

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)
)
 Plaintiff)
)
 RACHEL TUDOR,)
)
 Plaintiff-Intervenor)
 v.)
)
 SOUTHEASTERN OKLAHOMA)
 STATE UNIVERSITY, and)
)
 THE REGIONAL UNIVERSITY)
 SYSTEM OF OKLAHOMA,)
)
 Defendants.)

CASE NO. 5:15-CV-00324-C

**RESPONSE IN OPPOSITION TO DEFENDANTS’ MOTION FOR EXTENSION
OF DEADLINE TO CATEGORIZE ELECTRONICALLY STORED
INFORMATION**

I. Introduction

Defendants seek a fourteen (14) day extension of time to assert privilege claims on electronically stored information (“ESI”) originally produced by Defendants and selected by the United States for use in this litigation. (ECF No. 97). Such an extension would prejudice the United States by impacting its ability to conduct at least three remaining depositions of fact witnesses and a Fed. R. Civ. P. 30(b)(6) deposition, and prepare its final list of exhibits. In addition, Defendants fail to demonstrate a legitimate basis for the extension of a deadline to which they originally agreed. Defendants’ motion should be denied.

II. Argument

Defendants refused to produce ESI until compelled to do so by the Court (ECF No. 65), negotiated the terms of and proposed a Fed. R. Evid. 502(d) Order at the Court's instruction (which was subsequently entered by the Court at ECF No. 66), failed to meet their Court-ordered deadline for the production of such ESI despite having negotiated the deadline themselves, spent time in the last two weeks preparing and filing premature Motions in Limine (ECF Nos. 88 and 98), asked the United States to assist them in streamlining their review at the last minute (which the United States has consented to do), and now come before the Court to contend that they require an additional two weeks to review their own ESI. Defendants' alleged need for an extension is of their own making, not due to a change in circumstances, and such an extension would result in prejudice to the United States.

A. Defendants' Alleged Need for an Extension Lacks Any Legitimate Basis.

i. Defendants' Present Circumstances Are the Direct and Foreseeable Result of Their Prior Conduct.

For months, Defendants refused to produce ESI requested by the United States. Only after the Court compelled Defendants to do so did they produce ESI within the framework of a Fed. R. Evid. 502(d) Order. (ECF No. 65). The Parties themselves proposed the language and timeframes contained in this Rule 502(d) Order, which was entered by the Court on June 15, 2016 (ECF No. 66). Under this Order, Defendants were to produce native files to the United States by June 21, 2016, the United States would

have until July 29, 2016 to review those files and produce back to Defendants copies of the native files it selected for use in the litigation, and Defendants would then have fourteen days to assert any privileges. (ECF Nos. 65 and 66). Defendants produced approximately 48,000 native files (including both emails messages and attachments) (see ECF No. 84-5). Notably, Defendants did not produce this ESI via the United States' requested method of delivery, which delayed the United States' receipt of the ESI to June 27, 2016. (See Exhibit 1 hereto, June 23, 2016 email exchange, and Exhibit 2 hereto, June 27, 2016 email exchange)¹. The United States nevertheless completed its review of the files by the original deadline of July 29, 2016, producing copies and a list of approximately 2,000 native files (including both email messages and attachments) to Defendants.

On Monday, August 8, Defendants emailed the United States at 11:49 am Central time to request assistance in reviewing these 2,000 native files for the first time (Exhibit 3 hereto, Email Chain Regarding Additional ESI Filtering, at 4). Defendants demanded that the United States remove all duplicate files from the production and filter out any emails dated after October 12, 2010 on which Charles Babb (General Counsel for Defendant Regional University System of Oklahoma) or attorneys of the Oklahoma Attorney General's Office ("OAG") were listed as a sender or recipient, stating "it looks like we would withhold *all messages*" meeting those criteria. *Id* (emphasis added).

¹ To date, the United States still has not received the ESI mailed to the United States' Pennsylvania Avenue address via first-class U.S. Postal Service mail.

Defendants were aware that counsel for the United States were traveling to Oklahoma City that day to attend scheduled depositions on August 9, 10, and 11. After considering Defendants' request, the United States responded on the evening of August 9 that it could not agree to expend further Department of Justice resources based on the reasons cited by Defendants, noting that the United States produced multiple copies of certain documents because they might be necessary to show, for example, that multiple email recipients had actually received those emails. (Ex. 3 at 2-3). The United States also noted that Defendants were not entitled to assert a blanket assertion over all emails to or from its in-house counsel or attorneys without first reviewing each email to ensure that it met all criteria for asserting privilege. *Id.*

During a deposition the next day, August 10, 2016, counsel for Defendants asked if the United States would reconsider its stance on filtering emails to or from Babb and other OAG attorneys, newly explaining that such a filter would enable Defendants to conduct a more targeted review of those emails and representing that Defendants would not assert a blanket privilege objection after all. The United States agreed to consider the narrowed request and reached out to its Litigation Support Group, which would actually conduct the filtering, to ascertain when such a request could be completed. At a subsequent deposition break, Defendants asked if the United States also would consider a two-week extension of time to review the ESI. The United States agreed to consider the requested extension, but immediately expressed its concerns that such an extension would

prevent it from adequately preparing for and conducting two remaining fact depositions,² since it would be unclear whether the ESI in question could be used during those depositions. At the conclusion of the August 10, 2016 deposition, the United States informed Defendants that it would agree to further filter emails to or from Babb and OAG counsel, but that it could not promise to complete such filtering until August 12, 2016.³ (Ex. 3 at 1). The United States informed Defendants that it would not agree to the two-week extension, not only because it prejudiced the United States' ability to prepare for the depositions of Melinda House and Judge Richard Ogden (a former Regent of the Regional University System of Oklahoma), but because the United States' list of exhibits is due on Friday, August 19, 2016. *Id.* On August 11, 2016, Defendants then filed the instant Motion.

