

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

PERFECT BARRIER, L.L.C., an Indiana)
LLC,)
)
Plaintiff,)
v.)
)
WOODSMART SOLUTIONS, INC. , a)
Florida corporation,)
)
Defendant,)
_____)
)
WOODSMART SOLUTIONS, INC.,)
)
Counter-Plaintiff and)
Third-Party Plaintiff,)
)
v.)
)
PERFECT BARRIER,)
)
Counter-Defendant,)
)
And JOHN K. BANKS and)
WILLIAM P. BANKS,)
)
Third-Party Defendants.)
_____)

Cause No.: 3:07CV0103 RL-CAN

**MEMORANDUM IN SUPPORT OF MOTION TO COMPEL COMPLIANCE WITH
PROTECTIVE ORDER AND FOR SANCTIONS**

Plaintiff Perfect Barrier, LLC (“Perfect Barrier”) submits this memorandum in support of its motion for an Order compelling Defendant WoodSmart Solutions, Inc. (“WoodSmart”) to comply with this Court’s February 7, 2008 Order and for sanctions, pursuant to Fed. R. Civ. P. 26(c) and N.D. Ind. L. R. 37.1. WoodSmart has refused to comply with the terms of this Court’s Protective Order to which it consented. Instead of carefully and sparingly using the

Attorneys-Eyes-Only designation as provided in the Protective Order, WoodSmart has blanketed 96% of its document production with the designation without any consideration as to the content of the documents so designated. After Perfect Barrier's repeated requests that WoodSmart reconsider its blanket designations, WoodSmart still refuses to review its documents and to properly apply this most restrictive designation as intended by the Order. Instead, WoodSmart insists that Perfect Barrier review nearly 80,000 pages of documents that have been haphazardly designated and challenge each designation individually. WoodSmart's abuse of this restrictive designation is a blatant attempt to impose the cost of its production on Perfect Barrier and is in bad faith. For this abuse, WoodSmart should be sanctioned.

NATURE OF THE CASE

This commercial breach of contract action between Perfect Barrier and WoodSmart is based upon a January 2004 Restated License, Purchase and Services Agreement. As the Restated Agreement required, Perfect Barrier made required minimum purchases of BluWood™, a wood treatment product, and paid WoodSmart in excess of Four Million dollars (\$4,000,000.00) up through September 2005. The dispute in this case involves WoodSmart's failure to perform its express and implied obligations under the Restated Agreement.

Throughout the relationship, WoodSmart breached the Restated Agreement in several respects, including but not limited to: (1) accepting from Perfect Barrier a \$2,500,000.00 payment for BluWood™ that WoodSmart never produced or delivered; (2) failing to provide testing or technical support causing faulty product to be delivered to customers; (3) improperly formulating BluWood™; and (4) continually violating the Exclusive Territory provision by licensing new licensees in most of Perfect Barrier's Exclusive Territory. WoodSmart has refused to pay the \$2,500,000.00 owing to Perfect Barrier. And Perfect Barrier has been deprived of its

Exclusive Territory, has expended funds in an attempt to expand its market, and has lost funds and the value of its business as a result of WoodSmart's breaches of contract and warranties.

In November 2005, WoodSmart asserted in writing that Perfect Barrier was in default of the Restated Agreement for failure to make required purchases in October 2005. Unable to reach a resolution of the alleged default, in January 2007 WoodSmart notified Perfect Barrier that the Restated Agreement was terminated and that Perfect Barrier owed \$10,154,760.00 to WoodSmart at the time of termination.

PROCEDURAL BACKGROUND

In March 2007, Perfect Barrier instituted this action seeking monetary damages in excess of \$2,500,000 and a declaratory judgment. WoodSmart has filed counterclaims seeking in excess of \$10,000,000 from Perfect Barrier for breach of contract, misrepresentation and fraud, and negligent misrepresentation. WoodSmart has filed "third-party claims" against Perfect Barrier's principals, John K. Banks and William P. Banks, for misrepresentation and fraud and negligent misrepresentation. Perfect Barrier's motion to dismiss the counterclaims has been fully briefed and has been pending since July 20, 2007. Instead of filing a response to Perfect Barrier's motion to dismiss, WoodSmart filed a motion to file an Amended Answer, counterclaims, and third-party claims which has been fully briefed and pending since August 9, 2007. The Banks' motion to dismiss the amended third-party claims has been fully briefed and pending since September 11, 2007.

Perfect Barrier served Plaintiff's First Request for Production of Documents upon WoodSmart on October 5, 2007. On November 7, 2007, WoodSmart served its written responses on Perfect Barrier, objecting to seventeen of the thirty-two requests on the grounds that the requested documents contained confidential, sensitive, or proprietary business

information and/or trade secrets and would be made available subject to the entry of a Protective Order. (See Ex. A, Def.'s Resp. to Pl.'s First Req. for Production.) In an effort to address what appeared to be WoodSmart's legitimate concern regarding its confidential information, Perfect Barrier entered into negotiations with WoodSmart regarding a Protective Order. The Parties submitted a consent Protective Order for the Court's consideration on December 12, 2007, which was denied without prejudice on January 9, 2008. The parties submitted a revised Protective Order for the Court's reconsideration on January 31, 2008, which this Court granted on February 7, 2008.

THE PROTECTIVE ORDER

The Protective Order was entered for the protection of confidential information "which the parties *reasonably believe* to comprise sensitive and valuable information whose disclosure could cause a party competitive harm." (Protective Order at 1 (emphasis added).) The Protective Order provides two levels of confidentiality to provide the Parties the opportunity to protect particularly sensitive information that may require more special handling than that provided to other confidential information. Pursuant to the Protective Order, documents designated as "Confidential" will be "treated as proprietary and shall be utilized by the party receiving such documents for no other purpose than in connection with this litigation." (*Id.* at ¶ II.B.) The "Confidential-Attorney-Eyes-Only" designation provides a higher level of protection for those categories of proprietary information that require "special handling" in addition to that reserved for "Confidential" documents. (*Id.* ¶ II.C.) The effect of the Attorneys-Eyes-Only designation is to not only prevent the public from viewing confidential information, but to prevent the Parties themselves from being able to view such information and confer with counsel in aid of their own legal representation. The Protective Order provides that a Party may

challenge the other Party's claim of confidentiality. (*Id.* ¶ VIII.) And the Parties may seek damages for the other Party's violation of the Protective Order. (*Id.* ¶ XI.)

WOODSMART MAKES BLANKET "ATTORNEYS-EYES-ONLY" DESIGNATION

In December, 2007, WoodSmart produced hard copy documents consisting of 4,745 pages, all of which were designated as "Confidential" pursuant to the Protective Order. Of those pages produced, WoodSmart designated nearly half – 2,178 pages – as Attorneys-Eyes-Only. In a January 30, 2008 email, WoodSmart's counsel indicated that WoodSmart intended to produce *all* of its responsive electronic emails with the "Confidential-Attorney Eyes Only" designation, which WoodSmart later indicated would be approximately 75,000 pages. (*See* Exs. B & D.) On January 30, 2008, Perfect Barrier's counsel requested that WoodSmart reconsider the overbroad blanket Attorneys-Eyes-Only designation, considering "many of the identified emails concern external communications with Perfect Barrier [and other third parties]." (*See* Ex. C.)

