

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

BRIDGESTONE AMERICAS, INC.,)
)
 Plaintiff)
)
v.)
)
)
INTERNATIONAL BUSINESS)
MACHINES CORPORATION,)
)
 Defendant)

No. 3:13-1196
Judge Sharp/Brown
Jury Demand

O R D E R

A telephone conference was conducted on February 4, 2015, at the request of the parties. Six topics were up for discussion.

The **first** topic dealt with the inadvertent disclosure of some 731 documents by Bridgestone, which they wish returned. These 731 documents were part of some 1.6 million documents produced in disclosure. The documents are divided into two subsets. The first subset is documents which are relevant and either have been or will be disclosed. However, these particular documents were collected in a folder at the request of a Bridgestone attorney and consequently they identify to some degree the importance that Bridgestone puts on these documents. The disclosure of the particular documents contained in that folder could lead to the disclosure of mental impressions and work product of the Bridgestone attorney who requested them.

The Magistrate Judge believes that these documents should either be destroyed or returned to Bridgestone. However, Bridgestone will insure and, at the appropriate time certify, to

IBM that the documents contained in that folder either have been produced as part of the normal discovery process, or will be produced.

The **second** set of documents contain documents that Bridgestone claims are clearly work product. They have provided a matrix describing these documents which have a number of blank entries. IBM does not contest the fact that Bridgestone is entitled to protection of its privileged documents, however, they contend that in order to evaluate whether the privilege is properly claimed, they need a better privilege log. After discussion with the parties the Magistrate Judge believes that Bridgestone should provide a more detailed description of the document than has previously been provided. If, after IBM has an opportunity to review the new privilege log, there are still questions concerning the propriety of these particular documents given that the number of documents appear limited the Magistrate Judge would be willing to undertake an *in camera* review of the documents for privilege.

The **third** issue deals with IBM's attempt to secure documents from Bridgestone's parent company in Japan. The Plaintiff, Bridgestone America, contends that they do not have the authority to order the parent company to produce documents. If the parties are unable to resolve this issue, IBM may brief this issue on or before **February 13, 2015**. Bridgestone's response will be due **February 27, 2015**, and any reply will be due on **March 6, 2015**. Replies should be limited to **five pages**.

The Magistrate Judge suggested to IBM that they consider issuing formal deposition notices to Bridgestone's parent company, to see if Bridgestone's parent company is willing to produce the documents in a reasonably timely fashion. Bridgestone America advised that they would express to the parent company that they have no objection to the production of the documents. The Magistrate Judge made this suggestion in an effort to avoid getting in a legal thicket over whether the subsidiary does have custody and control over documents held by the parent. As long as IBM can get the documents it may not be necessary to delay the case over an issue as to whether such production can be compelled from Bridgestone America.

The **fourth** issue was the source of various noncustodial documents. IBM has requested Bridgestone provide more information about the meaning of various terms that have been used to describe some noncustodial documents. It appears that the parties should be able to resolve this issue. IBM should provide Bridgestone a list of the terms they need defined. Bridgestone should respond to their request within **seven days**. If, at that point differences remain, the parties may contact the Magistrate Judge again.

The **fifth** issue deals with laptop computers that were issued to IBM employees while they were working on the disputed contract at Bridgestone. IBM would like to know what happened to the computers. Bridgestone should provide within **21 days** such information it has as on what computers were issued to IBM

employees and what disposition of the computers was made after the IBM's employees left. If the computers were reused, they should include information about what happened to the data on the computers-whether it was preserved or wiped out.

The **sixth** issue dealt with the predictive coding being employed by Bridgestone and what efforts they have made to change the seed set, in view of the fact that on review some of the documents listed as nonresponsive were, in fact, responsive. The parties are in further discussion of this issue and at this point there does not appear to be anything that the Magistrate Judge needs to resolve. The Magistrate Judge does remind both parties that to the extent they use predictive coding, he expects full transparency in how the predictive coding is established and used.

The Magistrate Judge appreciates counsel's frankness and willingness to discuss and compromise these issues with an eye toward resolving them as expeditiously as possible.

It is so **ORDERED**.

/s/ Joe B. Brown
JOE B. BROWN
United States Magistrate Judge