Nowhere in their Motion do Defendants argue that circumstances have changed since they agreed to the two-week review period approved by the Court, because circumstances have not changed. Both Plaintiffs' review of Defendants' original ESI production (which was completed on time) and Defendants' review of the significantly-narrowed ESI pool necessarily take place during discovery, when depositions and other discovery matters are scheduled. Defendants argue that they had insufficient time to

² At the time, this Court had not yet entered its order concerning the continuation of the Babb deposition (ECF No. 96), which now presents a third fact deposition to which Defendants' assertions of privilege over ESI is relevant.

³ The United States memorialized this conversation via email later that evening, but verbally informed Defendants of its position immediately after the August 10, 2016 deposition concluded.

conduct their review, yet they had sufficient time to file not one, but two, lengthy and premature Motions in Limine (ECF Nos. 88 and 98), which are not due to be filed until mid-October 2016. Defendants also created the need for unnecessary motion practice by improperly asserting attorney-client privilege during the deposition of Babb. (See ECF No. 96). With respect to the lengthy telephonic discovery conference referenced by Defendants, it is important to point out that the conference was necessitated by Defendants' issuance of two now-contested Rule 30(b)(6) deposition notices to the United States (*see* ECF Nos. 89 and 99) and the Equal Employment Opportunity Commission, and that as a result of that conference, Defendants not only agreed to a stipulation that enabled the United States to withdraw some of its own Rule 30(b)(6) deposition topics and pending written discovery, but the United States also provided Defendants with a requested one-week extension for responding to pending written discovery. The implication that the United States has somehow proceeded with discovery discourteously and thereby necessitated the requested extension is simply inaccurate.

Furthermore, Defendants suggest, without support, that the United States should bear all burden associated with ESI because Defendants lack e-discovery software. The United States notes that the software it has used for this production, Relativity, is not proprietary and is equally available for Defendants to purchase. While the United States agreed to take on the overwhelming majority of the burden associated with its ESI

requests, it is not required to altogether eliminate or further reduce any burden associated with Defendants' review of their own ESI for privilege.

ii. The United States Appropriately Circumscribed Its Selection of ESI

Defendants also suggest that the United States' selection of documents is "expansive," "over-broad," "excessive," and "somewhat irrelevant." (ECF No. 97 at 3). Defendants produced more than 48,000 native files, and the 2,000 or so files selected by the United States constitute only about *four percent* of Defendants' original ESI production. The United States also disputes Defendants' contention that it selected irrelevant emails. When reviewing and selecting ESI, the United States was mindful of relevancy, but also took into account that it had only one opportunity to select any documents that it might need to support its claims. Therefore, consistent with Fed. R. Civ. P. 26(b)(1), the United States selected items that it reasonably believed fell within the scope of discovery in light of the time at which its selections were due and the amount of discovery remaining in the case.

Defendants also imply that the United States improperly selected native files that are subject to attorney-client privilege.⁴ Since Defendants apparently have not reviewed the United States' ESI selection, their basis for such an assertion is unclear. This Court is already aware that the parties do not agree on the nature and scope of attorney-client privilege in this case, and the United States disputes that all emails sent to or from

⁴ The United States notes that it believes there are very few, if any, emails sent to or from OAG attorneys included in its ESI selection.

Charles Babb on or after October 12, 2010 (the day after which Plaintiff-Intervenor Rachel Tudor filed her third internal grievance with Southeastern Oklahoma State University and well before that internal grievance was resolved) are privileged. Thus, Defendants' argument that a large number of the United States' selected ESI files are privileged is based on yet another inappropriate construction of attorney-client privilege.

B. The United States Would Be Prejudiced by Defendants' Requested Extension.

The United States made plain to Defendants that its opposition to their requested extension was grounded in the prejudice that would result from such an extension, though Defendants omit any discussion of prejudice from their Motion. The United States will participate in the noticed depositions of House and Ogden, both of which are likely to occur before Defendants' requested extended deadline of August 26, 2016. The United States has also noticed a Fed. R. Civ. P. 30(b)(6) deposition of Defendants on August 26, 2016, and intends to continue the deposition of Babb in light of the Court's recent order permitting that continuation (ECF No. 96). The United States' ability to prepare for and conduct these depositions, particularly the deposition of Babb, would be greatly inhibited if it does not know which documents Defendants claim to be privileged.

In addition, the United States is required to file its final list of exhibits on or before August 19, 2016. It cannot do so if it is unaware of which documents in the case over which Defendants are asserting privilege.

Finally, in addition to the reasons we provided to Defendants on August 10, the United States also notes that its ability to respond to any summary judgment motion filed

by Defendants will be negatively influenced by the requested extension. The current dispositive motion deadline of September 1, 2016, falls only days after Defendants' would-be ESI review deadline of August 26, 2016, and it is unlikely that any disputes regarding Defendants' assertions of privilege will be resolved before Plaintiffs receive, and perhaps are required to respond to, such a dispositive motion.

III. Conclusion

In the face of the prejudice that would be suffered by the United States, Defendants provide no legitimate basis for an extension of time to review ESI that they originally produced themselves. Defendants knew of their August 12, 2016 deadline well in advance, yet failed to take the necessary steps to meet it. The United States requests that the Court deny Defendants' Motion (ECF No. 97) and require Defendants to produce the ESI by the parties' original deadline of August 12, 2016, as reflected in the Rule 502(d) Order entered by this Court (ECF No. 66).