In response, WoodSmart's counsel indicated that it would not conduct a careful review to reconsider the designations on the responsive documents. Instead WoodSmart's counsel responded that "I have scanned through many of the emails and stand by our AEO designation.... *I doubt* that there are any improperly-designated AEO emails that are relevant to the litigation that you would want to use in the case. However, if there are some that you wish to challenge the AEO designation, we will reconsider them on an individual basis." (*See* Ex. D (emphasis added).) Counsel went on to say "*virtually all of the emails, as far as we can tell, are irrelevant to the litigation and deal with very confidential day-to-day operations of the company with their distributors.*" (*Id.* (emphasis added).) Counsel justified WoodSmart's refusal to reconsider the blanket designations by asserting "[w]e would like to be as cooperative as possible

but the thrust of the recent changes in the eDiscovery rules was to shift the cost of production of voluminous eDiscovery to the requesting party.” (*Id.*)

On February 14, 2008, Perfect Barrier again reached out to WoodSmart’s counsel in an effort to resolve this issue. Perfect Barrier pointed out that WoodSmart’s Attorneys-Eyes-Only designation was dubious as many documents reflect communications with third parties or Perfect Barrier on obviously non-privileged/non-trade secret issues. (*See* Ex. E.) On February 25, 2008, having received no response from Woodsmart, Perfect Barrier again requested that WoodSmart indicate whether it would reconsider its unfounded designations prior to Perfect Barrier seeking court intervention. (*See* Ex. F.) To date, WoodSmart has refused to reconsider its over-broad designations.

LEGAL STANDARD

Consistent with Fed. R. Civ. P. 26(c)(7), the producing party has the burden to show that it has properly designated documents as confidential under a protective order. *See THK America, Inc. v. NSK Co. Ltd.*, 157 F.R.D. 637, 646 (N.D. Ill. 1993); *Team Play, Inc. v. Boyer*, No. 03 C 7240, 2005 WL 256476, at *1 (N.D. Ill. Jan. 31, 2005); *Ideal Steel Supply Corp. v. Anza*, No. 02 Civ. 4788RMBAJP, 2005 WL 1213848, at *2 (S.D.N.Y. May 23, 2005). Once the designation has been challenged, it is the burden of the designating party to justify the need for enforcement of the protective order with respect to those documents. *Team Play*, 2005 WL 256476 at *1.

ARGUMENT

WoodSmart’s Blanket Designation of Documents as Attorneys-Eyes-Only is in Bad Faith and is an Attempt to Shift the Burden of its Production to Perfect Barrier.

A party’s sweeping use of the Attorneys-Eyes-Only designation can be a form of discovery abuse, resulting in the modification of a protective order and justifying the imposition

of sanctions on the designating party. *Team Play, Inc. v. Boyer*, No. 03 C 7240, 2005 WL 256476 at *1 (N.D. Ill. Jan. 31, 2005); *THK America, Inc. v. NSK Co. Ltd.*, 157 F.R.D. 637, 647 (N.D. Ill. 1993). Sanctions imposed on parties found to be over-designating documents have taken the form of short time periods within which to reclassify the documents and all associated costs for expedited reclassification, or the loss of the party's right to use the Attorneys-Eyes-Only designation. See *Quotron Systems, Inc. v. Automatic Data Processing, Inc.*, 141 F.R.D. 37, 40 (S.D.N.Y. 1992); *THK*, 157 F.R.D. at 647. Such sanctions are appropriate in this matter.

In *Quotron*, the defendant produced documents to plaintiff, designating them as "Highly Confidential" which limited access to Plaintiff's counsel and outside experts. 141 F.R.D. at 39. Plaintiff accused defendant of restricting plaintiff's ability to prepare for trial by over-designating documents as "Highly Confidential." The Court found that defendant had unnecessarily designated documents as "Highly Confidential." As evidence, the Court pointed to the fact that defendant offered in correspondence to plaintiff and at oral arguments to reclassify the documents it had produced and to remove the "Highly Confidential" designation from any documents for which defendant determined the designation to have been unwarranted. *Id.* at 40. The Court ordered the defendant to reclassify its documents within ten days from the date of oral argument because defendant "had, as a litigation tactic and not due to inadvertence, over stamped documents 'Highly Confidential'." *Id.* The court held that "[a]ny extra costs incurred by ADP as a result of this deadline, such as assigning additional ADP personnel to review and reclassify the documents over weekends and holidays, are in the nature of sanctions imposed by the Court due to the actions of ADP and its counsel in the original classification of the documents." *Id.*

The Court in *THK* found that the sanctions imposed in *Quotron* were too mild considering the defendant's bad faith and egregious conduct. *THK*, 157 F.R.D. at 647. In *THK*,

the defendant had produced approximately 75,000 pages of documents, out of which 50,000 pages were designated as being subject to the protective order. Of those 50,000 pages subject to the protective order, 39,000 pages were designated as Attorneys Eyes Only. The court found that designating 79% of the documents as Attorney's Eyes Only was "absurdly high" and a misuse of the designation. *Id.* at 645.

Defendants' wholesale use of "Attorney's Eyes Only" stands the Protective Order on its head. What was intended by the very language of the Protective Order to be a very *limited* category reserved for specially sensitive documents has become the most used category by far in the lawsuit. Rather than operating as a limited exception, the "Attorney's Eyes Only" designation has been used by the defendants almost *four times more* than the lower confidentiality designation. This is a blatant misuse of the "Attorney's Eyes Only" designation....

Id. (emphasis in the original). The Court found that defendants' designation of customer documents that were innocuous and far from current, internal documents that were clearly not even confidential, and documents which defendants did not even author as Attorneys-Eyes-Only was further evidence of defendants' misuse of the designation. *Id.* at 645-47.

The Court in *THK* stripped the defendants of the right to use the Attorneys-Eyes-Only designation, stating that "[c]ourts are too overburdened with heavy caseloads and backlogs to be taxed by parties engaging in uncooperative, dilatory, and obstructionist litigation tactics, or similar stratagems designed to increase the litigation expenses of the opposing party. The risks for engaging in such conduct must be substantial in order to act as an effective deterrent." *Id.* at 647.

