

BOIES. SCHILLER & FLEXNER LLP
5301 Wisconsin Avenue N.W. Washington, DC 2001 5-201 5 PH
202.237.2727 " FAX 202.237.6131

MEMORANDUM
DRAFT AS OF 6/23/2014- SUBJECT TO
CHANGE
ATTORNEY WORK PRODUCT/ATTORNEY-CLIENT
COMMUNICATION

TO: Burisma

FROM: Boies, Schiller & Flexner LLP
PRIVILEGED

AND
DATE: June 23, 2014

CONFIDENTIAL

RE: Strategic Outline for Legal Defense Plan,
including Exhibits A-C as attachments

Executive Summary

Burisma has been advised that it is the subject of a criminal investigation being conducted by the Ministry of Internal Affairs of Ukraine and, upon information and belief, the investigation is politically motivated (the "Investigation"). Therefore, in anticipation of potential litigation, Burisma has implemented a three-track parallel strategy, focusing on: 1) political, 2) legal, and 3) public relations efforts to defend against or dismiss any case brought by the Ukrainian government arising from the Investigation (the "Global Defense Strategy").

The Global Defense Strategy includes the following overall goals:

A. Insulate Burisma from politically motivated disruptions in operations, including

legal challenges to licenses, now and in the future.

B. Raise awareness about and demonstrate, to both U.S. and Ukrainian officials, Burisma's commitment to U.S.-Ukraine shared goals of transparency, anti-corruption and security in the Ukrainian energy sector.

C. Communicate that Burisma is a modern, transparent, expert Company with corporate best practices by any international standards.

D. Communicate and effectuate corporate growth opportunities for Burisma.

Burisma can measure the effectiveness of our strategy by whether the actions outlined below are, step-by-step, taking Burisma closer to achieving the goals outlined above.

This memo is divided into three parts, reflecting the Global Defense Strategy:

I. Political strategy in the U.S. and Ukraine
Global legal strategy (including investigative work
111. Global public relations strategy

WWW.11S1,1.1.P.COM

First, here is an overview of the team advising Burisma in relation to its Global Defense Strategy.

Boies, Schiller & Flexner ("BSF"): Renowned U.S. law firm that has repeatedly obtained favorable results for clients caught in the crosshairs of high-profile and multi-dimensional disputes involving actual or threatened litigation, intense media scrutiny, and government investigations. BSF will lead the Global Defense Strategy, including advising Burisma on all legal issues and on how to protect Burisma from legal challenges.

From its inception, BSF has handled the most complex, high-profile and high-stakes legal matters in the United States and abroad - including, in its early years, serving as lead counsel to former Vice President Al Gore in Bush v. Gore and related proceedings that decided the 2000 presidential election to, more recently, leading the global defense of the Bank of New York Mellon which settled a \$22.5 billion claim filed by the Russian Federal Customs Service in Russian court for less than 1% of claimed damages. Resolution of the case involved work with the U.S. and Russian Governments at the highest levels.

Because BSF understands that in complex disputes success can be determined by what happens outside the courtroom, we work directly with executives, boards, and in-house teams - in the United States and abroad - to craft an overall strategic approach extending to all facets of a case. We assist clients in dealing simultaneously with the law, the media, and the government. And we help them respond swiftly and intelligently in a way that not only addresses the existing crisis but also minimizes future financial, litigation, and reputational exposure.

- Nardello & Co. ("Nardello"): Global investigative firm that has extensive experience investigating corporate governance issues in Ukraine and the former Soviet Union. Founded by former U.S. federal prosecutor Dan Nardello, Nardello brings a legal discipline to the investigations it conducts, and works closely with corporations, law firms, governments and high-net-worth individuals to devise strategies that are tailored to the business needs of its clients. Since its beginning, Nardello has worked on some of the highest profile litigation and transactional matters, and the firm is routinely involved in

cases that are on the front pages of the publications such as the New York Times, Wall Street Journal and Washington Post. It has conducted dozens of investigations in the former Soviet Union, including Ukraine, and has a team of regional experts based out of its London office.

