dismissing the State law claims, they are not ripe for consideration by this Court.

**2. *The Alternative Grounds Do Not Support Dismissal.***

Mr. Carnero's opposition papers submitted to the district court establish that the each of the alleged alternative grounds do not support dismissal of his state law claims. Mr. Carnero hereby refers to and incorporates those papers, all of which are reproduced in the Appendix. *See A-102-141* (Mr. Carnero's Opposing Memorandum of Law) at pp. 1-18 (statement of facts), pp. 19-23 (comity

argument), pp. 23-30 (*forum non conveniens* argument) and pp. 30-31 (indispensable party argument); A-167-327 (Declarations and exhibits submitted in opposition to BSC's Motion to Dismiss); A-138-140 (chronology of events).

### CONCLUSION

The district court's decision dismissing Mr. Carnero's federal claim under the whistleblower section of the Sarbanes-Oxley Act should be reversed. The district court's decision dismissing Mr. Carnero's state law claims should be reversed and remanded.

Dated: February 16, 2005

BOLATTI & GRIFFITH  
Counsel for Appellant

By:   
\_\_\_\_\_

Edward Griffith

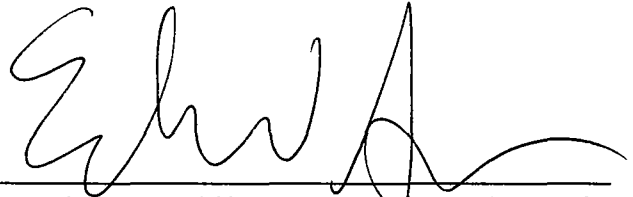
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New York, New York 10005  
(212) 363-3780  
(212) 363-3790 (fax)

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1. This brief complies with the type-volume limitation of Fed.R.App.P. 32(a)(7)(B) because this brief contains 3,912 words, excluding the parts of the brief exempted by Fed.R.App.P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed.R.App.P. 32(a)(5) and the type style requirements of Fed.R.App.P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using WordPerfect 11 in Times New Roman 14 pt font.

Dated: February 16, 2005

A handwritten signature in black ink, appearing to read 'Edward Griffith', written over a horizontal line.

Edward Griffith, counsel for plaintiff-  
appellant Ruben Carnero

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this date served all parties in the foregoing matter with a true copy of **Appellant's Reply Brief** by depositing a copy of same, enclosed in a postpaid properly addressed wrapper, in a post official depository under the exclusive care and custody of the United State Postal Service, to the following:

James W. Nagle, P.C.  
Leslie S. Blickenstaff  
GOODWIN PROCTER LLP  
Exchange Place  
Boston, Massachusetts 02109-2881

This 16<sup>th</sup> day of February, 2005

A handwritten signature in black ink, appearing to read 'D. Derby', written over a horizontal line.

Deborah A. Derby