Similarly, WoodSmart has unnecessarily over-designated the vast majority of its documents as "Attorneys-Eyes-Only" in bad faith. The Parties here consented to the inclusion of an Attorneys-Eyes-Only designation in the Protective Order with the understanding that it was to be used sparingly for a specified class of proprietary information that is being maintained in

confidence by the producing Party. Yet, over 96% of WoodSmart's production has been blanketed with the Attorneys-Eyes-Only designation. Specifically, the Protective Order states:

It is the intent of the parties that the "CONFIDENTIAL, ATTORNEY-EYES-ONLY" designation shall be minimally used and an effort will be made to limit its use to information which is proprietary technical or business information relating to recent, present or planned activities of the designating party and which has been and is being maintained in confidence by the designating party.

(Protective Order ¶ II.C.) To the contrary, WoodSmart has blanketed approximately 77,000 pages of its 80,000 page production with the Attorneys-Eyes-Only designation without even reviewing each document to determine whether in fact the documents should be so restricted.

As in *Quotron*, WoodSmart's correspondence with Perfect Barrier illustrates that WoodSmart purposefully and unnecessarily has over-designated documents. WoodSmart's counsel admits as much when stating in the February 7, 2008 email that he "[has] *scanned through many of the emails* and stand by our AEO designation since *virtually all of them ... would be designated AEO anyway. I doubt* that there are any improperly-designated AEO emails that are relevant to the litigation that you would want to use in the case. However, if there are some that you wish to challenge the AEO designation, we will reconsider them on an individual basis ... *virtually all of the emails, as far as we can tell*, are irrelevant to the litigation and deal with very confidential day-to-day operations on the company with their distributors." (See Ex. D.) WoodSmart has blanketed its production with the designation, without any substantive review of the documents so designated. WoodSmart's assertion that "virtually all" of its designations seem proper "as far as [they] can tell" falls far short of the burden it carries. It is defense counsel's "place and their responsibility to ensure that the proper confidential designations are assigned to the documents produced." *THK*, 157 F.R.D. at 644.

Furthermore, a cursory review of the hard copy documents already produced reveals that WoodSmart's designations are dubious and over-broad. Just as in *THK*, WoodSmart has designated as Attorneys-Eyes-Only documents that could not have been so designated in good faith. For instance, WoodSmart designated as Attorneys-Eyes-Only documents that reflect communications with and pertain to Perfect Barrier and which Perfect Barrier has seen or authored during the course of its business with WoodSmart, including:¹

- Perfect Barrier purchase orders [e.g., W4437, W4544, W4698];
- WoodSmart invoices issued to Perfect Barrier [e.g., W4435, W4539, W4697, W4745];
- Copies of Perfect Barrier check stubs for payment of WoodSmart invoices [e.g., W4434, W4538];
- Bills of Lading from various shippers for product sent to Perfect Barrier [e.g., W4433, W4444, W4523];
- WoodSmart packing slips for shipments to Perfect Barrier [e.g., W4431, W4524];
- Email communication between Charles Morando and individuals at Perfect Barrier [e.g., W2567, W2573, W2577, W2666 through W2700];
- Correspondence from Perfect Barrier to WoodSmart or other companies and copied to WoodSmart [e.g., W2590, W2642];
- Hard copy correspondence from WoodSmart to Perfect Barrier [e.g., W2701, W2704-W2705];
- Bank's Corporation invoice to WoodSmart [e.g., W2664];
- Signed copies of agreements between WoodSmart and Banks Corporation [e.g., W2710, W2744-W2761].

(There can be no doubt that a substantial portion of the 75,000 pages of electronic communications that WoodSmart has designated as Attorneys-Eyes-Only also are communications with Perfect Barrier or other third-party, non-privileged communications that should not be restricted to attorneys only.

Perfect Barrier cannot be required to review every document produced by WoodSmart and challenge the designations individually when WoodSmart has so blatantly over-designated

¹ The documents described here are currently designated as "Confidential Attorney's Eyes Only" and would have to be filed with the Court under seal pursuant to Paragraph IV of the Protective Order. Therefore, Perfect Barrier has not attached them as exhibits hereto. Should the Court desire, Perfect Barrier will submit the documents for *in camera* review in a separate filing.

its documents. There is a presumption that the *responding* party bears the costs of complying with discovery requests and costs are shifted only by agreement of the parties or pursuant to court order where the request violates the Fed. R. Civ. P. 26(b)(2)(C) proportionality test. *Grant v. Homier Dist. Co.*, No. 3:07-CV-116JVB, 2007 WL 2446753, at *4-5 (N.D. Ind. Aug. 24, 2007) (ordering responding party to bear its own costs of production). Further, it is the burden of the party designating documents pursuant to a protective order to show that the information should be protected and so designated. *See* Fed. R. Civ. P. 26(c)(7); *THK*, 157 F.R.D. at 646; *Team Play*, 2005 WL 256476, at *1; *Ideal Steel Supply Corp.*, 2005 WL 1213848 at *2. WoodSmart also should bear the burden of engaging in these obstructionist litigation tactics.

CONCLUSION

For the foregoing reasons, WoodSmart should be compelled to conduct a substantive review and reclassify its documents as “Non-Confidential” or “Confidential” in accordance with the Protective Order within 10 days of the Court’s decision on this motion, WoodSmart should no longer be permitted to designate documents as Attorneys-Eyes-Only during the course of this litigation, and WoodSmart should be ordered to pay to Perfect Barrier the costs of this motion.

This the 14th day of March, 2008.

Respectfully submitted,

s/ Paul J. Peralta

Paul J. Peralta

Tonya L. Mitchell

MOORE & VAN ALLEN, PLLC

100 N. Tryon Street, Floor 47

Charlotte, NC 28202-4003

(704) 331-1024

paulperalta@mvalaw.com

tonyamitchell@mvalaw.com

ATTORNEYS FOR PLAINTIFF
PERFECT BARRIER, L.L.C., and THIRD-
PARTY DEFENDANTS JOHN K.
BANKS, and WILLIAM P. BANKS

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the **MEMORANDUM IN SUPPORT OF MOTION TO COMPEL COMPLIANCE WITH PROTECTIVE ORDER AND FOR SANCTIONS** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Eric J. Dorkin
Steffanie N. Garrett
Leah Wardak
Holland & Knight LLP
131 S. Dearborn, 30th Fl.
Chicago, Illinois 60603
eric.dorkin@hklaw.com
steffanie.garrett@hklaw.com
leah.wardak@hklaw.com

Stefan V. Stein
Michael J. Colitz
Holland & Knight LLP
100 N. Tampa Street, Suite 4100
Tampa, FL 33602-3644
stefan.stein@hklaw.com
michael.colitz@hklaw.com

This the 14th day of March, 2008.

s/ Paul J. Peralta
Paul J. Peralta
Tonya L. Mitchell
MOORE & VAN ALLEN, PLLC
100 N. Tryon Street, Floor 47
Charlotte, NC 28202-4003
(704) 331-1000
paulperalta@mvalaw.com
tonyamitchell@mvalaw.com

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

PERFECT BARRIER, L.L.C.,)

Plaintiff)

v.)

WOODSMART SOLUTIONS, INC.)

