

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

GLENN GRAFF, et al.,
Plaintiffs

vs

HAVERHILL NORTH
COKE COMPANY, et al.,
Defendants

Case No. 1:09-cv-670

Dlott, J.
Litkovitz, M.J.

ORDER

This matter is before the Court following a telephone status/discovery conference held on February 20, 2014. The parties have been involved in ongoing negotiations related to supplemental discovery and have agreed on many of the terms of the prospective production, with the exception of the following three items:

1. Defendants reserve the right to review the hit documents on a document-by-document basis and to withhold from production any non-responsive documents or to redact documents, if necessary, to ensure that employee privacy rights are not violated. To the extent Defendants choose to review documents individually, they will bear those costs and do so within the deadline provided. Plaintiffs object to such review.
2. Defendants request that the supplemental custodian production be their final document production in this case. Plaintiffs seek the production of responsive “project” and “report-related” documents (a dispute currently pending before this Court) and wish to work out, with the guidance of the Court, an agreeable solution to the production of targeted information from Defendants’ W and P drives.
3. Defendants ask that Plaintiffs pay 50% of ADI costs. Plaintiffs object to the payment of such costs.

With respect to Item 1, defendants have agreed to track the documents withheld from production as non-responsive and to categorize or identify such documents in a manner that will enable plaintiff to discern whether the withholding is justified on this basis. In the event the parties are unable to agree on the production of such documents, the parties will notify the Court. The

Court will then review the disputed documents and make a final determination as to their production. To the extent defendants choose to review documents individually, they will do so within the deadline provided and bear those costs.

With respect to Item 2, the Court declines defendants' request to absolutely foreclose any further document production with respect to the "project" and "report-related" documents at this juncture. Both parties and the Court desire finality on the production of documents and electronic information. However, as stated at the conference, the custodial production may reveal additional documents related to "project" and/or "report-related documents" sought by plaintiffs. Until the custodial documents are produced and reviewed by plaintiffs, it would be premature for the Court to determine that any additional "project" and/or "report-related documents" sought by plaintiffs are not discoverable. To the extent the parties may disagree on the discoverability of such documents, the Court believes that in the interest of judicial economy such disputes should be addressed at a later time along with the other privilege and work product issues on the "project" and/or "report-related documents" presently pending before the Court.

With respect to the discovery of information from defendants' W and P drives, the parties are ordered to confer with one another on whether they can reach an agreeable solution to the production of targeted information based on the contents of the W and P drives. In the event the parties dispute the potential discoverability of this information, they should request a telephone discovery conference with the Court.

With respect to Item 3, the Court will address this issue after production of the custodial documents has been completed. The Court is unable to decide this issue without a record addressing the Fed. R. Civ. P. 26(b)(2)(C)(iii) factors. In addition, to the extent plaintiffs will seek


additional discovery after the custodial documents are produced, the Court must balance the Rule 26(b)(2)(C)(iii) factors before determining whether additional discovery will be permitted.

Defendants are ordered to advise plaintiffs of the proposed deadline for production of documents from the custodial search by February 28, 2014. In the event the parties are unable to agree on a deadline for the production of custodial documents, they are directed to request a conference with Court.

Plaintiffs have by oral motion requested an extension of time until February 25, 2014 to file their response to defendants' motion to disqualify (Doc. 247). Defendants do not object. Therefore plaintiffs' oral motion is granted.

IT IS SO ORDERED

Date 2/21/14


Karen L. Litkovitz
United States Magistrate Judge