

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

ILLINOIS COMPUTER RESEARCH, LLC, <i>Plaintiff and Counterclaim Defendant,</i>)	
)	
v.)	No. 07 C 5081
)	
FISH & RICHARDSON P.C., <i>Defendant, Counterclaimant, Third- Party Plaintiff, and Counterclaim Defendant,</i>)	Judge Rebecca R. Pallmeyer
)	
v.)	Magistrate Judge Maria Valdez
)	
SCOTT C. HARRIS, et al., <i>Third-Party Defendants.</i>)	
)	

**FISH & RICHARDSON'S PRELIMINARY RESPONSE TO
ICR'S AND MR. HARRIS'S MOTION TO COMPEL DOCUMENTS**

Mr. Harris and ICR have filed another premature motion. As shown in the attached communications from counsel for Fish & Richardson, Mr. Harris's and ICR's counsel refused to meet and confer on the issue of Fish & Richardson's privilege log, despite repeated invitations:

In terms of the issues regarding Fish & Richardson's assertion of privilege, ***we are prepared to discuss that with you.*** We are reviewing again the documents that have been withheld on grounds of privilege, and expect that shortly we will be withdrawing our assertion of privilege as to some of the materials that have been withheld, although I anticipate that we will have an issue regarding the scope of privilege at some point. ***I do not believe, however, that the issue is sufficiently framed just yet to merit briefing (particularly since we have never met and conferred on the issue).*** [. . .] If you would like to discuss this, let us know when you are available on Wednesday.

(04/29/08 D. Bradford E-mail, attached as Ex. A) (emphasis added).

The bottom line from my perspective is that ***we are not at an impasse on the issues you are trying to interject on Friday.*** In particular, I believe that we can make progress on this issue and that is it worth discussing further without burdening the Court with still more briefing. [. . .] I respectfully request that you not file another unnecessary and premature motion. Instead, ***I suggest we pick a day on which to have a complete "meet and confer" conference,*** and if we are

not able to resolve the matters to your satisfaction, that we agree on a briefing schedule that puts your objections to our privilege log before the court in the next couple of weeks.

(04/30/08 D. Bradford E-mail, attached as Ex. B) (emphasis added). Without having met and conferred regarding *any* document on Fish & Richardson's privilege log, Mr. Harris and ICR filed a motion to compel *every* document on the log -- a violation of Local Rule 37.2. While Mr. Vickrey mentioned concerns about Fish & Richardson's privilege log in court on Monday, April 28, there is no basis to consider the issue without a "meet and confer" to at least narrow, if not resolve, issues. Nor is there any basis to do so without an opportunity for full briefing.

Fish & Richardson respectfully requests that ICR's and Mr. Harris's Motion to Compel Documents be denied without prejudice for failure to comply with Local Rule 37.2. In the alternative, Fish & Richardson requests that it be given through May 12, 2008 to attempt to meet and confer with counsel and, if necessary, to prepare a written response to ICR's and Mr. Harris's lengthy and premature motion.

Dated: May 1, 2008

Respectfully submitted,

FISH & RICHARDSON P.C.

By: s/ David J. Bradford
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed with the Court by means of the Court's CM/ECF system, which will send notification of such filing to the following counsel at their email address on file with the Court:

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May 1, 2008.

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