Defendant)

Cause No.: 3:07-CV-0103 RL-CAN

WOODSMART SOLUTIONS, INC.,)

Counter-Plaintiff and
Third Party Plaintiff)

v.)

PERFECT BARRIER)

Counter-Defendant)

And JOHN K. BANKS AND
WILLIAM P. BANKS,)

Third Party Defendants)

**DEFENDANT, WOODSMART SOLUTIONS, INC.'S RESPONSES TO
PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Defendant, Woodsmart Solutions, Inc., (hereinafter "Woodsmart") by and through their undersigned counsel, hereby object and respond to Plaintiff, Perfect Barrier, L.L.C.'s First Request for Production of Documents as follows:

GENERAL OBJECTIONS

1. Woodsmart objects to each of the requests to the extent they seek documents subject to the attorney/client or work product privileges, prepared or assembled in anticipation of litigation or for trial, not relevant to the subject matter involved in this action, not reasonably calculated to lead to the discovery of admissible evidence, or otherwise not within the scope of discovery within Rules 26 and 34 of the Federal Rules of Civil and the Local Rules of this Court.
2. Woodsmart objects to each of the requests to the extent they seek the production of documents that contain privileged, confidential, sensitive or proprietary business information and/or trade secrets.
3. Woodsmart objects to the "Definitions" and "Instructions" sections, including without limitation, any definitions that are broader than those permitted by the Federal Rules of Civil Procedure or the Local Rules of this Court.
4. Woodsmart objects to the requests to the extent that they are unlimited as to time.
5. Woodsmart objects to the requests to the extent that they seek documents not relevant to the subject matter involved in this action and are not reasonably calculated to lead to the discovery of admissible evidence.
6. Woodsmart objects to the requests to the extent that they are overly broad and unduly burdensome.

7. Woodsmart objects to the requests to the extent that they seek production of confidential, commercial, financial or other proprietary business information constituting the Woodsmart's proprietary trade secrets.

8. As discovery in this case is ongoing, Woodsmart reserves the right to revise and/or supplement its responses to Plaintiff's document requests with information and/or evidence hereinafter obtained through discovery.

DOCUMENTS REQUESTED

1. All Documents that concern or relate to licenses Woodsmart granted concerning sales of BluWood to parties other than Perfect Barrier from January 2004 to the present, including but not limited to license or sales agreements.

RESPONSE:

Woodsmart objects to this request to the extent it seeks the production of documents that contain privileged, confidential, sensitive or proprietary business information and/or trade secrets. However, subject to the entry of a Protective Order, the requested documents will be made available for inspection and copying.

2. All Documents that touch upon or relate to communications between Woodsmart and any representative or principal of Perfect Barrier.

RESPONSE:

The requested documents are available for inspection and copying.

3. All Documents that concern or relate to problems, complaints, or claims (including warranty claims) communicated to Woodsmart regarding BluWood from any party for the period January 2004 to the present.

RESPONSE:

Woodsmart objects to this request to the extent it seeks the production of documents that contain privileged, confidential, sensitive or proprietary business information and/or trade secrets. However, subject to the entry of a Protective Order, the requested documents will be made available for inspection and copying.

4. All Documents that concern, relate to, or in any way support Woodsmart's claim that it provided technical support to Perfect Barrier at any time between October 2004 and October 2005 or thereafter.

RESPONSE:

The requested documents are available for inspection and copying.

5. All Communications between Charles Morando, Adolph Morando, Robert Morando, or Michael Morando concerning or relating to problems or difficulties Perfect Barrier experienced in applying the BluWood product to lumber.

RESPONSE:

The requested documents are available for inspection and copying.

6. All communications between, from, or to Charles Morando, Adolph Morando, Robert Morando, or Michael Morando or Michael Reed regarding Perfect Barrier's effort to sell equipment and supplies to Envirogard of the Southeast.

RESPONSE:

The requested documents are available for inspection and copying.

7. All internal correspondence at Woodsmart and to or from Envirogard of the Southeast, LLC relating to Perfect Barrier's:

- (i) problems or difficulties experienced in applying the BluWood material to lumber products;
- (ii) Efforts to sell equipment and material to Envirogard.

RESPONSE:

Woodsmart objects to this request to the extent it seeks the production of documents that contain privileged, confidential, sensitive or proprietary business information and/or trade secrets. However, subject to the entry of a Protective Order, the requested documents will be made available for inspection and copying.

8. All documents relating to orders from and shipments of BluWood product to Perfect Barrier from October 2004 through October 2005 or thereafter.

RESPONSE:

The requested documents are available for inspection and copying.

9. All Correspondence between Charles Morando, Adolph Morando, Robert Morando, or Michael Morando and Michael Reed between January 2004 and January 2007 regarding Perfect Barrier or any Perfect Barrier's employees, officers, or shareholders.

RESPONSE:

The requested documents are available for inspection and copying.

10. All communication between Woodsmart and Envirogard and/or Shane Holley for the period January 1, 2004 through present.

RESPONSE:

Woodsmart objects to this request to the extent it seeks the production of documents that contain privileged, confidential, sensitive or proprietary business information and/or trade secrets. However, subject to the entry of a Protective Order, the requested documents will be made available for inspection and copying.

11. Any and all affidavits, sworn statements, or deposition transcripts containing testimony from any representative from Woodsmart, including, but not limited to, Charles Morando, Adolph Morando, Robert Morando, or Michael Morando, whether rendered on behalf of Woodsmart or not, regardless of administrative or judicial forums, from January 2002 to the present.

RESPONSE:

Woodsmart objects to the scope of this request to the extent that it seeks information that is not related to the issues in this litigation, or is not likely to lead to relevant information. Woodsmart also objects to these requested documents to the extent they seek the production of documents that contain privileged, confidential, sensitive or proprietary business information and/or trade secrets. Subject to this objection, non-confidential documents containing relevant or relevant-leading information are available

for inspection and copying and those that are confidential will be made available for inspection and copying upon the entry of a Protective Order.

12. All Documents relating to or concerning Woodsmart's affirmative defenses in this litigation.

RESPONSE:

Woodsmart objects to this request to the extent that it invades the work-product privilege. However, the requested documents concerning the affirmative defenses as pled are available for inspection and copying.

13. All Documents reflecting payments made by Perfect Barrier for the purchase of BluWood product from January 2004 through January 2007.

RESPONSE:

The requested documents are available for inspection and copying.

14. Any and all Documents concerning or relating to formulation changes or modifications made to the BluWood product from October 2004 through January 2007.

RESPONSE:

Woodsmart objects to this request to the extent it seeks the production of documents that contain privileged, confidential, sensitive or proprietary business information and/or trade secrets. However, subject to the entry of a Protective Order, the requested documents will be made available for inspection and copying.

15. All Communications concerning or relating to negotiations between Woodsmart and Perfect Barrier for a new or amended licensing agreement.

RESPONSE:

The requested documents are available for inspection and copying.