Respectfully submitted,

Date: August 12, 2016

VANITA GUPTA
Principal Deputy Assistant Attorney General
Civil Rights Division

DELORA L. KENNEBREW
Chief
Employment Litigation Section

MEREDITH L. BURRELL (MD no number issued)
Deputy Chief
Employment Litigation Section

/s/ Valerie Meyer

ALLAN K. TOWNSEND (ME Bar No. 9347)
SHAYNA M. BLOOM (D.C. Bar No. 498105)
VALERIE MEYER (AZ Bar No. 023737)
Senior Trial Attorneys
Employment Litigation Section
Civil Rights Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Patrick Henry Building, Fourth Floor
Washington, DC 20530
Telephone: (202) 616-9100
Facsimile: (202) 514-1005
Allan.Townsend@usdoj.gov
Shayna.Bloom@usdoj.gov
Valerie.Meyer@usdoj.gov

Attorneys for Plaintiff United States

Meyer, Valerie (CRT)

From: Townsend, Allan (CRT)
Sent: Thursday, June 23, 2016 5:57 PM
To: Lori Cornell; Jeb Joseph
Cc: Bloom, Shayna (CRT); Meyer, Valerie (CRT); bnovotny@nationlit.com; eyoung@jtweisslaw.com; jweiss@jtweisslaw.com; Dixie Coffey
Subject: Re: Tudor

Jeb,
We have repeatedly asked you to mail us packages via FedEx, UPS, or another overnight delivery service. No one until now has ever indicated that you needed our account information in order to do so. These discs were due to us on June 21. So, sending them via regular mail on June 21 to the wrong address is unacceptable particularly given the fact that we have repeatedly told you that it takes weeks for packages sent via regular mail to get to us. Please send new copies of the discs via overnight delivery today to the correct address (601 D St. NW, Suite 4500, Washington, DC 20579) and call me or Shayna so that we can discuss what to do about the ESI review deadlines in the 502(d) order since they were predicated on you getting the ESI to us by June 21.

I do not believe it is our obligation to pay for the overnight delivery. If you disagree, send us the amount that you have to pay for the overnight delivery and any case law or other authority you believe supports your position. But you should not wait any longer to send the discs via overnight delivery. I expect to receive the discs tomorrow.

Allan

> On Jun 23, 2016, at 4:27 PM, Lori Cornell <lori.cornell@oag.ok.gov> wrote:
>
> Allan:
>
> It was sent regular US mail to:
>
> Allan Townsend
> Shayna Bloom
> Valerie Meyer
> US DEPT. OF JUSTICE – CIVIL RIGHTS DIVISION – DC
> 950 Pennsylvania Ave NW – RM 49258 PHB Washington, DC 20530
>
> If you are insisting on having stuff overnighted to you, please provide us with your Fed-Ex account information and we will do so. In the alternative, we would be happy to hand deliver documents, disc, etc. to the DOJ office here and you can make whatever arrangements you wish.
>
> Thanks,
>
> Lori Cornell
> Office of the Attorney General
> Paralegal
> 313 N.E. 21st Street
> Oklahoma City, Oklahoma 73105
> Telephone: 405.521.3921
> Direct: 405.522.2906
> Facsimile: 405.521.4518
>
>

> CONFIDENTIALITY NOTICE: This email message and all attachments transmitted with it may contain information that is legally privileged, confidential, and/or attorney work product intended solely for the use of the intended recipient, or the employee or agent responsible to deliver it to the intended recipient. You are hereby notified that any reading, dissemination, disclosure, distribution, copying or other use of this information without the permission of the Oklahoma Office of the Attorney General is strictly prohibited. If you have received this message in error, please notify the sender immediately by telephone at 405.522.2906 or lori.cornell@oag.ok.gov, and destroy this message.

> ♻ Save a tree. Don't print this e-mail unless it's really necessary.

>
>
>
>
>

> -----Original Message-----

> From: Townsend, Allan (CRT) [mailto:Allan.Townsend@usdoj.gov]

> Sent: Thursday, June 23, 2016 4:24 PM

> To: Lori Cornell

> Cc: Bloom, Shayna (CRT); Meyer, Valerie (CRT); bnovotny@nationlit.com; eyoung@jtweisslaw.com; jweiss@jtweisslaw.com; Dixie Coffey; Jeb Joseph

> Subject: Re: Tudor

>

> We still have not received the discs. Please provide answers to my questions below and also, if there is a tracking number associated with the package, please provide that as well.

>

> On Jun 23, 2016, at 10:57 AM, Townsend, Allan (CRT)

<Allan.Townsend@crt.usdoj.gov<mailto:Allan.Townsend@crt.usdoj.gov>> wrote:

>

> And could you please confirm exactly what address you sent the package to? I wasn't sure what you meant by "mailing address."

>

> Thanks,

> Allan

>

> On Jun 23, 2016, at 10:39 AM, Townsend, Allan (CRT)

<Allan.Townsend@crt.usdoj.gov<mailto:Allan.Townsend@crt.usdoj.gov>> wrote:

>

> Did you send it overnight?

>

> On Jun 23, 2016, at 10:19 AM, Lori Cornell <lori.cornell@oag.ok.gov<mailto:lori.cornell@oag.ok.gov>> wrote:

>

> We sent the disc usps to your mailing address on 6/21/2016.

>

> From: Townsend, Allan (CRT) [mailto:Allan.Townsend@usdoj.gov]

> Sent: Wednesday, June 22, 2016 8:32 PM

> To: Lori Cornell

> Cc: Bloom, Shayna (CRT); Meyer, Valerie (CRT); bnovotny@nationlit.com<mailto:bnovotny@nationlit.com>; eyoung@jtweisslaw.com<mailto:eyoung@jtweisslaw.com>; jweiss@jtweisslaw.com<mailto:jweiss@jtweisslaw.com>; Dixie Coffey; Jeb Joseph

> Subject: RE: Tudor

>

> Lori,

> We did not receive the discs today. Did you send them out yesterday or today? Also, could you please confirm that you sent them via FedEx, UPS, or another overnight courier to the address we provided?