- FTI Consulting ("FTI"): Global business consultancy with 700 public relations and communications professionals worldwide. FTI's energy sector, with approximately 100 consultants focused solely on energy, is considered a go-to resource for reputation management engagements for upstream exploration and production businesses, particularly those with geographically dispersed challenges. To that end, FTI advises Noble Energy on issues in Nicaragua, Israel, Equatorial Guinea and the Falkland Islands as well as Transocean on issues in the US and Brazil and Royal Dutch Shell on its efforts in South Africa and Alaska. FTI also advises a number of top-tier industry associations

in the oil and gas space as well as a collection of smaller producers in the US and abroad.

FTI maintains offices across Europe including a Brussels-based public affairs practice and maintains affiliate relationships in Ukraine and many of the former CIS countries.

Finally, the team working with Bursima has advised companies involved in complex reputational issues in Uzbekistan, Kazakhstan and Ukraine.

ML Strategies ("MLS"): Leading government relations firm led by David Leiter,

Secretary of State John Kerry's former Chief of Staff and a former U.S. Department of

Energy official. MLS is experienced in working with law firms to navigate complex

political, government, and business issues and Mr. Leiter has strong relationships with

key U.S. decision makers and is well regarded on the subject of energy specifically.

MLS will help build relationships with U.S. officials, and help Burisma convey any feedback on U.S. laws and regulations related to Ukraine.

BSF regularly serves as the coordinating entity for globally sensitive matters such as the challenge Burisma is currently confronting. While each of the components of the Global Defense Strategy draws on experts and experiences that are unique, we firmly believe that only an integrated approach led by BSF can ensure that strategy remains consistent across all aspects of the controversy; that internal investigations are conducted timely, thoroughly and accurately; that litigation positions or positions taken with a legislator or regulator are not undercut elsewhere; and that deliberations and communications forged in crisis are protected to the maximum permissible extent by applicable legal privileges. Each of the groups highlighted above are accustomed to the collaborative nature of these undertakings and understand the role that each plays within the broader ecosystem of a defense that BSF has put together on your behalf. As you read the summaries of our political, legal and public relations elements below, you'll see that each element informs and is informed by the others.

, Political

a. Since Ukraine's judicial system (particularly in politicized cases) is unpredictable, Burisma is seeking to address fighting any potential lawsuit through non-judicial channels.

b. Overall Strategy

i. Meet with the U.S. officials in Washington, DC who are leading U.S. policy related to Ukraine to brief them on who Burisma is, its significance to the future of Ukraine, and the Investigation in order to seek their advice

and assistance; focus on why a legal challenge and/or a taking of

Burisma's licenses is detrimental to both U.S. and Ukrainian national interests.

ii. Engagement in similar discussions with Ukrainian officials in the U.S., led by U.S. representatives of Burisma.

iii. Allow for a face saving exit for the Ukrainian government.

c. U.S. Political/Regulatory Engagement

See also Exhibit A for "Six-Month U.S. Government Strategy" memo, which includes further details including additional future meeting suggestions.

See also Exhibit B for "June 2014 Capital Hill Meeting Summaries" memo.

- i. U.S. Senate (Congress)
 - 1. Foreign Relations Committee
 - a, Chairman Robert Menendez (D-NJ) (Met with staff on June 13)
 - b, Ranking Member Bob Corker (R-TN) (Met with staff on June 13)
 - e. Senator Ben Cardin (D-MD) (briefed staff orally and Senator in writing prior to trip to Ukraine in late May, 2014)
 - d. Senator Ed Markey (D-MA) (introduced the Ukrainian Independence from Russia Energy Act) (may want to meet with in the future)
 - 2. European Affairs Subcommittee
 - a. Chairman Chris Murphy (D-CT) (Met with staff on June 19th)

- b. Ranking Member Ron Johnson (D-WI) (Met with staff on June 16 1111)
- c. Senator Ben Cardin (D-MD) (briefed staff orally and Senator in writing prior to trip to Ukraine in late May 2014)
- 3. Senator Kelly Ayotte (R-NH) (briefed staff orally and Senator in writing prior to trip to Ukraine in late May 2014)
- 4. Senator Rob Portman (R-OH) (briefed staff orally and Senator in writing prior to trip to Ukraine in late May 2014)
- 5. See Exhibit A for list of additional targets

