

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS

PAT BEESLEY, *et al.*, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 INTERNATIONAL PAPER COMPANY, *et al.*, )  
 )  
 Defendants. )

Cause No: 3:06-cv-00703-DRH-CJP

**PLAINTIFFS’ RESPONSE AND OBJECTIONS TO DEFENDANTS’ SUBPOENAS  
DUCES TECUM OF PLAINTIFFS’ EXPERT WITNESSES**

Plaintiffs submit the following responses to the request for production of documents made part of the subpoenas duces tecum addressed to each of Plaintiffs’ six designated expert witnesses:

1. Produce copies of all documents, data and charts that you relied upon, reviewed, or otherwise considered in connection with your work in this Case, including any articles or publications, whether received from Plaintiffs, Plaintiffs’ counsel, or *any* other source, including but not limited to those used in:

- (a) preparing the Report;
- (b) reaching the opinions expressed in the Report or other opinions formed by you in connection with this Case, even if not expressed in the Report;
- (a) conducting the analyses or research described in the Report, or conducted in connection with this Case but not described in the Report; and/or
- (b) preparing tables and charts that are contained in or accompanying the Report or not contained in or accompanying the Report.

To the extent that any such materials are unmodified copies of documents that have already been produced in discovery by Plaintiffs or Defendants, you may simply identify those documents by their corresponding Bates numbers.

**Response:** Plaintiffs have, or will have by August 29, produced all data or other information “considered by the witness in forming his opinions” as per Rule 26(a)(2)(B)(ii).

2. Produce copies of all documents, data, and charts, including any articles or publications, whether received from Plaintiffs, Plaintiffs’ counsel, or *any* other source in connection with your work in this Case, that you did not rely upon or otherwise consider in:

- (a) preparing the Report;
- (b) reaching the opinions expressed in the Report or other opinions formed by you in connection with this Case, even if not expressed in the Report;
- (c) conducting analyses or research described in the Report or conducted in connection with this Case but not described in the Report; and/or
- (d) preparing tables and charts that are contained in or accompanying the Report or not contained in or accompanying the Report.

To the extent that any such materials are unmodified copies of documents that have already been produced in discovery by Plaintiffs or Defendants, you may simply identify those documents by their corresponding Bates numbers.

**Objection:** Plaintiffs object to the scope of the request because it only seeks material not relied upon by the expert. The scope of permissible discovery, pursuant to Rule 26(a)(2)(B)(ii), pertaining to information “considered by the witness in forming his opinions” has been identified in the experts’ reports and/or produced to Defendants.

3. Produce copies of all correspondence and other communications, along with any notes or other documents memorializing such communications, whether written, electronic, or otherwise recorded, between you and Plaintiffs, Plaintiffs’ witnesses, any fact witnesses or third parties, or the author of any article, publication or report that you relied upon or cited to in connection with your work in this Case. Pursuant to the March 5, 2008 letter agreement of

counsel, this request does not seek the production any communications between you and "any party's attorney(s) or consulting experts engaged by the attorney(s)".

**Response:** Plaintiffs have, or will have by August 29, produced any responsive information to the extent not covered by the letter agreement.

4. Produce copies of all correspondence and other communications, along with notes or other documents memorializing such communications, whether written, electronic, or otherwise recorded, between you and any other testifying experts in connection with your work in this Case, including but not limited to any testifying experts retained by Plaintiffs or Plaintiffs' counsel in connection with this Case. Pursuant to the March 5, 2008 letter agreement of counsel, this request does not seek the production any communications between you and "any party's attorney(s) or consulting experts engaged by the attorney(s)".

**Response:** Plaintiffs have, or will have by August 29, produced any responsive information to the extent not covered by the letter agreement.

5. Produce all documents that were created, written, prepared, produced, or generated by you in connection with your work on this Case. Pursuant to the March 5, 2008 letter agreement of counsel, this request does not seek the production any "drafts of any testifying expert(s) report."