>

> Thanks,
> Allan
>
> From: Townsend, Allan (CRT)
> Sent: Tuesday, June 21, 2016 5:59 PM
> To: Lori Cornell
> Cc: Bloom, Shayna (CRT); Meyer, Valerie (CRT); bnovotny@nationlit.com<mailto:bnovotny@nationlit.com>;
eyoung@jtweisslaw.com<mailto:eyoung@jtweisslaw.com>; jweiss@jtweisslaw.com<mailto:jweiss@jtweisslaw.com>;
Dixie Coffey; Jeb Joseph
> Subject: Re: Tudor
>
> Lori,
> I'm not sure if we can read a blu ray but I suspect that we can. So please send it to us. If we can't read it, I'll let you
know.
>
> As Shayna indicated in her June 16 email, we need you to send the discs via FedEx, UPS or another overnight courier to
601 D St. NW, Suite 4500, Washington, DC 20579<x-apple-data-detectors://4>.
>
> Thanks,
> Allan
>
> On Jun 21, 2016, at 4:23 PM, Lori Cornell <lori.cornell@oag.ok.gov<mailto:lori.cornell@oag.ok.gov>> wrote:
> <image001.jpg>
> Allan:
>
> We have now received discs from RUSO and SEOSU. However, we just realized that the disc from RUSO is on a blue
ray, which we are not able to read. Do you have the capabilities to read a blue ray disc and is it ok for us to send it to you
in that format? If not, we are working with RUSO to provide us with a format that we are able to access and can provide
that to you upon receipt.
>
> I apologize for the late notice on this it was simply overlooked when we received it yesterday.
>
> Lori Cornell
> Office of the Attorney General
> Paralegal
> 313 N.E. 21st Street
> Oklahoma City, Oklahoma 73105
> Telephone: 405.521.3921
> Direct: 405.522.2906
> Facsimile: 405.521.4518
> <image002.png>
>
> CONFIDENTIALITY NOTICE: This email message and all attachments transmitted with it may contain information that is
legally privileged, confidential, and/or attorney work product intended solely for the use of the intended recipient, or
the employee or agent responsible to deliver it to the intended recipient. You are hereby notified that any reading,
dissemination, disclosure, distribution, copying or other use of this information without the permission of the Oklahoma
Office of the Attorney General is strictly prohibited. If you have received this message in error, please notify the sender
immediately by telephone at 405.522.2906 or lori.cornell@oag.ok.gov<mailto:lori.cornell@oag.ok.gov>, and destroy this
message.
> P Save a tree. Don't print this e-mail unless it's really necessary.
> _____
>

Meyer, Valerie (CRT)

From: Bloom, Shayna (CRT)
Sent: Monday, June 27, 2016 9:32 AM
To: Jeb Joseph
Cc: Meyer, Valerie (CRT); bnovotny@nationlit.com; eyoung@jtweisslaw.com; jweiss@jtweisslaw.com; Townsend, Allan (CRT); Lori Cornell; Dixie Coffey
Subject: RE: Tudor

Jeb:

We've made arrangements for the discs to be dropped off at the Oklahoma City U.S. Attorney's Office. You can go to their front desk at 210 Park Avenue, Suite 400 and tell them the discs are for Kay Sewell or Gina Penny. If you prefer not to park, you can reach Kay Sewell on her cell phone at 405-550-8308 and she will come downstairs. Their office is open until 5 pm.

Shayna

Shayna Bloom
Trial Attorney
United States Department of Justice
Civil Rights Division
Employment Litigation Section
Telephone: (202) 305-1450
Fax: (202) 514-1005

WARNING AND CONFIDENTIALITY NOTICE: The information contained in this e-mail message, including any attachments, is confidential, may be subject to the attorney-client privilege or other privileges, may constitute inside information, and is intended only for the use of the intended addressees. In the event this communication was received by you in error, please notify the sender immediately; return this communication to the sender; and permanently delete this communication from your computer storage systems. Any unauthorized review, use, disclosure or distribution of this communication is strictly prohibited and may be unlawful.

From: Jeb Joseph [mailto:jeb.joseph@oag.ok.gov]
Sent: Friday, June 24, 2016 6:41 PM
To: Bloom, Shayna (CRT); Dixie Coffey
Cc: Meyer, Valerie (CRT); bnovotny@nationlit.com; eyoung@jtweisslaw.com; jweiss@jtweisslaw.com; Townsend, Allan (CRT); Lori Cornell
Subject: RE: Tudor

Shayna,

I just got back from downtown OKC. The US Attorney's Office there did not know anything about a delivery for you. I think they need for you to call them and let them know I'm dropping this off for you. As a result, I was not able to leave the package there. It's here in our office now. If you will please call and let someone at the DOJ-OKC office know, and then give me their name, I will be happy to re-deliver this on Monday.

Thanks, and have a good weekend,
Jeb

Jeb E. Joseph
Assistant Attorney General
Litigation Division
Office of the Attorney General
313 N.E. 21st Street
Oklahoma City, OK 73105
(405) 522-8940 - Office
(405) 521-4518 - Fax

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, reliance upon, or distribution by others, or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.



Help conserve trees and space. Don't print this e-mail unless it's really necessary.

-----Original Message-----

From: Bloom, Shayna (CRT) [<mailto:Shayna.Bloom@usdoj.gov>]
Sent: Friday, June 24, 2016 3:14 PM
To: Jeb Joseph; Dixie Coffey
Cc: Meyer, Valerie (CRT); bnovotny@nationlit.com; eyoung@jtweisslaw.com; jweiss@jtweisslaw.com; Townsend, Allan (CRT); Lori Cornell
Subject: RE: Tudor

Jeb, it looks like our e-mails crossed, but please still let us know if you have overnighted the materials or plan to hand-deliver them to the USAO today. Thanks.