- ii. U.S. House of Representatives (Congress)
 - 1, Foreign Affairs Committee
 - a. Chairman Ed Royce (R-CA) (met with staff on June 17th)
 - b. Ranking Member Eliot Engel (D-NY) (met with staff on June 17th)
 - c. Congressman Steve Stockman (R-TX) (briefed staff orally and Congressman in writing prior to trip to Ukraine in late May 2014)

2. Europe, Eurasia, and Emerging Threats Subcommittee

- iv. Conduct research surrounding the Investigation and collect defensive documents related thereto, including supporting documents for the licenses at issue as well as any disclosures by Nikolai to the Ukrainian

anti-monopoly service or other relevant regulatory body regarding his business interests.

v. Prepare for ICSID arbitration should the Ukrainian government "take" away Burisma rights, creating an injury-in-fact.

b. U.S. Legal

i. To date, BSF has reviewed Burisma's constituent documents and various other background materials to understand the company. We have also reviewed both current UK and NYSE corporate governance standards and have worked on a set of formal corporate governance recommendations for Burisma.

Summary of BSF's Recommendations related to Corporate Best Practices

1. D&O Insurance. The company should obtain MO insurance, We recommend that we reach out to Joseph Coughlin from Corporate Risk Solutions, LLC. The corporate group has worked with Joe in the past and believe he would be ideal for this situation given the complexities involved.

1 Corporate Governance.

a. The company should develop and adopt a written set of corporate governance guidelines that provide the framework for the effective governance of the company.

This would include the recommended number of independent directors on the Board (i.e., a majority) and the specific criteria and process for determining independence.

b. The company should develop and adopt a written code of business conduct and ethics that sets out the guiding

of the principles for all officers, directors and employees
interests company to act lawfully, ethically and in the best
include of the company. This code of conduct should also
for an anti-bribery policy, as well as internal controls
putting the policy into effect.

Board c. We understand that at the last board meeting, the
resolved to form an audit committee and a strategic
require planning committee. Each of these committees will
committees, charters to be drafted. In addition to those 2
we would recommend for consideration the following
additional committees:

- Nominating/Corporate Governance Committee – NYSE rules require the board to form this committee, and that it be composed entirely of

independent directors. It must have a written charter that addresses the committees purpose and responsibilities - which, at minimum, must be to: (I) identify individuals qualified to become board members, consistent with criteria approved by the board, and to select, or to recommend that the board select, the director nominees for the next annual meeting of shareholders (or at the present time, for NZ's consideration); develop and recommend to the board a set of corporate governance guidelines applicable to the corporation; and oversee the evaluation of the board and management; and (2) an annual performance evaluation of the board.

- Compensation Committee –NYSE rules require the board to form this committee, and that it be composed entirely of independent directors. It must have a written charter that addresses the committees purpose and responsibilities - which, at minimum, must be to have direct responsibility to: (1) review and approve corporate goals and objectives relevant to CEO compensation, evaluate the CEO's performance in light of those goals and objectives, and, either as a committee or

together with the other independent directors (as directed by the board), determine and approve the CEO's compensation level based on this evaluation; and (2) make recommendations to the board with respect to non-CEO executive officer compensation, and incentive-compensation and equity-based plans that are subject to board approval.

d. The board should be keeping minutes of each of the board meetings. Following each meeting, the board minutes need to be drafted and then circulated to the board for approval

as the official minutes of such meeting. We believe Vadim,

as Corporate Secretary, accomplished this but please advise

if that is not the case.

3. Local Jurisdiction Issues. We need to understand better how local

laws in Ukraine and Cyprus may impact the above corporate governance issues. For example, in crafting the code of business

conduct, we will need advice from Ukrainian and Cyprus counsel

re: anti-bribery/corruption laws and regulations in Ukraine/Cyprus.

As such, we would suggest the company putting us in touch with

their Ukrainian and Cypriot counsel.

4. Jurisdiction of Incorporation. The board and the company should

continue to consider changing the company's jurisdiction from

Cyprus to another jurisdiction. The main considerations are (1)

optics, (2) tax consequences (which BSF can assist with at your

request), and (3) the impact on venue for any international

arbitration or litigation will need to be considered. In addition, to

the extent the company decides to re-domesticate into another

jurisdiction, the corporate governance policies will need to be

adapted to that particular jurisdiction.

