

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

JOHN WARD, JR.

§
§
§
§
§
§

v.

C. A. NO. 08-4022

JURY TRIAL DEMANDED

CISCO SYSTEMS, INC.

**DEFENDANT CISCO SYSTEMS, INC.'S MOTION FOR MAGISTRATE JUDGE
SETSER TO COMPEL PRODUCTION OF DOCUMENT ON PRIVILEGE LOG AND
BRIEF IN SUPPORT THEREOF**

TO THE HONORABLE MAGISTRATE JUDGE:

Cisco System, Inc. ("Cisco") hereby files its Motion to Compel Production of Document on Privilege Log and Brief in Support as set forth below.

I. INTRODUCTION

Plaintiff brought this action on March 13, 2008, claiming that Cisco had published defamatory articles about him that have damaged his reputation and caused him mental anguish.

On March 30, 2009, Cisco served its First Request for Production on Plaintiff, which was aimed at discovering essential information relating to Plaintiff's claims and so that Cisco could prepare for depositions and further discovery in this case. Ward included a document on his privilege log that could not be privileged because it is a communication with someone who is not his attorney in this case.

Cisco filed a motion to compel this document previously, but there was confusion about which document was at issue. Magistrate Judge Setser therefore ordered that Cisco should determine the correct document number from Plaintiff's privilege log and file another motion.

On December 21, 2009, counsel for Plaintiff identified the document as document No. 6 from Plaintiff's privilege log.

II. ARGUMENT

In response to Cisco's First Request for Production, Plaintiff logged a document in his privilege log (Exhibit A) that could not be privileged. Number 6 states that it is a communication between D. Pridham and John Ward, Jr. and is described as "Work product and litigation strategy regarding Ward v. Cisco." (Exhibit A). Yet Ward testified that David Pridham was not an attorney in this litigation:

Q. Is Mr. Pridham, who you referenced earlier, an attorney in the Ward versus Cisco case?

A. No.

(Deposition of John Ward, Exhibit B at 130:18-20). The communication could not possibly be privileged or work product when the conversation was not between Plaintiff and his attorneys in this lawsuit. Therefore, Ward should be ordered to produce the document.

III. CONCLUSION

For the reasons set forth above, Cisco requests that the Court overrule Plaintiff's objections and order Plaintiff to produce document no. 6 from Plaintiff's privilege log. In the alternative, Cisco requests that Plaintiff be required to produce the document for *in camera* inspection to determine whether it is privileged.

Respectfully submitted,

JACKSON WALKER L.L.P.

/s/ Charles L. Babcock

Charles L. Babcock
Federal Bar No.: 10982
Email: cbabcock@jw.com

Richard E. Griffin
Arkansas Bar No.: 63020
Email: rgriffin@jw.com

Crystal J. Parker
Federal Bar No.: 621142
Email: cparker@jw.com

1401 McKinney
Suite 1900
Houston, Texas 77010
(713) 752-4200

(713) 752-4221 – Fax

Kurt A. Schwarz
Jackson Walker L.L.P.
901 Main Street, Suite 6000
Dallas, Texas 75202
Telephone: (214) 953-6000
Telecopier: (214) 953-5822

ATTORNEYS FOR CISCO SYSTEMS, INC.

CERTIFICATE OF CONFERENCE

The parties have conferred in good faith on the specific issues in dispute in this Motion, and they are not able to resolve their disagreements without the intervention of the Court.

/s/ Crystal J. Parker

CERTIFICATE OF SERVICE

This is to certify that on this 30th day of December, 2009, a true and correct copy of the foregoing was served via electronic mail upon:

Patricia L. Peden
Law Offices of Patricia L. Peden
5901 Christie Avenue
Suite 201
Emeryville, CA 94608
Attorney for Plaintiff John Ward, Jr.

Nicholas H. Patton
Patton, Tidwell & Schroeder, LLP
4605 Texas Boulevard
P.O. Box 5398
Texarkana, Texas 75505-5398
Attorney for John Ward, Jr.