Shayna

Shayna Bloom
Trial Attorney
United States Department of Justice
Civil Rights Division
Employment Litigation Section
Telephone: (202) 305-1450
Fax: (202) 514-1005

WARNING AND CONFIDENTIALITY NOTICE: The information contained in this e-mail message, including any attachments, is confidential, may be subject to the attorney-client privilege or other privileges, may constitute inside information, and is intended only for the use of the intended addressees. In the event this communication was received by you in error, please notify the sender immediately; return this communication to the sender; and permanently delete this communication from your computer storage systems. Any unauthorized review, use, disclosure or distribution of this communication is strictly prohibited and may be unlawful.

-----Original Message-----

From: Bloom, Shayna (CRT)
Sent: Friday, June 24, 2016 3:45 PM
To: Jeb Joseph; Dixie Coffey
Cc: Meyer, Valerie (CRT); bnovotny@nationlit.com; eyoung@jtweisslaw.com; jweiss@jtweisslaw.com; Townsend, Allan (CRT); Lori Cornell
Subject: RE: Tudor

Dixie and Jeb:

We are writing because we have not received a response to our e-mails from yesterday about the deficiency in the method you used to send the ESI which was due to be produced June 21. As we have said many times during the course of this litigation, failure to use an overnight courier such as FedEx or UPS and failure to use the address we provided for that purpose results in a lengthy delay before we receive any materials sent. Also, and particularly relevant here, in the past, discs have either been physically damaged in that process or the data on the disc have been corrupted.

With respect to this shipment specifically, we wrote to you on June 16 and June 20 to find out how you planned to send the materials. We did not receive a response until after you'd sent them by U.S. Mail, and only then did you say that you will not send materials by overnight courier unless we provide our account number, or that you will hand-deliver materials to the Oklahoma City U.S. Attorney's Office. If you had responded to our previous e-mails and offered the alternatives beforehand, we could have made arrangements to that end. Instead, we are now unlikely to receive the discs until sometime late next week and they may be damaged, meaning you will need to produce them again. Regardless, we have now lost a significant amount of our review time. As a result, we will be arranging a call with the Court to modify the deadlines in the FRE 502 Order, and we ask, if you did not overnight the discs yet, that you please hand-deliver copies of all of the discs to the Oklahoma City USAO by close of business today so we can arrange to have them sent to us.

Shayna

Shayna Bloom
Trial Attorney
United States Department of Justice
Civil Rights Division
Employment Litigation Section
Telephone: (202) 305-1450
Fax: (202) 514-1005

WARNING AND CONFIDENTIALITY NOTICE: The information contained in this e-mail message, including any attachments, is confidential, may be subject to the attorney-client privilege or other privileges, may constitute inside information, and is intended only for the use of the intended addressees. In the event this communication was received by you in error, please notify the sender immediately; return this communication to the sender; and permanently delete this communication from your computer storage systems. Any unauthorized review, use, disclosure or distribution of this communication is strictly prohibited and may be unlawful.

-----Original Message-----

From: Townsend, Allan (CRT)
Sent: Thursday, June 23, 2016 5:57 PM
To: Lori Cornell; Jeb Joseph
Cc: Bloom, Shayna (CRT); Meyer, Valerie (CRT); bnovotny@nationlit.com; eyoung@jtweisslaw.com; jweiss@jtweisslaw.com; Dixie Coffey
Subject: Re: Tudor

Jeb,
We have repeatedly asked you to mail us packages via FedEx, UPS, or another overnight delivery service. No one until now has ever indicated that you needed our account information in order to do so. These discs were due to us on June 21. So, sending them via regular mail on June 21 to the wrong address is unacceptable particularly given the fact that we have repeatedly told you that it takes weeks for packages sent via regular mail to get to us. Please send new copies of the discs via overnight delivery today to the correct address (601 D St. NW, Suite 4500, Washington, DC 20579) and call me or Shayna so that we can discuss what to do about the ESI review deadlines in the 502(d) order since they were predicated on you getting the ESI to us by June 21.

I do not believe it is our obligation to pay for the overnight delivery. If you disagree, send us the amount that you have to pay for the overnight delivery and any case law or other authority you believe supports your position. But you should not wait any longer to send the discs via overnight delivery. I expect to receive the discs tomorrow.

Allan

> On Jun 23, 2016, at 4:27 PM, Lori Cornell <lori.cornell@oag.ok.gov> wrote:

>

> Allan:

>

> It was sent regular US mail to:

>

> Allan Townsend

> Shayna Bloom

> Valerie Meyer

> US DEPT. OF JUSTICE – CIVIL RIGHTS DIVISION – DC

> 950 Pennsylvania Ave NW – RM 49258 PHB Washington, DC 20530

>

> If you are insisting on having stuff overnighted to you, please provide us with your Fed-Ex account information and we will do so. In the alternative, we would be happy to hand deliver documents, disc, etc. to the DOJ office here and you can make whatever arrangements you wish.

>

> Thanks,

>

> Lori Cornell

> Office of the Attorney General

> Paralegal

> 313 N.E. 21st Street

> Oklahoma City, Oklahoma 73105

> Telephone: 405.521.3921

> Direct: 405.522.2906

> Facsimile: 405.521.4518

>

>

> CONFIDENTIALITY NOTICE: This email message and all attachments transmitted with it may contain information that is legally privileged, confidential, and/or attorney work product intended solely for the use of the intended recipient, or the employee or agent responsible to deliver it to the intended recipient. You are hereby notified that any reading, dissemination, disclosure, distribution, copying or other use of this information without the permission of the Oklahoma Office of the Attorney General is strictly prohibited. If you have received this message in error, please notify the sender immediately by telephone at 405.522.2906 or lori.cornell@oag.ok.gov, and destroy this message.