5. We would like to know the identities of and information about any

of Burisma's partners in its subsidiaries that are not wholly-owned.

iii. Next Steps: BSF can do the following work right away, based on the

recommendations above, should Burisma authorize it, working with

Burisma's Ukrainian and Cyprus counsel as necessary.

1. Assist in obtaining D&O insurance

2. Draft various corporate governance policies/guidelines/charters to

be considered by the Board of Burisma for adoption, including:

a. A corporate governance guideline

b. A code of business conduct, including anti-bribery/corruption policies

c. Various charters for Board committees

Assist the company in reviewing potential re-domestication of the

holding company from Cyprus to another jurisdiction, including

providing international tax advice.

c. Ukrainian Legal

Arguments under Ukrainian law to defend against the Investigation

1. [To be discussed and added in the future]

2. Some of the information that Nardello is seeking to learn and

document with exhibits may be usable in a domestic defense.

d. International Legal

i. Evaluate International Arbitration Claim - Analyze whether Burisma may

be in position to file an arbitration against Ukraine under the International

Convention on the Settlement of Investment Disputes ("ICSID" or the

"Convention").

Summary of BSF's Evaluation of ICSID arbitration:

1. The ICSID arbitration rules provide that foreign investors can file arbitrations against countries that interfere with a foreign investment. One of the key requirements under the ICSID rules is that the investor must be a national of a state that is a signatory to the Convention, and the country in which the investment is made must also be a signatory to the Convention. In this case, both

9

Cyprus (Burisma being a Cypriot entity) and Ukraine are signatories to the Convention, so this requirement appears to be met. Note also that the Netherlands is a signatory to the Convention, should the Burisma become a Dutch corporation.

2. Any potential request for arbitration we may pursue is highly fact dependent, and requires actual harm to Burisma investment.

Threats to take actions harmful to Burisma are not enough – the harm has to involve an actual taking away of Burisma rights, such as a revocation of its licenses to explore and develop petrochemicals in Ukraine, or a refusal to allow it to sell oil and gas.

As a result, we will continue to monitor carefully the events on the ground as they develop. Although Burisma certainly does not want to commence ICSID proceedings before its investments in Ukraine have been harmed, we also want to be able to proceed

expeditiously should that occur. Should filing an ICSID arbitration become warranted, we will want to be in position to register a Request for Arbitration (the document that commences the proceedings) promptly with the ICSID Secretariat, and will want to start negotiating with Ukraine over the arbitration procedures.

Those negotiations will include a variety of issues – including the number of arbitrators, and the identity of our party-nominated arbitrator, if the parties agree that each should nominate one arbitrator, as well as the schedule for the proceedings and various other procedural issues.

4. The Request for Arbitration should be relatively short, and could be prepared and filed within a few weeks of the decision by Burisma to pursue ICSID arbitration. To the degree we would intend to use the Request for Arbitration as a tool to leverage settlement discussions and negotiations, however, we would want to make the Request for Arbitration longer and more fulsome, which could take a month or so of detailed fact development work, including interviews, to accomplish. The arbitration itself will take significantly longer, with a number of rounds of pleadings being filed over multiple years.

III. Public Relations Strategy

a. Overall Strategy

i. Protect Burisma and its leadership from mischaracterizations and or

aggressive public inquiry by regularly delivering consistent and fact-based messaging.

Position Burisma as maintaining an evolved and ongoing communications

program in line with the westernized leadership standards it has adopted.

Attorney Work Product
Privileged and Confidential
Draft as of June 23, 2014 – Subject

to Change

roughly 89% of Ukraine's energy sector is government operated and that Burisma accounts for 20% of the 11% of private sector operations.

2. Staff of Senate Foreign Relations Committee Chairman Robert Menendez (D-NJ)

Following our meeting with Ranking Member Corker's staff, we met with Hal Connolly, who serves as Senator Foreign Relations Committee Chairman Menendez's lead staffer for international energy issues. We were later joined by one of Hal's colleagues who also supports

Chairman Menendez's work on the Foreign Relations Committee and had previously worked for now Secretary of State John Kerry.