**Response:** Plaintiffs have, or will have by August 29, produced any responsive information to the extent not covered by the letter agreement.

6. Produce electronic copies of all Programs used to read the original raw data produced by Defendants or any other data sources reviewed by or relied upon by you in connection with this Case or used to clean, correct or modify the data to produce analytical files.

**Objection:** The request is vague and overly broad to the extent that it requests production of licensed software programs. Plaintiffs have, or will have by August 29, produced any information “considered by the witness in forming his opinions,” pursuant to Rule 26(a)(2)(B)(ii).

7. Produce electronic copies of all Programs and/or Data Sets used by you to conduct the analyses and calculations, or to arrive at the results, discussed in the Report and/or to prepare the tables and charts included in and accompanying the Report. Programs and/or Data Sets identified and produced in response to this paragraph should be organized based on analyses, calculations, tables, and/or charts to which they correspond and should be labeled accordingly, so that it is clear which Program and/or Data Set was used by you with respect to a particular analysis.

**Objection:** The request is vague and overly broad to the extent that it requests production of licensed software programs. Plaintiffs have, or will have by August 29, produced any information “considered by the witness in forming his opinions,” pursuant to Rule 26(a)(2)(B)(ii).

8. Produce electronic copies of all Programs and/or Data Sets used by you, in connection with your work on this Case, to conduct analyses and calculations, or to arrive at results, that are not discussed in the Report. Programs and/or Data Sets identified and produced in response to this paragraph should be organized based on analyses, calculations, tables, and/or

charts to which they correspond and should be labeled accordingly, so that it is clear which Program and/or Data Set was used by you with respect to a particular analysis.

**Objection:** The request is vague and overly broad to the extent that it requests production of licensed software programs. Plaintiffs have, or will have by August 29, produced any information “considered by the witness in forming his opinions,” pursuant to Rule 26(a)(2)(B)(ii).

9. Produce an electronic copy of any original raw data reviewed by or relied upon by you in connection with this Case that was not produced by Defendants, and identify the source of the data.

**Objection:** The request is vague as to the term “original raw data” and unduly burdensome to the extent that it requests production of data previously identified and/or produced or made available. Plaintiffs have, or will have by August 29, produced any information “considered by the witness in forming his opinions,” pursuant to Rule 26(a)(2)(B)(ii).

10. Produce all documents reflecting or containing the results or output of the analyses or calculations referred to in any of the paragraphs above.

**Response:** Plaintiffs have, or will have by August 29, produced any such responsive information.

11. To the extent not covered by the paragraphs above, produce an electronic copy of all Data Sets referenced in the Report and provide all Programs used to create such Data Sets.

**Response:** See response to items 6-9 above.

12. To the extent you used a methodology, process or labeling system to identify or organize data or documents produced by Plaintiffs or Defendants in this Case, please produce all documents concerning the methodology, process and/or labeling system.

**Objection:** The request is vague and overly broad. Plaintiffs have, or will have by August 29, produced any information “considered by the witness in forming his opinions,” pursuant to Rule 26(a)(2)(B)(ii).

13. Produce copies of all written or otherwise recorded directions given by you to others in connection with your work in this Case.

**Response:** Plaintiffs have, or will have by August 29, produced any responsive information to the extent not covered by the letter agreement.

14. Produce copies of all reports (a) authored by you in other cases, or (b) authored by other experts either in this Case or in other cases, that you reviewed in connection with your work in this Case.

**Objection:** Vague as to whether the last clause limits both subparts (a) and (b). Plaintiffs will assume that it does. Furthermore, the request seeks information that is protected by the consulting expert work product privilege and which is subject to court issued confidentiality orders. To the extent that Plaintiffs’ experts intend to rely upon such information in “forming” their opinions in this case, same will be identified but not produced only upon order issued by the court which issued the protective order.

15. All unpublished articles, speeches, presentations, books, and/or other publications authored in whole or in part by you.

