IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TONY RIZZO,

Plaintiff,

v.

SOUTH BEND SPORTING GOODS, MAURICE SPORTING GOODS, INC., PAMIDA STORES OPERATING CO., LLC, BLAIN SUPPLY, INC. (BLAIN'S FARM & FLEET), MILLS FLEET FARM, INC. and WAL-MART STORES, INC. a/k/a WAL-MART STORES, INC., DELAWARE,

Defendants.

ORDER

09-cv-189-bbc

On April 6, 2010 counsel for defendants served a subpoena for the production of documents on a third-party law firm, O'Brien, Anderson, Burgy & Garbowicz, LLP, that had formerly represented plaintiff. Plaintiff brings a motion to quash the subpoena on the grounds that: 1) the subpoena was improperly served by certified mail; 2) compliance with the subpoena by the third-party law firm would be unduly burdensome; and 3) the documents sought are subject to attorney client and work product privileges.

Plaintiff is the wrong party to be asserting the first two objections. To the extent that service was improper or O'Brien, Anderson believed the compliance would be overly burdensome it could have objected pursuant to Rule 45(c)(2)(B) or brought its own motion to quash and, so far as the record indicates, it has not.

Concerning the third objection, plaintiff certainly has an interest in asserting that documents sought for production may be subject to privilege; however, it seems very unlikely that all documents sought are privileged. The proper process when potentially privileged documents are sought in discovery is not to quash the subpoena in its entirely. Rather, response to the subpoena asserting that certain documents are protected by a privilege should be accompanied by a privilege log indicating the alleged basis for the failure to produce, facilitating challenges to the assertion of privilege and potential *in camera* inspection by the court of documents for which privilege status is in dispute.

Plaintiff's motion to quash the subpoena served on O'Brien, Anderson, Burgy & Garbowicz, LLP is DENIED.

Entered this 6th day of May, 2010.

BY THE COURT:

Peter Oppeneer

PETER A. OPPENEER
Magistrate Judge