/s/ Charles L. Babcock

Charles L. Babcock

Exhibit A

JOHN WARD, JR. PRIVILEGE LOG

05/29/2009

No.	Pages	From	To	Other Recipients	Date	Description	Privilege
1	1	P. McAndrews	John Ward, Jr. Eric Albritton		3/08/08	Discussion of filing of ESN lawsuit	AC WP
2	1	Chiaviello, Bob	John Ward, Jr		3/14/08	Re Ward v. Cisco	WP
3	1	Eric Albritton	John Ward, Jr. Eric Albritton		10/16/07	Attorney communications regarding filing of ESN litigation	AC WP
4	2	Eric Albritton	Paul McAndrews Eric Albritton John Ward, Jr. Jason Saunders	Gmcandrews pmcandrews	10/18/07	Communications regarding litigation strategy in ESN v. Cisco	AC WP
5	2	Eric Albritton	Paul McAndrews Eric Albritton John Ward, Jr. Jason Saunders	Gmcandrews pmcandrews	10/18/07	Communications regarding litigation strategy in ESN v. Cisco	AC WP
6	1	D. Pridham	John Ward, Jr.		11/06/07	Work product and litigation strategy regarding Ward v. Cisco	AC WP
7	2	P. McAndrews	Eric Albritton	John Ward, Jr.	2/25/08	Attorney client communications regarding discussions with Cisco	AC WP
8	1	P. McAndrews	Eric Albritton John Ward, Jr.		3/9/08	Re filing of ESN lawsuit	AC WP
9	1	Eric Albritton	John Ward, Jr.		10/16/07	Re filing of ESN lawsuit	AC WP
10	1	Eric Albritton	John Ward, Jr.		10/17/08	Re filing of ESN lawsuit	AC WP
11	1	Eric Albritton	Jason Saunders, John Ward, Jr. and Amie Mathis		10/18/07	Litigation strategy in ESN lawsuit	AC WP
12	2	John Ward, Jr.	Eric Albritton		10/17/07	Litigation strategy in ESN lawsuit	AC WP
13	1	Terry Fokas	John Ward, Jr.		1/22/08	Comment regarding pending	AC WP

			Kevin Meek			lawsuit and Troll Tracker post	
14	1	Bruce Lagerman	John Ward, Jr.		4/5/08	Emails re potential case and comment regarding Troll Tracker post	AC WP
15.	1	Eric Albritton	Jason Saunders	Johnny Ward, Amie Mathis	10/18/07	Email re filing of ESN lawsuit	AC WP
16.	9	P. McAndrews	Eric Albritton	Amie Mathis	10/18/07	Emails re filing of ESN lawsuit	AC WP
17.	2	Eric Albritton	Eric Albritton, T. Wimbiscus, P.W.McAndrews, Eric Albritton, Johnny Ward, Jason Saunders	GMcAndrews, PMcAndrews	10/18/07	Email re filing of ESN lawsuit	AC WP
18.	2	Eric Albritton	Jason Saunders, Johnny Ward, Amie Mathis		10/18/07	Email re filing of ESN lawsuit	AC WP
19.	2	Eric Albritton	T. Wimbiscus, P.W. McAndrews, Eric Albritton, Johnny Ward, Jason Saunders	GMcAndrews, PMcAndrews	10/18/07	Email communication regarding filing of ESN lawsuit	AC WP
20.	1	Eric Albritton	Johnny Ward		10/17/07	Email re filing of ESN lawsuit	AC WP
21.	1	Eric Albritton	Johnny Ward, Eric Albritton		10/16/07	Email re filing of ESN lawsuit	AC WP
22.	3	Eric Albritton	Johnny Ward		10/16/07	Email re filing of ESN lawsuit	AC WP
23.	2	Johnny Ward	Eric Albritton		10/17/07	Email re filing of ESN lawsuit	AC WP

Exhibit B

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

JOHN WARD, JR.,	*
	*
V.	* C.A. NO. 08-4022
	* JURY TRIAL DEMANDED
CISCO SYSTEMS, INC.	*

CERTIFIED COPY

ORAL AND VIDEOTAPED DEPOSITION OF

THOMAS JOHN WARD, JR.

