

Kaplowitz, Joshua M.

From: Kaplowitz, Joshua M. [Joshua.Kaplowitz@dbr.com]
Sent: Thursday, September 17, 2009 11:17 AM
To: Kaplowitz, Joshua M.; James M. Jones; Kennedy, Pete; DeYoung, Kyle; Mike.Cox@koleyjessen.com; AChagaris@beattielaw.com; apromer@hangley.com
Cc: Marian Schneider; john bonifaz; Michael Churchill; Kohart, Mary E.; Holly Jacobson
Subject: Banfield v. Cortes discovery - bifurcated protective orders
Importance: High
Attachments: Confidentiality Agreement and Stipulated Protective Order for Vendors (just machines) (1184083_1).DOC; Confidentiality Agreement and Stipulated Protective Order for Vendors (just machines) (1184083_1).DOC

All,

As promised, attached are draft copies of separate protective orders for the machines/code and for the documents. Please get us any edits and comments to the document protective order by next Thursday so we can submit a signed version to the Court by next Friday. As to the machines/code protective order, I understand that Premier has already moved to quash on the machines/code, but we would still like everyone's input on how this order would satisfy your respective clients if the Court orders the machines/code to be produced for inspection. We have not included a list of competitors, but unless we hear differently we will assume that the list would simply be a list of the the Vendors who we have served with subpoenas.

Sincerely,
Josh Kaplowitz

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From: Kaplowitz, Joshua M.
Sent: Tuesday, September 15, 2009 1:48 PM
To: 'James M. Jones'; Kennedy, Pete; 'DeYoung, Kyle'; 'Mike.Cox@koleyjessen.com'; 'AChagaris@beattielaw.com'; 'apromer@hangley.com'
Subject: Banfield v. Cortes discovery

Gentlemen,

I have been having conversations with several of you about bifurcating discovery disputes in the above-referenced case into two categories: (1) documents and (2) DRE machine and source code production. The vendors and the Commonwealth have indicated to us that they can agree on a protective order that covers only the documents, while all of the vendors agree that we need to litigate over the production of machines and source code for inspection by Petitioners' experts. Although Petitioners are frustrated at the slow pace of these negotiations over the summer, we are willing to test out this bifurcation in an effort to accelerate the heretofore glacial pace of discovery.

Accordingly, by this Thursday morning we will be sending everyone two draft protective orders: one covering the documents and one covering the machines/code. We would like to receive any proposed edits to the document protective order within a week of our email, with an eye toward submitting a signed order to the court by the end of next week.

10/15/2009

In the meantime, although we recognize that the machine/code issue is almost certainly going to go to the judge, we are interested in knowing what sorts of trade secret protections would satisfy your clients in the event that the court orders you to produce the machines and source code for inspection. In the "combined" protective order that we sent everyone at the beginning of the summer, we outlined what we think are fair procedural protections, but we never heard anything as to the substance of the machine/code-related portions of that order. Please let email or call me in the next few days with your client's demands on this issue. This knowledge will help streamline the process in the event that the Court rules in our favor on that motion.

Assuming your clients do not have a last-minute change of heart on the machines/code issue, we will then be moving to compel the machines and source code by the end of next week. It is our hope that we will have a signed protective order on the documents in place at that time and will therefore not need to also move to compel documents.

Please do not hesitate to call or email me.

Sincerely,
Josh

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