ALERTS AND UPDATES

Pa. District Court Awards $367,000 in E-discovery Costs to Prevailing Defendants

June 7, 2011

In *Race Tires America, Inc. v. Hoosier Racing Tire Corp.*,[1] the U.S. District Court for the Western District of Pennsylvania held that the two prevailing defendants may recover e-discovery costs because such costs are the modern-day equivalent of duplication costs.

Although the court took care to limit its ruling to the "unique" facts associated with this case, parties may want to consider narrowly tailoring their discovery requests and seeking early agreement on the scope of electronic productions.

Case Background

Plaintiffs Race Tires America, Inc. and associated entities—tire suppliers referred to as STA—sued defendants Hoosier Racing Tire Corp. (Hoosier), a tire supplier competitor, and Dirt Motor Sports, Inc. (DMS), a motorsport-racing sanctioning body, alleging damages from exclusive supply contracts between the defendants. The district court granted summary judgment in favor of the defendants, finding that STA failed to demonstrate that it sustained an antitrust injury. The U.S. Court of Appeals for the Third Circuit affirmed.

The defendants then each sought to recover their costs—the vast majority of which were related to e-discovery. STA filed objections, contending that the costs were not taxable pursuant to 28 U.S.C. § 1920(4), which permits recovery of "[f]ees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case." The issue before the district court was the applicability of § 1920(4) to electronically stored information, an issue which has not yet been addressed by the Third Circuit.

The district court first focused on the words "exemplification" and "copying." While recognizing that these terms "originated in and were developed in the world of paper," it viewed the steps a vendor takes to produce electronic data as the "electronic equivalents of exemplification and copying." STA aggressively pursued e-discovery under the case management plan, and the court found that the requirements and expertise necessary to retrieve and prepare documents for production were an indispensable part of the discovery process. The vendor invoices showed that the costs were limited to producing electronic documents and did not include costs incurred to improve the format and design of electronic evidence or costs associated with a review for responsiveness and privilege. When considering the reasonableness of the costs sought by the defendants—$125,580.55 for Hoosier, as reduced by the clerk of the court, and $241,788.81 for DMS—the court recognized that it was unlikely that a party would increase its costs unnecessarily without knowing that it would prevail at trial.

The court took care to state that the facts and circumstances of this case were unique and its opinion should not be read as a pronouncement on how this court or any other members of this court would rule on future applications to recover e-discovery costs.

For Further Information

If you have any questions about the information addressed in this *Alert*, please contact Sandra A. Jeskie, Ryan E. Borneman, any member of Duane Morris' Trial Practice Group or the attorney in the firm with whom you are regularly in contact.

Note

1. *Race Tires America, Inc. v. Hoosier Racing Tire Corp.*, 2011 U.S. Dist. LEXIS 48847 (W.D. Pa. May 6, 2011).

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