

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EXPERI-METAL INC.,
a Michigan corporation,

Plaintiff,

vs.

Case No. 2:09-cv-14890
Hon. Patrick J. Duggan

COMERICA BANK,

Defendant.

Richard B. Tomlinson (P27604)
Daniel R. Boynton (P 30359)
Joseph W. Thomas (P33226)
DRIGGERS, SCHULTZ & HERBST, P.C.
Attorneys for Plaintiff
2600 West Big Beaver Road, Suite 550
Troy, MI 48084
Telephone: 248.649.6000
Facsimile: 248.649.6442
rtomlinson@driggerschultz.com

Todd A. Holleman (P57699)
Lara Lenzotti Kapalla (P67667)
MILLER, CANFIELD PADDOCK AND
STONE, PLC
Attorneys for Defendant
150 W. Jefferson, Suite 2500
Detroit, MI 48226
Telephone: 313.963.7420
holleman@millercanfield.com
kapalla@maillercanfield.com

PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION TO COMPEL

Plaintiff, Experi-Metal Inc., by and through its attorneys, Driggers, Schultz & Herbst, for its response to Defendant's Motion to Compel, states as follows:

1. Admits the allegations contained in Paragraph 1 of Defendant's Motion to Compel.
2. Admits that Comerica took the position that Plaintiff's responses were incomplete and requested additional information.

3. Admits that Experi-Metal provided additional information and documents in response to Comerica's discovery requests on July 23, 2010.

4. Denies the allegation contained in Paragraph 4 in the form and manner alleged for the reason that it is untrue.

5. Denies the allegations contained in Paragraph 5 and further states that Plaintiff supplied Defendant with additional supplemental documents on September 7, 2010 (a copy of Plaintiff's counsel's correspondence transmitting the additional documents is attached as Exhibit 1).

6. Plaintiff states as follows with respect to each of the subparts in Paragraph 6:

- All of the correspondence that Plaintiff sent or received regarding the January 22, 2009 phishing attack, including correspondence between Experi-Metal and any law enforcement or regulatory agency has been previously produced.
- All documents related to the investigation of the January 22, 2009 phishing attack including the FBI investigation have previously been produced. As to the FBI investigation's status reports referenced in this subsection, Experi-Metal had never visited the web site for status reports until after the deposition of Valiena Allison. Subsequently, Experi-Metal has visited the web site and has furnished the status reports to Comerica on September 7, 2010.
- Experi-Metal previously objected to producing documents related to any insurance claims related to the phishing attack as the information requested is inadmissible under the collateral source rule. Without waiving that objection, on September 7, 2010, Experi-Metal has produced the documents to Comerica.
- As indicated in Plaintiff's initial response to the discovery requests, the documents that were sent or received from Plaintiff's expert, Lance James, were provided to Comerica in connection with Plaintiff's initial response to Comerica's discovery requests. Plaintiff provided a duplicate set of the responsive documents on September 7, 2010.
- A privilege log was provided to counsel for Comerica on September 7, 2010.

7. Plaintiff has produced all of the documents and has produced the privilege log with respect to this matter.

8. Plaintiff denies the allegations contained in Paragraph 8 for the reason they are untrue.

9. Plaintiff admits that counsel has discussed the discovery issues and supplemental responses have been provided.

Respectfully submitted,

DRIGGERS, SCHULTZ & HERBST, P.C.

By: s/Richard B. Tomlinson

Richard B. Tomlinson (P27604)

Daniel R. Boynton (P30359)

Joseph W. Thomas (P33226)

Attorneys for Plaintiff

2600 West Big Beaver Road, Suite 550

Troy, MI 48084

Telephone: 248.649.6000 / Fax: 248.649.6442

rtomlinson@driggerssschultz.com

CERTIFICATE OF SERVICE

I certify that on September 8, 2010, I filed the foregoing paper with the Clerk of the Court using the ECF system which will electronically send notification to Todd A. Holleman, Esq. and Lara Lenzotti Kapalla, Esq.

s/Richard B. Tomlinson (P27604)

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Troy, MI 48084

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