16. Any and all Documents relating to all meetings between Charles Morando and William P. Banks regarding negotiation of licensing agreement and any amends or

modifications thereto including but not limited to the meeting occurring February 3, 2006.

RESPONSE:

The requested documents are available for inspection and copying.

17. All documents reflecting sales of the BluWood product to any party from January 1, 2004 through January 1, 2007.

RESPONSE:

Woodsmart objects to this request to the extent it seeks the production of documents that contain privileged, confidential, sensitive or proprietary business information and/or trade secrets. However, subject to the entry of a Protective Order, the requested documents will be made available for inspection and copying.

18. All documents referenced or identified in Interrogatory No. 15.

RESPONSE:

Woodsmart objects to this request to the extent it seeks the production of documents that contain privileged, confidential, sensitive or proprietary business information and/or trade secrets. However, subject to the entry of a Protective Order, the requested documents will be made available for inspection and copying.

19. All documents referenced or identified in Interrogatory 16.

RESPONSE:

Woodsmart objects to this request to the extent it seeks the production of documents that contain privileged, confidential, sensitive or proprietary business information and/or trade secrets. However, subject to the entry of a Protective Order, the requested documents will be made available for inspection and copying.

20. All documents referenced or identified in Interrogatory 17.

RESPONSE:

Woodsmart objects to this request to the extent it seeks the production of documents that contain privileged, confidential, sensitive or proprietary business

information and/or trade secrets. However, subject to the entry of a Protective Order, the requested documents will be made available for inspection and copying.

21. Any and all Woodsmart documents referring to or concerning any document or record retention policy of Woodsmart.

RESPONSE:

Woodsmart objects to this request to the extent it seeks the production of documents that contain privileged, confidential, sensitive or proprietary business information and/or trade secrets. However, subject to the entry of a Protective Order, the requested documents will be made available for inspection and copying.

22. All documents listing Woodsmart current and former employees or current and former independent contractors for the period 2000 to present.

RESPONSE:

Woodsmart objects to this request to the extent it seeks the production of documents that contain privileged, confidential, sensitive or proprietary business information and/or trade secrets. However, subject to the entry of a Protective Order, the requested documents will be made available for inspection and copying.

23. All documents reflecting communications between Woodsmart and Formulation Technologies, Inc. for the period 2000 and the present, including any agreements between the two entities.

RESPONSE:

Woodsmart objects to this request to the extent it seeks the production of documents that contain privileged, confidential, sensitive or proprietary business information and/or trade secrets. However, subject to the entry of a Protective Order, the requested documents will be made available for inspection and copying.

24. All reports or documents from U.S. Environmental Protection Agency ("EPA") reflecting EPA approval had issued for BluWood any time after October 2004.

RESPONSE:

The requested documents are available for inspection and copying.

25. All documents indicating or reflecting development by Woodsmart of a Material Safety Data Sheet ("MSDS") prior to October, 2004.

RESPONSE:

The requested documents are available for inspection and copying.

26. All documents reflecting payments made by Perfect Barrier for which no BluWood product was shipped.

RESPONSE

The requested documents are available for inspection and copying.

27. Any and all documents reflecting review or approvals by Woodsmart of product application machinery or equipment used by any of its licensees from 2000 to the present.

RESPONSE:

Woodsmart objects to this request to the extent it seeks the production of documents that contain privileged, confidential, sensitive or proprietary business information and/or trade secrets. However, subject to the entry of a Protective Order, the requested documents will be made available for inspection and copying.

28. Any and all pleadings, discovery requests and/or discovery responses from, by, or to Woodsmart and any of its principals, including but not limited to Charles Morando, Adolph Morando, Robert Morando, or Michael Morando from the period January 1, 2002 to the present.

RESPONSE:

Woodsmart objects to the scope of this request to the extent that it seeks information that is not related to the issues in this litigation, or is not likely to lead to

relevant information. Woodsmart also objects to these requested documents to the extent they seek the production of documents that contain privileged, confidential, sensitive or proprietary business information and/or trade secrets. Subject to this objection, non-confidential documents containing relevant or relevant-leading information are available for inspection and copying and those that are confidential will be made available for inspection and copying upon the entry of a Protective Order.

29. All documents that relate to or concern Woodsmart's claim set forth in paragraph 14 of its counterclaim that there were "a few limited exceptions" to Perfect Barrier's exclusive territory in the United States and Canada.

RESPONSE:

Woodsmart objects to this request to the extent it seeks the production of documents that contain privileged, confidential, sensitive or proprietary business information and/or trade secrets. However, subject to the entry of a Protective Order, the requested documents will be made available for inspection and copying.

30. All Documents Woodsmart has in support of its claims asserted in its Counterclaim.

RESPONSE:

Woodsmart objects to this request to the extent that it invades the work-product privilege. However, the requested documents concerning the Counterclaim as pled are available for inspection and copying.

31. Copies of all financial statements concerning or relating to Woodsmart, including but not limited to audited and/or unaudited financial statements for the period January 1, 2002 to the present.

RESPONSE:

Woodsmart objects to this request to the extent it seeks the production of documents that contain privileged, confidential, sensitive or proprietary business information and/or trade secrets. However, subject to the entry of a Protective Order, the requested documents will be made available for inspection and copying.

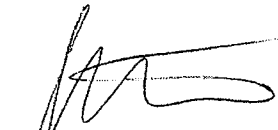
32. All Documents reflecting opinions, summaries, or other similar communications from any expert retained to testify in this matter.

RESPONSE:

The requested documents are available for inspection and copying.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was placed in an envelope and mailed via U.S. First Class mail to: Paul J. Peralta, Esquire at: Moore & Van Allen, PLLC, 100 N. Tyron Street, Floor 47, Charlotte, North Carolina 28202-4003 on this the 7th day of November, 2007.



Stefan V. Stein

cc: Woodsmart Solutions, Inc.

4890244_v1

EXHIBIT B

Tonya Mitchell

From: stefan.stein@hklaw.com
Sent: Wednesday, January 30, 2008 1:48 PM
To: Paul Peralta
Cc: Tonya Mitchell; Lynn Holder; dwilkens@digitallegal.net; shelley.franz@hklaw.com; sheila.pitts@hklaw.com
Subject: RE: Status
Attachments: Digital Legal Inv.PDF; w2634.PDF

Dear Paul:

Thank you for your patience. The data has now been loaded into our Summation. By copy of this email to David Wilkens of Digital Legal, I'm asking him to burn you a DVD marked Confidential - Attorney Eyes Only including all of the emails except for the attorney-client privileged emails listed below. Of course, we reserve the right to claw-back any other privileged emails that may be inadvertently previously produced or produced herein. Please note that in this regard, we are clawing back the Ken Pollock document previously produced. See attached.

Before he burns the DVD, please let David know ASAP what data format would you prefer for whatever document management program you intend to use. Also, a copy of their invoice is attached. Please remit payment directly to Digital Legal.

