

Patricia L. Peden

From: Patricia L. Peden [ppeden@pedenlawfirm.com]
Sent: Thursday, June 25, 2009 6:10 PM
To: 'Babcock, Chip'; 'Parker, Crystal'; 'Griffin, Richard'
Cc: 'nickpatton@texarkanalaw.com'; 'Marcie Long'; 'Geoff Culbertson'
Subject: RE: Ward submission log

Chip:

Cisco continues to assert an unreasonable interpretation what Judge Hendren ordered to be produced for *in camera* review. The Judge's instructions were not limited to the documents produced in the Albritton case, as I think his law clerk explained to Crystal. Cisco's continued assertions to the contrary ignore the Judge's directions. Cisco's narrow reading of the Court's instructions is also inconsistent with the issues briefed to the Court and the Court's request that Plaintiff identify all documents to be reviewed so as to avoid additional effort at a later date. We believe that the Judge wants to get the issue firmly resolved by reviewing all of the documents at issue. We have done our best to break the documents into categories for the Judge's review. Of course, our selection is hampered by the fact that, unlike Cisco, we don't have access to the contents of the documents that Cisco is withholding under a claim of privilege. The remaining arguments you have made mirror arguments in Cisco's briefing and discussions Nick and I had with Crystal yesterday. As I explained to Crystal, Cisco continues to improperly assert that the waiver ordered by the Court is a document by document waiver, rather than a subject-matter waiver. I think our positions are clear and I won't rehash them here.

The purpose of my email to you was to ask when Cisco was going to give us its comments on the joint submission log we sent you on Monday. We promised to send our revisions by Tuesday, but at Crystal's urging that the issue was time sensitive, Marcie stayed late and got you the log by Monday night. We have heard nothing from Cisco for the last three days. My emails asking you when we can expect to receive it have been ignored. I asked Crystal about it yesterday and she said that you were working on it and you would get it to us as soon as possible. We still don't have it. Now, at the close of business the night before our joint submission is to be filed, not only have you not provided us with a revised submission log, but you raise issues about the documents we identified on Monday. Certainly, Cisco could have raised those issues with us before now.

Instead, Cisco requested a last minute meet and confer about an additional brief it wants to file with the Court. Given this course of events, I am led to believe that Cisco is not planning to file a joint submission log with the Court that includes all of the documents Plaintiff identified. My assumption is reinforced by the fact that you did not send a submission log with your email. Nor does your email make any assertion that one is forthcoming. If that is Cisco's intent, please just say so instead of leading us to believe that a submission log is on its way when it is not.

If Cisco does intend to file a joint submission log with changes, Cisco's refusal to provide a revised log means that Plaintiff won't have an opportunity to meaningfully review Cisco's changes. Not only is it unreasonable for Cisco to expect us to review the log in the few hours left before it is due, but both Nick and my client have prior out of the office engagements tomorrow. Cisco's refusal to provide a revised submission log, or even to let me know when I can expect to receive one, means that I won't have a chance to discuss the issue with my team before it must be filed.

If I have not received a revised submission log by 10:00 am Pacific tomorrow along with an agreement from Cisco that it won't oppose Plaintiff's motion to the Court explaining Cisco's delay and asking for additional time to file a joint submission log, Plaintiff will file his own pleading and submission log with the Court.

Best Regards,
Patty

From: Babcock, Chip [mailto:cbabcock@jw.com]
Sent: Thursday, June 25, 2009 2:59 PM
To: Patricia L. Peden; Parker, Crystal; Griffin, Richard
Cc: nickpatton@texarkanalaw.com; Marcie Long
Subject: RE: Ward submission log

Patty,

From what I can tell you have not done what the judge ordered which is to select from the produced documents in the Albritton case the documents you say are relevant to Interrogatories Five and Six. Rather you have sent us a list of every single document which can't possibly fulfill your obligations to select in good faith the documents you say relate to the questions. For example you have listed documents that were after the publication dates of the articles; you have listed documents that were not even sent to Frenkel, you have listed documents which you know (because you have seen the documents in the Albritton case) could not possibly relate to what Frenkel relied on for the articles or when Cisco first learned that ESN was claiming that the file stamp date was an error.

We can't possible be put into the position of saying what **you** think is relevant to the two interrogatories and I can't believe that you would want to burden the judge with this group of documents having made no effort to cut it down as he ordered.

I will be traveling for the next 2.5 hours but am available to talk after that.

Best regards,
Chip

From: Patricia L. Peden [mailto:ppeden@pedenlawfirm.com]
Sent: Thursday, June 25, 2009 12:41 PM
To: Parker, Crystal; Babcock, Chip
Cc: nickpatton@texarkanalaw.com; 'Marcie Long'
Subject: Ward submission log
Importance: High

Chip and Crystal:

When can we expect to see Cisco's proposed revisions to the joint submission log we sent you on Monday? It is now Thursday afternoon and the document is due to be filed with the Court tomorrow. I asked Crystal this question yesterday and also sent an email, but we have received no response from Cisco. We are concerned that we are not going to have enough time to evaluate Cisco's proposed changes before tomorrow's filing.

Thanks,
Patty

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