**Objection:** vague as to whether the term “unpublished” qualifies all items requested. Plaintiffs will assume that it does because any published material would be equally available to Defendants and thus would be unduly burdensome for Plaintiffs’ experts to

be required to produce same. Plaintiffs object to the request as interpreted as beyond the scope of proper expert discovery and overly broad in scope and unlimited in time since it is not narrowly tailored to the subject matter in this case and is unduly burdensome to the extent that such items have not been identified as being considered by Plaintiffs' experts in forming their opinions, pursuant to Rule 26(a)(2)(B)(ii). Plaintiffs further object as duplicative, to the extent that responsive material has already been identified in the expert reports pertaining to information "considered by the witness in forming [their] opinions" and/or produced to Defendants and because Rule 26(a)(2)(B)(iv) only requires identification of all publications authored in the previous 10 years.

16. All transcripts of depositions in which you testified as an expert witness.

**Objection:** Overly broad in scope and time, beyond the scope of permissible discovery, and subject to proprietary privilege. Plaintiffs have already provided "a list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition," pursuant to Rule 26(a)(2)(B)(v) and any such transcripts would be available to defendants at their cost from the court reporter who may have a proprietary interest in such transcript.

17. Produce a copy of your most current curriculum vitae.

**Response:** Copies of same have already been provided with the experts' reports.

18. Produce a copy of any exhibits to be used as a summary of or as support for the opinions expressed in the Report, to the extent it will not be produced with the Report.

**Response:** Plaintiffs have, or will have by August 29, produced any responsive information.

19. Documents reflecting whether you are or were engaged in private business, and if so, all marketing literature and documents reflecting your business philosophy, including but not limited to, statements, brochures, leaflets, requests for proposals to clients, reports, etc. This request includes, but is not limited to, documents relating to fees and expenses of investment products of 401(k) plans.

**Objection:** Overly broad in scope and time, beyond the scope of permissible discovery. Plaintiffs have already provided “the witness’s qualifications,” pursuant to Rule 26(a)(2)(B)(iv) and to require production of same would be unduly burdensome.

20. Produce all documents relating to the time spent by you and/or the compensation to be paid to you relating to your work in this Case, including but not limited to time sheets, calendars and planners (whether electronic or in paper form), notes, and invoices.

**Response:** Plaintiffs have, or will have by August 29, produced “a statement of the compensation to be paid for the study and testimony in the case” as required by Rule 26(a)(2)(B)(vi), including a statement of the time spent by the expert and compensation paid relating to the work in this case.

21. Any retainer agreements regarding work you were asked to perform in this Case.

**Response:** Plaintiffs have, or will have by August 29, produced any responsive information.

Dated: August 13, 2008

Respectfully submitted:

**SCHLICHTER, BOGARD & DENTON**

**By: /s/ Nelson G. Wolff**

Jerome J. Schlichter 02488116

jschlichter@uselaws.com

Nelson G. Wolff 6211943

nwoff@uselaws.com

[nwoff@uselaws.com](mailto:nwoff@uselaws.com)

120 W. Main Street, Suite 208

Belleville, IL 62220

100 S. Fourth Street, Suite 900

St. Louis, MO 63102

(314) 621-6115

(314) 621-7151 (Fax)

*Attorneys for Plaintiffs*



**CERTIFICATE OF SERVICE**

I hereby certify that on August 13, 2008, the following discovery document:

1. **PLAINTIFFS' RESPONSE AND OBJECTIONS TO DEFENDANTS'  
SUBPOENAS DUCES TECUM OF PLAINTIFFS' EXPERT  
WITNESSES**

was served electronically on the following individuals:

Gregory C. Braden  
Donald L. Havermann  
Bridgit M. DePietto  
Simon J. Torres  
Shannon M. Callahan  
Morgan Lewis & Bockius  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004

Michael J. Nester  
Donovan, Rose, Nester & Joley, P.C.  
8 East Washington Street  
Belleville, IL 62220  
Telephone (618) 235-2020

Attorneys for Defendants

/s/ Nelson G. Wolff