The Protective Order modifications are acceptable - please proceed with filing with the court.

Steve

CMOR0000715 eDoc	Kristina	
CMOR0011531 Attachment	KM	
CMOR0008484 Email	stefan.stein@hklaw.com	camorando@perfectbarrier.com
CMOR0008492 Email	stefan.stein@hklaw.com	camorando@perfectbarrier.com
CMOR0011530 Email	Charles A. Morando	'camorando@bluwood.net'
CMOR0011560 Email	Charles A. Morando	'stefan.stein@hklaw.com'
CMOR0011588 Email	Kristina McPherson	'stefan.stein@hklaw.com'
CMOR0011651 Email	Charles A. Morando	'stefan.stein@hklaw.com'
CMOR0011653 Email	Charles A. Morando	'stefan.stein@hklaw.com'
CMOR0011655 Email	Charles A. Morando	'stefan.stein@hklaw.com'
CMOR0011657 Email	Charles A. Morando	'stefan.stein@hklaw.com'
CMOR0011659 Email	Charles A. Morando	'stefan.stein@hklaw.com'
CMOR0011729 Email	Charles A. Morando	'stefan.stein@hklaw.com'
CMOR0011740 Email	Charles A. Morando	'stefan.stein@hklaw.com'
CMOR0011909 Email	Charles A. Morando	'stefan.stein@hklaw.com'
CMOR0011922 Email	Charles A. Morando	'stefan.stein@hklaw.com'
CMOR0011947 Email	Charles A. Morando	'stefan.stein@hklaw.com'
CMOR0012104 Email	Charles A. Morando	
CMOR0007011 Attachment		
CMOR0019443 Attachment		
CMOR0005490 Email	Kristina McPherson	jfischer@iplawfl.com
CMOR0007002 Email	Joe Fischer	CAMorando; kristina@perfectbarrier.com
CMOR0007004 Email	Joe Fischer	CAMorando; kristina@perfectbarrier.com
CMOR0007010 Email	Joe Fischer	CAMorando
CMOR0007012 Email	Joe Fischer	CAMorando
CMOR0007013 Email	Joe Fischer	CAMorando
CMOR0007014 Email	Joe Fischer	CAMorando

2/26/2008

Case 1:07-cv-00103-JVB-CAN document 523 filed 03/14/2008 page 3 of 4

CMOR0007015 Email	Joe Fischer	camorando@perfectbarrier.com
CMOR0007016 Email	Joe Fischer	Charles A. Morando
CMOR0007017 Email	Joe Fischer	Charles A. Morando
CMOR0016642 Email	Kristina McPherson	jfischer@iplawfl.com
CMOR0019414 Email	Joe Fischer	CAMorando; kristina@perfectbarrier.com
CMOR0019416 Email	Joe Fischer	CAMorando; kristina@perfectbarrier.com
CMOR0019442 Email	Joe Fischer	CAMorando
CMOR0019444 Email	Joe Fischer	CAMorando
CMOR0019445 Email	Joe Fischer	CAMorando
CMOR0019446 Email	Joe Fischer	CAMorando
CMOR0019447 Email	Joe Fischer	camorando@perfectbarrier.com
CMOR0019448 Email	Joe Fischer	Charles A. Morando
CMOR0019449 Email	Joe Fischer	Charles A. Morando

From: Paul Peralta [mailto:paulperalta@mvalaw.com]
Sent: Wednesday, January 30, 2008 9:55 AM
To: Stein, Stefan (TPA - X36578)
Cc: Tonya Mitchell; Lynn Holder
Subject: Status

Stefan,

Please advise when we can expect to receive the completed production from Woodsmart. The last word we had received was that your vendor was compiling the e-mails. We have no indication when those are to be produced. Please advise.

As well, we have not received a response from you regarding the revised protective order. We need to re-submit to the court. Let us know if we are authorized to proceed.

Thanks.

Paul

Paul J. Peralta

Attorney at Law

Suite 4700

100 North Tryon Street

Charlotte, NC 28202-4003

W 704 331 1024

F 704 339 5869

paulperalta@mvalaw.com

www.mvalaw.com

To comply with certain U.S. Treasury regulations, we inform you that, unless expressly stated otherwise, any U.S. Federal tax advice contained in this e-mail, including attachments, is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any penalties that may be imposed by the Internal Revenue Service.

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2/26/2008

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case 3:07-cv-00103-JE-GAN document 52-3 filed 03/14/2008 page 4 of 4

EXHIBIT C

Paul Peralta

From: Paul Peralta
Sent: Wednesday, January 30, 2008 3:31 PM
To: stefan.stein@hklaw.com
Subject: RE: Status

Stefan,

Why are you making a blanket designation of Attorneys' Eyes only? Since many of the identified e-mails concern external communications with Perfect Barrier and Envirogard, as well as third party suppliers and customers, it would seem such a designation is overbroad. I suggest you reconsider this so as to avoid the time and expense associated with the challenge process set forth in the protective order.

Please let us know how you will proceed.

Paul



Paul J. Peralta

Attorney at Law

Suite 4700
100 North Tryon Street
Charlotte, NC 28202-4003

T 704 331 1024
F 704 339 5869

paulperalta@mvalaw.com
www.mvalaw.com

From: stefan.stein@hklaw.com [mailto:stefan.stein@hklaw.com]
Sent: Wednesday, January 30, 2008 1:48 PM
To: Paul Peralta
Cc: Tonya Mitchell; Lynn Holder; dwilkens@digitallegal.net; shelley.franz@hklaw.com; sheila.pitts@hklaw.com
Subject: RE: Status

Dear Paul:

Thank you for your patience. The data has now been loaded into our Summation. By copy of this email to David Wilkens of Digital Legal, I'm asking him to burn you a DVD marked Confidential - Attorney Eyes Only including all of the emails except for the attorney-client privileged emails listed below. Of course, we reserve the right to claw-back any other privileged emails that may be inadvertently previously produced or produced herein. Please note that in this regard, we are clawing back the Ken Pollock document previously produced. See attached.

Before he burns the DVD, please let David know ASAP what data format would you prefer for whatever document management program you intend to use. Also, a copy of their invoice is attached. Please remit payment directly to Digital Legal.

The Protective Order modifications are acceptable - please proceed with filing with the court.