> P Save a tree. Don't print this e-mail unless it's really necessary.

>

>

>

>

> -----Original Message-----

> From: Townsend, Allan (CRT) [mailto:Allan.Townsend@usdoj.gov]

> Sent: Thursday, June 23, 2016 4:24 PM

> To: Lori Cornell

> Cc: Bloom, Shayna (CRT); Meyer, Valerie (CRT); bnovotny@nationlit.com; eyoung@jtweisslaw.com; jweiss@jtweisslaw.com; Dixie Coffey; Jeb Joseph

> Subject: Re: Tudor

>
> We still have not received the discs. Please provide answers to my questions below and also, if there is a tracking number associated with the package, please provide that as well.
>
> On Jun 23, 2016, at 10:57 AM, Townsend, Allan (CRT)
<Allan.Townsend@crt.usdoj.gov<mailto:Allan.Townsend@crt.usdoj.gov>> wrote:
>
> And could you please confirm exactly what address you sent the package to? I wasn't sure what you meant by "mailing address."
>
> Thanks,
> Allan
>
> On Jun 23, 2016, at 10:39 AM, Townsend, Allan (CRT)
<Allan.Townsend@crt.usdoj.gov<mailto:Allan.Townsend@crt.usdoj.gov>> wrote:
>
> Did you send it overnight?
>
> On Jun 23, 2016, at 10:19 AM, Lori Cornell <lori.cornell@oag.ok.gov<mailto:lori.cornell@oag.ok.gov>> wrote:
>
> We sent the disc usps to your mailing address on 6/21/2016.
>
> From: Townsend, Allan (CRT) [mailto:Allan.Townsend@usdoj.gov]
> Sent: Wednesday, June 22, 2016 8:32 PM
> To: Lori Cornell
> Cc: Bloom, Shayna (CRT); Meyer, Valerie (CRT); bnovotny@nationlit.com<mailto:bnovotny@nationlit.com>; eyoung@jtweisslaw.com<mailto:eyoung@jtweisslaw.com>; jweiss@jtweisslaw.com<mailto:jweiss@jtweisslaw.com>; Dixie Coffey; Jeb Joseph
> Subject: RE: Tudor
>
> Lori,
> We did not receive the discs today. Did you send them out yesterday or today? Also, could you please confirm that you sent them via FedEx, UPS, or another overnight courier to the address we provided?
>
> Thanks,
> Allan
>
> From: Townsend, Allan (CRT)
> Sent: Tuesday, June 21, 2016 5:59 PM
> To: Lori Cornell
> Cc: Bloom, Shayna (CRT); Meyer, Valerie (CRT); bnovotny@nationlit.com<mailto:bnovotny@nationlit.com>; eyoung@jtweisslaw.com<mailto:eyoung@jtweisslaw.com>; jweiss@jtweisslaw.com<mailto:jweiss@jtweisslaw.com>; Dixie Coffey; Jeb Joseph
> Subject: Re: Tudor
>
> Lori,
> I'm not sure if we can read a blu ray but I suspect that we can. So please send it to us. If we can't read it, I'll let you know.
>
> As Shayna indicated in her June 16 email, we need you to send the discs via FedEx, UPS or another overnight courier to 601 D St. NW, Suite 4500, Washington, DC 20579<x-apple-data-detectors://4>.
>

> Thanks,

> Allan

>

> On Jun 21, 2016, at 4:23 PM, Lori Cornell <lori.cornell@oag.ok.gov<mailto:lori.cornell@oag.ok.gov>> wrote:

> <image001.jpg>

> Allan:

>

> We have now received discs from RUSO and SEOSU. However, we just realized that the disc from RUSO is on a blue ray, which we are not able to read. Do you have the capabilities to read a blue ray disc and is it ok for us to send it to you in that format? If not, we are working with RUSO to provide us with a format that we are able to access and can provide that to you upon receipt.

>

> I apologize for the late notice on this it was simply overlooked when we received it yesterday.

>

> Lori Cornell

> Office of the Attorney General

> Paralegal

> 313 N.E. 21st Street

> Oklahoma City, Oklahoma 73105

> Telephone: 405.521.3921

> Direct: 405.522.2906

> Facsimile: 405.521.4518

> <image002.png>

>

> CONFIDENTIALITY NOTICE: This email message and all attachments transmitted with it may contain information that is legally privileged, confidential, and/or attorney work product intended solely for the use of the intended recipient, or the employee or agent responsible to deliver it to the intended recipient. You are hereby notified that any reading, dissemination, disclosure, distribution, copying or other use of this information without the permission of the Oklahoma Office of the Attorney General is strictly prohibited. If you have received this message in error, please notify the sender immediately by telephone at 405.522.2906 or lori.cornell@oag.ok.gov<mailto:lori.cornell@oag.ok.gov>, and destroy this message.

> P Save a tree. Don't print this e-mail unless it's really necessary.

>

>

Meyer, Valerie (CRT)

From: Meyer, Valerie (CRT)
Sent: Wednesday, August 10, 2016 10:06 PM
To: 'Jeb Joseph'; 'Dixie Coffey'; 'Jillian T. Weiss, Esq.'; 'Ezra Young'; 'Brittany Novotny'
Cc: Townsend, Allan (CRT); Bloom, Shayna (CRT); 'Lori Cornell'
Subject: RE: US v. SOSU et al. - email search results and review

Tracking:	Recipient	Read
	'Jeb Joseph'	
	'Dixie Coffey'	
	'Jillian T. Weiss, Esq.'	
	'Ezra Young'	
	'Brittany Novotny'	
	Townsend, Allan (CRT)	
	Bloom, Shayna (CRT)	Read: 8/10/2016 10:09 PM
	'Lori Cornell'	

Dear Jeb:

I am writing to memorialize our in-person conversations today during breaks in the deposition of Dr. McMillan.