Similar to the meeting with Ranking Member Corker's staff, we introduced Burisma and discussed the company's interest in the portions of Senator Markey's bill that overlap with Ranking Member Corker's legislation. Hal agreed that there are key similarities between the bills, particularly in promoting domestic natural gas development and enhanced transparency, and indicated that he has also been providing feedback to Senator Markey's staff.

Hal's colleague was especially interested in discussing corruption in Ukraine. He articulated his perception that many former European Government officials are now working for oil and gas companies and have acquired some wealth. He also questioned to what extent any damaging action against Burisma's licenses might be in retaliation for any of Nikolay Zlochevskiy's actions as a member of the Ukrainian Government.

Also related to transparency, the staffers suggested that the recent legislation passed by the Verkhovna Rada to implement the European Union (EU) code of laws could help to increase transparency in the Ukrainian Government. This legislation is expected to be signed into law by the end of June.

Hal added that Chairman Menendez has talked about doing a second assistance package for Ukraine that would be focused on 1) Russian sanctions, and 2) technical assistance for specific Ukrainian industries. On sanctions, he said this bill would need to be more realistic than Ranking Member Corker's existing legislation.

In closing, Hal suggested also introducing Burisma to key officials at the State Department's Bureau of Energy Resources (ENR), the U.S. Agency for International Development (USAID), the Department of Energy (DOE), and the Treasury Department.

Staff for Senate European Affairs Subcommittee Ranking Member Ron Johnson (R-WI)

Our next meeting was with Deb Weigel who serves as a Legislative Assistant to Senate European Affairs Subcommittee Ranking Member Johnson. Deb's portfolio includes both energy issues and foreign affairs.

After introducing Burisma, Deb seemed especially interested in how Burisma's business goals could help Ukraine in its efforts to achieve energy independence. In particular, she asked questions about Burisma's current production rates and its timeline and process for ramping up production of Ukraine's domestic natural gas resources.

Attorney Work Product
Privileged and Confidential
Draft as of June 23, 2014 – Subject

to Change

Deb also provided some key insights on how the Senate European Affairs Subcommittee might move forward in responding to developments in Ukraine. First, Deb indicated that Ranking Member Johnson's Legislative Director is currently working on drafting an anti-corruption and transparency measure that may ultimately be considered by the Subcommittee. In addition, Deb noted that the Subcommittee has for a while had some interest in holding a hearing on energy security in Europe.

Since our meeting, we have followed up with Deb and asked that she keep us posted on any forthcoming legislation meant to address corruption in Ukraine. We have also offered to serve as a resource as planning for a Subcommittee hearing on energy security continues.

4. Staff for House Europe, Eurasia, and Emerging Threats Subcommittee Ranking Member Bill Keating (D-MA)

Next, we met with the staffers who support Congressman Keating in his role as Ranking Member of the House Europe, Eurasia, and Emerging Threats Subcommittee. Ranking Member Keating's Chief of Staff Garrett Donovan participated in this meeting, along with Moises Mendoza, who serves as a Charles B. Rangel Fellow. We were also joined by some of Ranking Member Keating's Subcommittee staff, including Democratic Staff Director Naz Durakoglu and Pearson Fellow Craig Conway.

In summary, much of the discussion in this meeting focused on Secretary of State John Kerry, especially given the Massachusetts connections, and the State Department's focus on Ukraine. Like many of our other meetings, Ranking Member Keating's staff seemed especially receptive to Boies, Schiller & Flexner's involvement in helping Burisma to increase its corporate transparency and to pursue more Western-like business standards.

Naz, in particular, had a number of questions about Nikolay Zlochevskiy and questioned whether or not some of the pressure on Burisma's licenses might be in retaliation for his involvement in previous administrations that shifted from being pro-Western to being more pro-Russian. Heather detailed earlier court cases related to Burisma's licenses and noted that Boies, Schiller & Flexner's current engagement with Burisma is focused on heading off any potential re-litigation.

Staff for House Foreign Affairs Committee Chairman Ed Royce (R-CA) and Ranking Member Eliot Engel (D-NY)

Our next meeting was with bipartisan staff on the House Foreign Affairs Committee. From Chairman Royce's staff, we were joined by Nilrini Rubin, Doug Seay, and Sarah Blocher. Of particular interest, Nilmini previously worked for former Senate Foreign Relations Committee

Chairman Dick Lugar (R-IL). We also found Doug to be especially engaged. From Ranking Member Engels staff, we were joined by Brent Woolfork, who serves as Ranking Member Engels lead staffer on international energy issues for the House Foreign Affairs Committee.