AUGUST 10, 2009

ORAL AND VIDEOTAPED DEPOSITION of THOMAS JOHN WARD, JR., produced as a witness at the instance of the Defendant, and duly sworn, was taken in the above-styled and -numbered cause on the 10th day of August, 2009, from 9:44 a.m. to 1:21 p.m., before Stacy L. Jordan, CSR in and for the State of Texas, reported by machine shorthand, taken in the law offices of John Ward, Jr., 111 West Tyler Street, City of Longview, County of Gregg, State of Texas, pursuant to the Federal Rules of Civil Procedure.

1 having been first duly sworn, testified as follows:

2 EXAMINATION

3 BY MR. BABCOCK:

4 Q. Will you state your name, sir.

5 A. Thomas John Ward, Jr.

6 Q. Mr. Ward, right in front of you is -- is the
7 deposition notice for your wife, which I forgot to
8 introduce.

9 A. Okay.

10 Q. But here's Exhibit 2. That's your notice.

11 A. Okay.

12 Q. The only reason I do this is so I can keep
13 track of depositions by numbers.

14 Would you tell us how you're employed?

15 A. I'm an attorney working for Ward & Smith law
16 firm, which is an assumed name.

17 Q. Okay.

18 A. T. John Ward, Jr., P.C. is the business entity
19 that I'm employed by.

20 Q. And T. John Ward, P.C. is the owner of the
21 Ward & Smith law business; is that right?

22 A. Jr. Yes.

23 Q. T. Ward [sic], Jr., P.C.

24 I take it there is a Smith?

25 A. There is.

1 Q. Is -- Mr. Chiaviello is the lawyer at
2 Fulbright --

3 A. Chiaviello (pronunciation).

4 Q. Chiaviello. Sorry. He is the lawyer at
5 Fulbright, correct?

6 A. Correct.

7 Q. And he's the one that told you about a
8 conversation he'd had with somebody else about you?

9 A. Correct.

10 Q. Okay. Are you working with him on any case?

11 A. Yes.

12 Q. Are -- is he a -- an attorney on the Ward
13 versus Cisco case?

14 A. No.

15 Q. Okay. Okay.

16 A. But I'm in -- I'm in a number of cases with
17 Mr. Chiaviello and his firm.

18 Q. Is Mr. Pridham, who you referenced earlier, an
19 attorney in the Ward versus Cisco case?

20 A. No.

21 Q. Is he a client?

22 A. He's an attorney for a client -- former client
23 who I'm no longer working for.

24 Q. Okay. Do you recall talking to him about
25 litigation strategy regarding Ward versus Cisco?

1 STATE OF TEXAS)

2 COUNTY OF DALLAS)

3
4 This is to certify that I, Stacy L. Jordan,
5 Certified Shorthand Reporter in and for the State of
6 Texas, certify that the foregoing deposition of THOMAS
7 JOHN WARD, JR. was reported stenographically by me at
8 the time and place indicated, said witness having been
9 placed under oath by me, and that the deposition is a
10 true record of the testimony given by the witness.

11 I further certify that I am neither counsel
12 for nor related to any party in this cause and am not
13 financially interested in its outcome.

14 Given under my hand and office on this 17th day
15 of August, 2009.

16
17 *Stacy L. Jordan*

18 STACY L. JORDAN, CSR 7499
19 Expiration Date: 12/31/10.
20 Firm No. 593

21 WEST COURT REPORTING SERVICES
22 221 Main Street
23 Suite 1250
24 San Francisco, California 94105
25 (800) 548-3668

23 Taxable cost of original charged to Defendant:
24 \$ _____

25 Atty: Mr. Charles L. Babcock and Ms. Crystal J. Parker,
Jackson Walker, L.L.P.

AUTHENTIC COPY
The original certified E-Transcript
file was electronically signed
using RealLegal technology