After I sent my email this morning at 9:25 am, you asked if we would be willing to at least filter out messages sent to or from Charlie Babb (and members of OAG staff), not so that you could make a blanket assertion of privilege, but so that your review of documents could be more targeted. We agreed to consider this proposal.

At a subsequent deposition break, you asked if we would, in the alternative, be willing to agree to a two-week extension of time for you to review the ESI we produced back to you. I indicated that I believed it was unlikely that we would agree, as a two-week extension would mean that we would not receive your assertions of privilege under the 502(d) order until almost the close of discovery. I stated, however, that we would consider this proposal as well and provide you with a response as soon as possible.

After the conclusion of Dr. McMillan's deposition, I let you know that we would not be able to agree to a two-week extension of your time to review the ESI we produced back to you, both because we need to know whether you will object to our use of some of those documents during upcoming depositions and because our exhibit list is due to the Court next Friday, August 19. I also noted that you agreed to the timeframes set forth in the 502(d) Order (ECF No. 66), we complied with these timeframes, and also, as expected, we produced back to you only a small portion of the documents you initially provided to us.

With respect to your request for the United States to further filter out emails sent to or from Babb in order to speed your review, in consulting with our litigation support group today I learned that it would take a couple of hours for them to apply such a filter, but that it could not begin until sometime tomorrow due to their existing workload and that the filtering might be finished either tomorrow or Friday. I indicated that it was not clear to me whether that would address your concerns.

If you still wish us to perform the filter and provide to you a separate list of the messages sent to or from Babb or members of the OAG staff (which we could not promise to get to you before Friday), please let us know by tomorrow morning at 10 am Eastern.

Sincerely,

Valerie

From: Meyer, Valerie (CRT)

Sent: Wednesday, August 10, 2016 9:25 AM

To: 'Jeb Joseph' <jeb.joseph@oag.ok.gov>; Dixie Coffey <dixie.coffey@oag.ok.gov>; Jillian T. Weiss, Esq. <jweiss@jtweisslaw.com>; Ezra Young <eyoung@jtweisslaw.com>; Brittany Novotny <BNovotny@nationlit.com>

Cc: Townsend, Allan (CRT) <Allan.Townsend@crt.usdoj.gov>; Bloom, Shayna (CRT) <Shayna.Bloom@crt.usdoj.gov>; Lori Cornell <lori.cornell@oag.ok.gov>

Subject: RE: US v. SOSU et al. - email search results and review

Dear Jeb:

Your assumption is incorrect. Allan, Shayna, and I selected all of the documents we produced back to you after reviewing them. With respect to identical versions of emails with multiple recipients, we did not necessarily review each copy of the email, but we reiterate that we may use multiple versions of one email to demonstrate its receipt by different recipients. Otherwise, all documents selected by the United States were reviewed by one or more of its attorneys (in addition to the thousands of others reviewed by the United States that were not selected).

Sincerely,
Valerie

From: Jeb Joseph [<mailto:jeb.joseph@oag.ok.gov>]

Sent: Wednesday, August 10, 2016 9:05 AM

To: Meyer, Valerie (CRT) <Valerie.Meyer@crt.usdoj.gov>; Dixie Coffey <dixie.coffey@oag.ok.gov>; Jillian T. Weiss, Esq. <jweiss@jtweisslaw.com>; Ezra Young <eyoung@jtweisslaw.com>; Brittany Novotny <BNovotny@nationlit.com>

Cc: Townsend, Allan (CRT) <Allan.Townsend@crt.usdoj.gov>; Bloom, Shayna (CRT) <Shayna.Bloom@crt.usdoj.gov>; Lori Cornell <lori.cornell@oag.ok.gov>

Subject: RE: US v. SOSU et al. - email search results and review

Valerie,

I take from your omission that actual human beings have not reviewed these documents (as inquired about in my email below, highlighted in **yellow**). When we ask the Court for relief we will note the United States' objections, including the lack of available Department of Justice resources.

Thank you for your time,
Jeb

From: Meyer, Valerie (CRT) [<mailto:Valerie.Meyer@usdoj.gov>]

Sent: Tuesday, August 09, 2016 10:49 PM

To: Jeb Joseph; Dixie Coffey; Jillian T. Weiss, Esq.; Ezra Young; Brittany Novotny

Cc: Townsend, Allan (CRT); Bloom, Shayna (CRT); Lori Cornell

Subject: RE: US v. SOSU et al. - email search results and review

Dear Jeb:

As you know, Allan and I have been in a deposition all day today and spent much of the day yesterday en route to Oklahoma City for this week's depositions. We do not agree with your premise that the Department of Justice is required to relieve Defendants of all burden with respect to reviewing these emails; we already have undertaken the burden of reviewing in excess of 48,000 native documents produced by Defendants and narrowing those documents to the approximately 2,000 documents we wish to use in this litigation. We did so by the Court's deadline despite delays in receiving the production that Defendants caused when you refused to mail the discs in the manner that the United States requested.

With respect to your request for the Department of Justice to de-duplicate the documents we produced back to you, we note that we produced duplicate native files in order to demonstrate that emails addressed to multiple recipients were, in fact, received by each of those recipients. Therefore, removing the duplicate files would prevent you from reviewing each version of a document that we might use.

With respect to your request to filter out all messages on which Charlie Babb was a recipient or sender after October 12, 2010, we note that any assertions of privilege as to these emails necessarily require Defendants to have reviewed each email to verify that it is privileged. It would be inappropriate for Defendants to make a blanket assertion without having reviewed each email to ascertain that it was not, for example, also sent to a third party (thereby waiving the privilege). We also remind Defendants of their obligation to place any message over which they assert privilege on a sufficiently-detailed privilege log. Filtering out emails sent to or by Babb serves no apparent purpose other than to permit Defendants to assert privilege without having verified that each document actually meets the criteria to be privileged.