Following our introduction of Burisma, Doug said that even in discussions between senior U.S. and Ukrainian Government officials, there has been some recognition that there is always going

Attorney Work Product
Privileged and Confidential
Draft as of June 23, 2014 – Subject

to Change

to be some level of corruption in Ukraine. While Ukrainian officials have privately committed to doing everything possible to mitigate corruption, Doug noted that the outlook remains bleak for total transparency. The staffers also suggested that it is quite possible that some of the most senior government officials are not aware of corruption that occurs within lower levels of their organizations. Like Burisma, the staff hoped that senior government officials would be concerned about corruption at any level within the bureaucracy. There were also some questions raised about Nikolay Zlochevskiy's tenure as part of the Ukrainian Government.

The Foreign Affairs Committee staff also asked a number of questions about Burisma's business operations. For example, the staffers were interested in learning more about the difference between the price Burisma is charging for natural gas and the cost of natural gas that is imported from Russia. They also asked about the applicability of the Subsoil Code of Ukraine and whether or not the Ukrainian Government has rights to any percentage of revenues earned or resources developed by Burisma. In addition, the staffers had questions about pipeline infrastructure and wanted to know whether or not Burisma owns any of the pipelines it is using to transport

natural gas.

We also discussed some of the pending legislation in both the House and Senate related to how the U.S. can support Ukraine in its transition, including by promoting transparency and encouraging robust activity in Ukraine's energy sector. Nihini specifically asked if there might be specific bills that are most preferential to Burisma's interests in Ukraine.

In closing, the staff noted their consensus that Ukraine is in need of technical assistance and sharing of best practices in a number of areas. In addition, the staff expressed a willingness to meet with any Burisma representatives who may visit the U.S., so long as they are open to speaking frankly about Burisma and developments in the country.

Staff for Senate European Affairs Subcommittee Chairman Chris Murphy (D-CT)

Next, we met with Senate European Affairs Subcommittee Chairman Chris Murphy's Chief of Staff Allison Herwitt and his Legislative Assistant for foreign policy Jessica Elledge.

In addition to introducing Burisma, we also followed up on the Subcommittee hearing on energy security in Europe that we had learned about in our earlier meeting with Ranking Member Johnson's staff. We were told that the hearing was being planned for the week of June 23, but will likely be held the week of July 7. Allison said that Deputy Assistant Secretary of State for Energy Diplomacy Amos Hochstein will likely be invited to testify at the hearing. While they had initially considered inviting U.S. Special Envoy for International Energy Affairs Carlos Pascual to testify, given the recent announcement that Ambassador Pascual will leave his position in August, the Subcommittee is now more inclined to have Ambassador Pascual participate once he has left the Administration.

We also discussed the possibility of Senator Murphy facilitating an introduction for Burisma and its U.S. team to Ukrainian Ambassador to the U.S. Olexander Motsyk. In their outreach to the Ukrainian Embassy, Senator Murphy's staff will also probe to see if Ambassador Motsyk would be open to meeting with just Burisma's U.S. legal and lobbying teams or if the Ambassador would be more inclined to meet with a representative of Burisma. We recognize that the

Attorney Work Product
Privileged and Confidential
Draft as of June 23, 2014 – Subject

to Change

participants in this meeting could affect how the meeting is reported to the Ukrainian Government.

There was also some discussion on the frequency of U.S. government traveling to Ukraine through the U.S. Embassy in Kyiv. Allison said she thought that at least one House Member might be planning to travel to Ukraine and she would try to confirm that trip. In addition to following up on the House Member who we think might be headed to Ukraine, we also expressed an interest in being alerted to any future congressional trips to Ukraine.

We also got to talking about how much Senator Murphy is enjoying his work on the Senate Foreign Relations Committee. In order to help make his foreign policy work even more relevant to his constituents in Connecticut, we also suggested that Senator Murphy consider speaking to the New York-based Council on Foreign Relations about his engagement on U.S. policy towards Ukraine's political transition. This is one of the think tanks that we are also considering engaging in August.

