

Mr. Harris forwarded the communication to someone at the Niro firm). In doing so, Mr. Harris's counsel redacted all information relating to Mr. Harris's transmission of the privileged Fish & Richardson internal email to the Niro firm.

2. Therefore, although there is no dispute that Mr. Harris transmitted the emails at issue to the Niro firm, it is unclear when Mr. Harris did so, what Mr. Harris said when he did so, and who at the Niro firm actually received the email. This information is relevant to a number of issues in this litigation. For example, *when* Mr. Harris transmitted Fish & Richardson's privileged, internal communications to the Niro firm is relevant to *when* Mr. Harris consulted with the Niro firm regarding potential litigation against Fish & Richardson. That will bear directly on, among other things, Mr. Harris's assertion of privilege over the seven documents Mr. Harris submitted this week for *in camera* review. The redacted information also is relevant, for example, to how Mr. Harris breached his fiduciary duties by transmitting Fish & Richardson's confidential information to parties and counsel adverse to Fish & Richardson and its clients.

3. Because the information redacted by Mr. Harris's counsel is so important, on May 7, 2008 Fish & Richardson asked that Mr. Harris produce unredacted versions of the documents. (Ex. B, 05/07/08 D. Bradford Ltr.) On May 9, 2008, Mr. Harris's counsel stated that it would produce a privilege log of the redacted emails, but would not produce them in unredacted form. (Ex. C, 05/09/08 L. Kenneally Ltr.) On May 16, 2008, Fish & Richardson reiterated that the redacted materials could not be privileged. (Ex. D, 05/16/08 E. Sacks Ltr.) Fish & Richardson asked that, at the very least, Mr. Harris fulfill his promise of providing a privilege log of the redactions, so that Fish & Richardson could evaluate Mr. Harris's assertions of privilege. (*Id.*)

4. On May 28, 2008, Mr. Harris's counsel stated "[a]s promised, we are producing a modified version of Harris 373 and a log of the redacted communications." (Ex. E, 05/28/08 L.

Kenneally Ltr.) Mr. Harris, however, did not fulfill that pledge. More than two weeks later, on June 12, 2008, Fish & Richardson informed Mr. Harris's counsel that Fish & Richardson had not yet received the modified version of Harris 373 and a log of the redacted communications, as Mr. Harris's counsel had promised. (Ex. F, 06/12/08 E. Sacks Ltr.) Fish & Richardson again requested that Mr. Harris produce the materials promptly. (*Id.*) Mr. Harris did not respond to that request. Therefore, on June 23, 2008 Fish & Richardson again requested production of unredacted versions of the emails, and informed Mr. Harris that it would seek Court intervention if Mr. Harris refused to do so. (Ex. G, 06/23/08 D. Bradford email.) On June 24, 2008, Fish & Richardson told Mr. Harris's counsel that there was no reason for further delay, and that it would file a motion to compel immediately. (Ex. H, 06/24/08 D. Bradford email.)

5. The redacted information is relevant to this case for the reasons provided above. There is no basis for Mr. Harris to assert privilege over the dates Mr. Harris transmitted Fish & Richardson's privileged internal communications to the Niro firm, or the contents of the transmittal email.

WHEREFORE, Fish & Richardson respectfully requests that the Court enter an order compelling Mr. Harris to produce unredacted versions of certain Harris emails labeled Harris 373, 391-94, 397-403.

June 24, 2008

Respectfully submitted,

FISH & RICHARDSON P.C.

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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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