

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

**BURNS & MCDONNELL ENGINEERING
COMPANY, INC.,**

Plaintiff,

v.

**NDE GLOBAL TECHNICAL SERVICES
GmbH and NDE TECHNICAL SERVICES,
USA, INC.,**

Defendants.

No. 1:16-cv-01100-STA-egb

ORDER GRANTING IN PART MOTION TO COMPEL

Before the Court is Defendant NDE Technical Services USA, Inc.'s Motion to Compel (ECF NO. 98) filed on January 25, 2018. On April 18, 2018, the Court held a telephonic status conference with counsel to discuss the current posture of the case, the parties' plans for mediation on April 26, 2018, and the Motions pending before the Court. The parties reported that both sides have agreed to proceed with mediation as planned. The Court directed the parties to file a mediation report after their mediation is concluded to notify the Court of the outcome of the mediation. The parties' mediation report is due by April 30, 2018.

Consistent with the Court's ruling at the status conference, Defendant's Motion to Compel is **GRANTED** as to the 35 or 36 documents and the attachments thereto¹ listed on Plaintiff Burns & McDonnell Engineering Company, Inc.'s revised privilege log (ECF No. 112) and withheld from

¹ Plaintiff's response and sur-reply to the Motion to Compel refer to 35 documents that fall in this category; Defendant's reply brief mentions 36. It was not clear from the discussion during the status conference what the precise number is. The parties agreed to confer about the specific number following the status conference.

production on the basis of the work product protection. Plaintiff has adduced no evidence to establish that the documents were prepared in anticipation of litigation. *See Biegas v. Quickway Carriers, Inc.*, 573 F.3d 365, 381-82 (6th Cir. 2009) (“Quickway did not come forward with any affidavits or similar proof demonstrating that Dailey’s statement was prepared in anticipation of litigation, much less the kind of ‘specific and detailed’ evidentiary material that would be sufficient to meet this burden.”) (citing *United States v. Roxworthy*, 457 F.3d 590, 597 (6th Cir. 2006)). Therefore, Plaintiff is ordered to produce the documents immediately so that Defendant will receive them no later than the close of business on Monday, April 23, 2018. The Court reserves its ruling on the remaining issues presented in the Motion to Compel as well as Defendant’s separate Motion for Extension of Time to Complete Discovery (ECF No. 122), pending the outcome of mediation.

IT IS SO ORDERED.

s/ S. Thomas Anderson
S. THOMAS ANDERSON
CHIEF UNITED STATES DISTRICT JUDGE

Date: April 19, 2018