As for emails on which members of the Oklahoma Attorney General's Office are copied, we believe that there are very few, if any, messages that we produced that meet this criteria and that it would not be burdensome to review any that may have been produced.

We are also unwilling to do the work you have requested because of the added burden it would impose on the United States. Our litigation support group would need to perform the work you are proposing. The litigation support group must support cases throughout the Civil Rights Division. We are unwilling to ask them to assist the OAG in performing its review of these emails at the expense of taking them away from other time sensitive tasks they are working on to support the Division's work on other cases and matters.

We believe that we have complied with both the letter and the spirit of the Court's orders on this subject and decline to apply the filters requested by Defendants for the reasons above. Should Defendants have additional reasons that they believe these filters should be applied, please let us know.

Sincerely,

Valerie

From: Jeb Joseph [<mailto:jeb.joseph@oag.ok.gov>]

Sent: Tuesday, August 09, 2016 7:43 PM

To: Meyer, Valerie (CRT) <Valerie.Meyer@crt.usdoj.gov>; Dixie Coffey <dixie.coffey@oag.ok.gov>; Jillian T. Weiss, Esq. <jweiss@jtweisslaw.com>; Ezra Young <eyoung@jtweisslaw.com>; Brittany Novotny <BNovotny@nationlit.com>

Cc: Townsend, Allan (CRT) <Allan.Townsend@crt.usdoj.gov>; Bloom, Shayna (CRT) <Shayna.Bloom@crt.usdoj.gov>; Lori Cornell <lori.cornell@oag.ok.gov>

Subject: RE: US v. SOSU et al. - email search results and review

Dear Department of Justice Counsel,

We have not yet heard back from you about the email below, sent to you on Monday morning. As you will recall, the stated purpose of the Judge's Order [Doc. No. 66] regarding production of ESI "is to shift the burdens of review . . ." from Defendants and their counsel to the Department of Justice because the Department sought significant and broad searches of emails, and represented to the Defendants and to the Court that the Department of Justice had the technology and IT personnel to do meaningful searches. During my telephone calls with you and your IT staff, the IT personnel represented that they could do de-duplications and combining of email threads to avoid duplicative production. However, the 2,000+ email files you presented to us include examples of duplicative files, as well as emails whose substance appears to have no bearing on the claims and defenses in this case. **Have actual human beings at the Department of Justice actually reviewed each of these emails and determined that they were relevant, and not**

duplicative? If the Department is unable or unwilling to discuss further technology-assisted filtering of these search results then the Defendants will be forced to seek relief from the Court. Please advise accordingly.

Thank you for your time and consideration,
Jeb

Jeb E. Joseph
Assistant Attorney General
Litigation Division
Office of the Attorney General
313 N.E. 21st Street
Oklahoma City, OK 73105
(405) 522-8940 - Office
(405) 521-4518 - Fax

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, reliance upon, or distribution by others, or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.



Help conserve trees and space. Don't print this e-mail unless it's really necessary.

From: Jeb Joseph
Sent: Monday, August 08, 2016 11:49 AM
To: 'Meyer, Valerie (CRT)'; Dixie Coffey; Jillian T. Weiss, Esq.; Ezra Young; Brittany Novotny
Cc: Townsend, Allan (CRT); Bloom, Shayna (CRT); Lori Cornell
Subject: RE: US v. SOSU et al. - email search results and review

Dear Department of Justice Counsel,

We are in the process of reviewing the multiple thousands of pages of email message files (and their attachments) which you seek to retain for use in this litigation. However, there are multiple copies of multiple emails. It was our understanding that part of your IT review process would include de-duplication of files. This does not appear to have been performed, and it creates a significant and unnecessary delay in this process.

****Can you please ask your IT staff to re-run the searches or at least apply a filter on the current results for duplicates?**

Also, although our review is ongoing, it looks like we would withhold all messages "to/from/cc/bcc/fw" Charlie Babb, (and any attorneys at the Oklahoma Attorney General's Office), on and after the date of October 12, 2010.

****Can you please have your IT staff apply both date and sender/receiver filters according to those parameters? If it helps you I am happy to speak with your IT staff.**

Thank you for your attention to this matter.

-Jeb

Jeb E. Joseph
Assistant Attorney General

Litigation Division
Office of the Attorney General
313 N.E. 21st Street
Oklahoma City, OK 73105
(405) 522-8940 - Office
(405) 521-4518 - Fax

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, reliance upon, or distribution by others, or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.



Help conserve trees and space. Don't print this e-mail unless it's really necessary.

From: Meyer, Valerie (CRT) [<mailto:Valerie.Meyer@usdoj.gov>]
Sent: Friday, July 29, 2016 3:45 PM
To: Dixie Coffey; Jeb Joseph; Jillian T. Weiss, Esq.; Ezra Young; Brittany Novotny
Cc: Townsend, Allan (CRT); Bloom, Shayna (CRT)
Subject: US v. SOSU et al.

Dear Counsel:

Today we have mailed to you a disc containing copies of the documents that Defendants produced as ESI and that the United States wishes to retain for use in this litigation. Attached is a PDF of the cover letter that accompanied that disc. The password for the disc is:

Unlock encrypted documents from the U.S. Department of Justice

Also attached to this email is a list of the documents that we wish to retain for use in this litigation. This list also serves as a key to the different document IDs assigned by the Defendants and the United States to each document. Please note that email attachments generally are not identified separately on this list because the attachments are part of the email file as produced by Defendants. Nevertheless, email attachments are on the disc (again, as part of the email file).

Sincerely,

Valerie Meyer
Senior Trial Attorney
U.S. Department of Justice
Civil Rights Division, Employment Litigation Section
Phone: (202) 305-3179
Fax: (202) 514-1005