Washburn's Autobody v. PPG Indus., Inc., No. S1122-04 CnC (Katz, J., July 14, 2008)

STATE OF VERMONT SUPERIOR COURT
Chittenden County, ss.: Docket No. S1122-04 CnC

WASHBURN'S AUTOBODY, et al.,

v.

PPG INDUSTRIES, INC., et al.

ENTRY

Plaintiffs have filed a motion to compel discovery from Defendants, stating that Defendants have not responded adequately to their requests to produce documents. Defendants argue that they have made the sought-after discovery available to Plaintiffs, in the form of a production they have already undertaken in the multi-district federal litigation (MDL), which contains documents responsive to Plaintiffs' requests.

V.R.C.P. 34(b) requires a responding party to produce documents "as they are kept in the usual course of business or . . . organize and label them to correspond with the categories in the request." "Requiring documents to be produced 'as they are kept in the usual course of business,' precludes artificial shifting of documents" or the deliberate mixing of relevant documents with irrelevant documents to obscure their significance. In re Sulfuric Acid Antitrust Litigation, 231 F.R.D. 351, 363 (N.D. Ill. 2005). Once documents have been removed from day-to-day business use, they are no longer kept in the "usual course" and the producing party has the obligation to "organize and

label" them to correspond with the document requests. Id. (citing City of Wichita, Kansas v. Aero Holdings, Inc., 2000 WL 1480499, at *1 (D. Kan. May 23, 2000)). However, balanced against this obligation not to "dump" documents is the requirement that discovery not be overly burdensome on, or overly expensive for, the responding party. V.R.C.P. 26(b)(1)(iii).

Here, producing multiple unlabeled disks containing 2.6 million pages of documents already produced in the MDL does not constitute a production of documents kept "in the usual course of business." V.R.C.P. 34(b). Thus, Rule 34(b) requires Defendants to organize and label the documents in such a way as to make it reasonably clear to Plaintiffs which documents pertain to which requests. However, requiring defendants to start from "scratch" and search their files again to generate a responsive set of documents that would largely overlap the MDL production would be unduly burdensome and expensive given the volume of documents involved.

The solution we see is that which Defendant Sherwin-Williams has produced – namely, a "source log" identifying where the documents originated. This allows Plaintiffs to navigate the disks containing the MDL production to find responsive documents.

Plaintiffs' motion is therefore GRANTED, in part, and DENIED, in part, as it pertains to Defendant Sherwin-Williams. All Defendants, other than Sherwin-Williams, are hereby ORDERED to provide a "source log" to Plaintiffs, along the lines of what Sherwin-Williams has generated, identifying the sources of documents contained on the MDL production disks. The parties should bear in mind that discovery at this point is limited to the issue of class certification.

Defendant Sherwin-Williams' request for sanctions is DENIED.

Dated at Burlington, Vermont, this ____ day of May, 2008.

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M. I. Katz, Judge