Steve

3/14/2008

CMOR0000715 eDoc	Kristina	
CMOR0011531 Attachment	KM	
CMOR0008484 Email	stefan.stein@hklaw.com	camorando@perfectbarrier.com
CMOR0008492 Email	stefan.stein@hklaw.com	camorando@perfectbarrier.com
CMOR0011530 Email	Charles A. Morando	'camorando@bluwood.net'
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CMOR0011588 Email	Kristina McPherson	'stefan.stein@hklaw.com'
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CMOR0007014 Email	Joe Fischer	CAMorando
CMOR0007015 Email	Joe Fischer	camorando@perfectbarrier.com
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CMOR0019446 Email	Joe Fischer	CAMorando
CMOR0019447 Email	Joe Fischer	camorando@perfectbarrier.com
CMOR0019448 Email	Joe Fischer	Charles A. Morando
CMOR0019449 Email	Joe Fischer	Charles A. Morando

From: Paul Peralta [mailto:paulperalta@mvalaw.com]
Sent: Wednesday, January 30, 2008 9:55 AM
To: Stein, Stefan (TPA - X36578)
Cc: Tonya Mitchell; Lynn Holder
Subject: Status

Stefan,

Please advise when we can expect to receive the completed production from Woodsmart. The last word we had received was that your vendor was compiling the e-mails. We have no indication when those are to be produced. Please advise.

As well, we have not received a response from you regarding the revised protective order. We need to re-submit to the court. Let us know if we are authorized to proceed.

Thanks.

Paul

Paul J. Peralta

Attorney at Law

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F 704 339 5869

paulperalta@mvalaw.com

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EXHIBIT D

Paul Peralta

From: stefan.stein@hklaw.com
Sent: Thursday, February 07, 2008 7:18 AM
To: Paul Peralta
Subject: RE: Status
Attachments: Hash - the New Bates Stamp.pdf

Dear Paul:

Regarding your questions concerning the native emails raised in your letter of January 30, we always intended to produce them as native files, not hard copies. To the extent they had been printed-out and kept in the client's files, they were produced to you in the bates-stamped original production.

Digital Legal estimates that printed in hard copies, the native emails would be about 75,000 pages and the cost for printing them to tiffs and then bates-stamping them would run \$12-20,000. We do not feel that it is our obligation to incur this cost. Indeed, the large number of emails is the result of the over-encompassing keyword list that you had insisted on despite our cautions to the contrary. If you still want them to be converted to tiffs, please contact Digital Legal and make appropriate financial arrangements with them. Digital Legal is also awaiting word from you on what format you prefer for the native emails.

FYI in our case, we have loaded the native files into Summation with database fields set-up by Digital Legal. I was hoping you too would be using Summation so that our respective database fields would mirror each other. Nevertheless, even if you do not use Summation, it is now common practice to use the hash numbers associated with each email in lieu bates-stamping. See the attached article. Hence, we do not feel a need for hard copies of them.

Regarding privilege, I have scanned through many of the emails and stand by our AEO designation since virtually all of them, even if printed in hard copy and reviewed, would be designated AEO anyway. I doubt that there are any improperly-designated AEO emails that are relevant to the litigation that you would want to use in the case. However, if there are some that you wish to challenge the AEO designation, we will reconsider them on an individual basis. Again, your keywords were so broad that virtually all of the emails, as far as we can tell, are irrelevant to the litigation and deal with very confidential day-to-day operations of the company with their distributors.

Please call to discuss further. We would like to be as cooperative as possible but the thrust of the recent changes in the eDiscovery rules was to shift the cost of production of voluminous eDiscovery to the requesting party. Your request would require us to incur the \$12-20,000 estimate for hard copy printing and bates-stamping.

Thank you.

Holland + Knight

Stefan V. Stein
Intellectual Property Law
Holland & Knight LLP
Suite 4100
100 North Tampa Street

3/14/2008

Tampa, Florida 33602-3644
PHONE (813) 227-8500
FAX (813) 229-0134
DIRECT LINE (813) 227-6578
Please respond to: stefan.stein@hklaw.com
www.hklaw.com

Pursuant to the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2522, the contents of this e-mail and the attachments hereto (if any) are confidential, privileged and/or otherwise exempt from disclosure and are intended only for disclosure to and use by the intended recipient of this message. If you are not the intended recipient of this message, the receipt of this message is not intended to and does not waive any applicable confidentiality or privilege and you are hereby notified that any dissemination, distribution, printing or copying of such contents is strictly prohibited. If you are not the intended recipient, please notify us by telephone or e-mail and delete this e-mail from your system. Further, e-mail transmissions are not guaranteed to be secure or error-free as information can be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. WE THEREFORE EXPRESSLY DISCLAIM ANY REPRESENTATION AND WARRANTY REGARDING THE SAFETY AND INTEGRITY OF THIS E-MAIL COMMUNICATION AND FOR ANY ERRORS OR OMISSIONS IN THE CONTENTS OF THIS E-MAIL WHICH ARISE AS A RESULT OF THIS TRANSMISSION, OR ANY SUBSEQUENT RE-TRANSMISSION.

From: Paul Peralta [<mailto:paulperalta@mvalaw.com>]
Sent: Wednesday, January 30, 2008 3:31 PM
To: Stein, Stefan (TPA - X36578)
Subject: RE: Status

Stefan,
Why are you making a blanket designation of Attorneys' Eyes only? Since many of the identified e-mails concern external communications with Perfect Barrier and Envirogard, as well as third party suppliers and customers, it would seem such a designation is overbroad. I suggest you reconsider this so as to avoid the time and expense associated with the challenge process set forth in the protective order.
Please let us know how you will proceed.
Paul

Moore&VanAllen

Paul J. Peralta

Attorney at Law

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From: stefan.stein@hklaw.com [<mailto:stefan.stein@hklaw.com>]
Sent: Wednesday, January 30, 2008 1:48 PM

3/14/2008

To: Paul Peralta
Cc: Tonya Mitchell; Lynn Holder; dwilkens@digitallegal.net; shellee.franz@hklaw.com; sheila.pitts@hklaw.com
Subject: RE: Status

Dear Paul:

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CMOR0007002 Email	Joe Fischer	CAMorando; kristina@perfectbarrier.com
CMOR0007004 Email	Joe Fischer	CAMorando; kristina@perfectbarrier.com
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CMOR0016642 Email	Kristina McPherson	jfischer@iplawfl.com
CMOR0019414 Email	Joe Fischer	CAMorando; kristina@perfectbarrier.com
CMOR0019416 Email	Joe Fischer	CAMorando; kristina@perfectbarrier.com
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Paul

Paul J. Peralta

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EXHIBIT E

Moore & Van Allen

February 14, 2008

VIA E-MAIL (Stefan.stein@hkllaw.com) and FAX

Stefan V. Stein, Esq.
Holland & Knight LLP
100 N. Tampa Street, Suite 4100
Tampa, FL 33602-3644

Paul J. Peralta
Attorney at Law

T 704 331 1024
F 704 339 5869
paulperalta@mvalaw.com

Moore & Van Allen PLLC

Suite 4700
100 North Tryon Street
Charlotte, NC 28202-4003

Re: Perfect Barrier v. Woodsmart, et al.
Cause No.: 3:07-CV-0103 RL-CAN

Dear Mr. Stein:

This confirms receipt of Woodsmart Solutions' hard copy documents from its third party vendor in response to the outstanding Perfect Barrier Request for Production of Documents and your e-mail of February 7, 2008.

Documents Identified Attorneys Eyes Only

The hard copy documents produced with Bates numbers W001 through W4745 have been designated "Confidential" all the hard copy documents produced with Bates numbers W2567 through W4745 have been designated as "Attorneys-Eyes-Only", with reference to the recently entered Protective Order.

Woodsmart's designation of many of the documents designated "Attorneys-Eyes-Only" is dubious since many documents reflect transactions or communications with third parties or with Perfect Barrier on obviously non-privileged/non-trade secret topics. For instance, the following have no apparent basis for preventing counsel review with our clients as to the content of the referenced documents:

- Perfect Barrier purchase orders [e.g., W4437, W4544, W4698];
- Woodsmart invoices issued to Perfect Barrier [e.g., W4435, W4539, W4697, W4745];
- Copies of Perfect Barrier check stubs for payment of Woodsmart invoices [e.g., W4434, W4538];
- Bills of Lading from various shippers for product sent to Perfect Barrier [e.g., W4433, W4444, W4523];
- Woodsmart packing slips for shipments to Perfect Barrier [e.g., W4431, W4524];
- E-mail communication between Charles Marando and individuals at Perfect Barrier [e.g., W2567, W2573, W2577, W2666 through W2700];
- Correspondence from Perfect Barrier to Woodsmart or other companies and copied to Woodsmart [e.g., W2590, W2642];
- Hard copy correspondence from Woodsmart to Perfect Barrier [e.g., W2701, W2704-W2705];
- Bank's Corporation invoice to Woodsmart [e.g., W2664];
- Signed copies of agreements between Woodsmart and Banks Corporation [e.g., W2710, W2744-W2761].

Stefan Stein, Esq.
February 14, 2008
Page 2

Woodsmart has simply made blanket "Attorneys-Eyes-Only" designations without considering the fundamental basis for such designation. I also understand from your email that you intend to designate all of Woodsmart's electronic production as "Attorneys Eyes Only." Woodsmart, not Perfect Barrier, has the burden of making careful, considered designations.

In an effort to resolve this matter short of court involvement and consistent with local Rule 37.1, we ask that you revisit the "Attorneys-Eyes-Only" designation as soon as possible. Please respond to this notice no later than Monday, February 18th so that we can proceed with the scheduling of Mr. Shane Holley's deposition. Mr. Holley has advised that he is available on February 25, 26, or 27 in Charlotte to conclude his deposition so please let us know of your availability. If it is Woodsmart's position that no change will be made to the designations, kindly contact us as soon as possible so that we may file the appropriate papers before the Court.

Production Format and Identification

The format you and your data vendor have proposed for production of documents responsive to our Request for Production of Documents creates concerns regarding the integrity of the original content as well as the importance of maintaining consistency in identifying those documents.

First as to identification, we have indicated our strong preference that the documents be identified by Bates number rather than "hash marks". While hash marks may be commonly used to check the integrity and authenticity of a native file and for de-duping electronic files, the use of hash marks in lieu of Bates-stamping is hardly "common" practice. We have in fact confirmed this with several vendors, including DTI's local office as well as their processing center in Atlanta. While the author of your article certainly advocates the use of hash marks, there are an equal number of critics who have published concerns about relying on that format for identification.

What is clear from the article you provided is that to verify authenticity of a document using a hash mark, a party must have a hash tool. Do you intend to provide us with a hash tool (via software) to verify the hash values your client provides in the load file to the actual native files? Further, because there is no defined standard yet as to native file production and how hash marks are used, how do you propose to:

- Manage the native files throughout discovery and refer to them in reports, depositions, hearings, and at trial? (Even the article on which you rely highlights the difficulty of using a hash mark as an identifying number due to its length and complexity.)
- Produce documents that require redactions?
- Designate confidentiality? (Thus, while you can populate a field as "confidential" in Summation, when the document is printed in hard copy for use in depositions, we have been told by Summation that it is possible that this type of field could be printed on a native file document

Stefan Stein, Esq.
February 14, 2008
Page 3

like a Docid can be printed, but it will require some work in configurations to do so.)

- Identify how the documents were kept in the usual course of business? Is Woodsmart prepared to include in the load file for the documents the information as to the location of the data on Woodsmart's computer when the file was harvested?

Finally, you should provide us with a hash value log that records all of the files produced and identifies them by hash value in order to insure continuity of identification. Indeed, the author of the article on which you rely recommends that such a log accompany native file production.

We would appreciate hearing from you at your earliest opportunity on these issues. Let's schedule a conference call to work through these problems.

Very truly yours,

MOORE & VAN ALLEN PLLC



Paul J. Peralta
PJP/abb

cc: Michael J. Colitz (michael.colitz@hkllaw.com)
Stephanie N. Garrett (steffanie.garrett@hkllaw.com)
Tonya Mitchell
Lynn Holder

EXHIBIT F

Tonya Mitchell

From: Paul Peralta
Sent: Monday, February 25, 2008 3:31 PM
To: stefan.stein@hklaw.com
Cc: Tonya Mitchell; Lynn Holder
Subject: RE: Holley Dep

We'll work on the week of 3/17 and will advise on confirmed dates from Holley. The dep will take place here at our office as indicated in earlier correspondence as well as our 2/14 letter. Based on your e-m below, it does not appear that you have read our 2/14 letter regarding the tiff/native file issue. Please respond to our concerns outlined on pp.2-3 of the letter about maintaining the integrity and confidentiality of documents subject to the P/O if we agree to go with the hash mark approach. Finally, you have not responded to the first part of that letter concerning the blanket AEO designation to your documents. Woodsmart has the obligation to make well-founded designations of confidentiality and we believe the blanket approach taken thus far is wrong and contrary to the spirit and intent of the discovery rules. Please advise. As indicated in the letter, we're prepared to confer about this before seeking court intervention.

Moore & Van Allen

Paul J. Peralta
Attorney at Law

Suite 4700
100 North Tryon Street
Charlotte, NC 28202-4003

T 704 331 1024
F 704 339 5869

paulperalta@mvalaw.com
www.mvalaw.com

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

From: stefan.stein@hklaw.com [mailto:stefan.stein@hklaw.com]
Sent: Monday, February 25, 2008 7:41 AM
To: Paul Peralta
Subject: RE: Holley Dep

I cannot travel this week (working from home while recuperating from surgery on Friday). Friday next week is possible (my son is home from USMMA on Mon-Wed and I'm in Dallas on Thursday). The week of 3/10 I'm in NJ for a string of depositions. The week of 3/17 would be preferred. I have a call with the client tomorrow so please propose some specific dates so I can clear them. Also, where do you want to take them?

Are you set now with the Bates/Hash numbering/tiff issues?

Steve

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

From: Paul Peralta [mailto:paulperalta@mvalaw.com]
Sent: Thursday, February 21, 2008 1:51 PM
To: Stein, Stefan (TPA - X36578)
Subject: Holley Dep

