

IN THE COURT OF CLAIMS OF OHIO

2014 OCT -8 AM 11:40

OHIO DEPARTMENT OF
TRANSPORTATION,

Plaintiff/Counter-Defendant,

v.

E.J. WARD, INC.,

Defendant/Counter-Plaintiff.

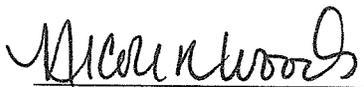
Case No. 2014-00405-PR

ORIGINAL

**DEFENDANT/COUNTERCLAIM-PLAINTIFF, E.J. WARD, INC.'S
MOTION FOR EXPEDITED DISCOVERY**

Pursuant to Rule 26(D) and Rule 34(B)(1), Ohio Rules of Civil Procedure, Defendant/Counterclaim-Plaintiff E.J. Ward, Inc. ("E.J. Ward"), respectfully requests leave of Court to require Plaintiff/Counter-Defendant Ohio Department of Transportation ("ODOT") to respond to E.J. Ward's First Request for Production of Documents served on ODOT on October 8, 2014, within fourteen (14) days from the date of service. The reasons supporting this Motion are more fully set forth in the attached Memorandum in Support.

Respectfully submitted,



Hansel H. Rhee (0076093)
John P. Gilligan (0024542)
Nicole R. Woods (0084865)

Ice Miller LLP
250 West Street, Suite 700
Columbus, Ohio 43215
T: (614) 462-2700
F: (614) 462-5135

Hansel.Rhee@icemiller.com
John.Gilligan@icemiller.com
Nicole.Woods@icemiller.com

Counsel for Defendant/Counterclaim-Plaintiff, E.J. Ward, Inc.

ON COMPUTER

MEMORANDUM IN SUPPORT

I. BACKGROUND

1. On February 10, 2014, ODOT filed its complaint against E.J. Ward in the Court of Common Pleas, Franklin County. On April 15, 2014, E.J. Ward filed a Counterclaim against ODOT seeking monetary damages, and on April 22, 2014, E.J. Ward filed a Petition for Removal with this Court. ODOT then filed its Answer to E.J. Ward's counterclaim on June 23, 2014.

2. On May 7, 2014, E.J. Ward requested copies of public records regarding the subject matter of this litigation under the Ohio Open Records Law §149.43, et seq. The requests were directed to Melissa Ayers, Deputy Director of Communications for ODOT. A copy of the requests are attached as Exhibit A.

3. Pursuant to the request of ODOT's Chief Legal Counsel, Patrick Piccininni, the public records requests were forwarded to Aisha Powell, Assistant Legal Counsel for ODOT, on May 23, 2014. A copy of the email forwarding the requests to Ms. Powell is attached as Exhibit B.

4. On June 11, 2014, E.J. Ward's counsel, sent an email to Ms. Powell inquiring about the status of ODOT's response to the public records requests. A copy of this email is attached as Exhibit C. Ms. Powell responded, advising that ODOT was in the process of gathering documents, and records would be produced in a reasonable time. A copy of Ms. Powell's response is attached as Exhibit D.

5. On June 25, 2014, ODOT served its First Set of Interrogatories and Request for Production of Documents to Ward. See attached Exhibit E. On August 18, 2014, less than two months after receipt, E.J. Ward's responses to ODOT's discovery were served on ODOT's

counsel. A computer disc containing images of E.J. Ward's documents was hand delivered to ODOT counsel on August 19, 2014. The document production consisting of 75,137 pages was a collection of both hard copy and electronic documents maintained by E.J. Ward with regard to the project and contract at issue in this litigation. A copy of the cover letter to ODOT counsel and E.J. Ward's responses are attached as Exhibit F.

6. E.J. Ward continued to followed up with ODOT regarding ODOT's response to the public records requests via both email and telephone throughout July and August 2014. ODOT continued to indicate responsive documents would be forthcoming.

7. On September 22, 2014, E.J. Ward's counsel received a voicemail from ODOT counsel again advising that the documents would be forthcoming. ODOT's counsel also confirmed in his voicemail that the time taken by ODOT to respond to the public records requests received by ODOT on May 23, 2014 had taken too long.

8. On September 26, 2014, a pretrial conference call was held with the Court. At this conference, E.J. Ward's counsel advised that no documents had yet been received from ODOT. The Court instructed Mr. Becker to contact ODOT counsel to see whether ODOT could start providing the documents on a rolling basis.

9. On September 26, 2014, ODOT provided a box of documents, approximately 1,000 pages. The documents were not collated so that the document reviewer could identify the beginning and the end of a document, the documents were not numbered, and the custodians for the document were not identified. The cover letter advised the documents were printed from the ODOT email system and that additional documents would be made available the middle of the following week. See attached Exhibit G.

10. On October 3, 2014, two more boxes of documents were provided by ODOT. Approximately 5,000 pages were produced. The second set of documents was produced in the same format as the first production. The cover letter advised that the documents were the remaining documents responsive to the public records requests and that the documents were printed from the ODOT email system. See attached Exhibit H.

11. E.J. Ward's public records requests sought production of the following information:

Any and all documents; *correspondence and/or communication of any kind*, including, writings of any type, audio records, email, and/or other *electronically stored information* and/or communications of any kind; any payment or accounting records that record, *reflect, or relate in any way to*:

1. The planning, development, and implementation of the Automated Fuels Management System ("Fuel Management System") for ODOT;
2. ODOT Contract Number RFP No. 509-12 ("Contract") between ODOT and EJ Ward, Inc.; and
3. The Contract for the Fuel Management System awarded to the vendor or vendors succeeding EJ Ward. Inc.

(See Exhibit A; emphasis added.)

12. An initial review of the documents produced by ODOT has been completed. Although ODOT provided a copy of the contract between ODOT and the succeeding vendor on the project, ODOT failed to produce any communications and payment or accounting records that relate to the contract awarded to the vendor succeeding E.J. Ward.

13. On October 8, 2014, E.J. Ward served ODOT with its First Request for Production of Documents (the "Document Requests"). See attached Exhibit I. E.J. Ward has specifically requested the following documents:

All documents regarding the Succeeding Contract, including but not limited to, applications for payment, invoices, change orders, and evidences of payment.

All documents reflecting communications between ODOT and FuelMaster regarding the Fuel System and Contract.

All documents, including communications, reflecting the additional costs incurred by ODOT to remove the non-compliant installation and materials as alleged in Paragraphs 23, 36, and 41 of the Complaint.

These documents were covered by the public records requests, but were not produced. Additionally, E.J. Ward has requested production of all documents that support ODOT's allegations in its Complaint with regard to the conduct of E.J. Ward on the project. These documents are necessary for E.J. Ward to evaluate its counterclaims and the possibility of settlement.

II. ARGUMENT

Trial courts possess broad discretion in discovery matters. *Heinrichs v. 356 Registry, Inc.*, 10th Dist. No. 13AP-36, 2013-Ohio-4161, ¶ 19 (citing *State ex. rel. Citizens for Open, Responsive & Accountable Govt. v. Register*, 116 Ohio St.3d 88, 2007-5542, 876 N.E.2d 913, ¶ 18. Moreover, courts have the right to regulate discovery and impose limits and conditions in order to expedite the administration of justice. *Grange Mut. Cas. Co. v. Auxier*, 12th Dist. Nos. CA-1109, et seq., 1983 WL 4408, *3 (June 29, 1983)(recognizing discretionary power of trial courts in issuing discovery orders). The Ohio Rules of Civil Procedure provide for expedited discovery. Rule 34 specifically permits a court to shorten the time within which a party must respond to document requests.

Rule 34 states in pertinent part:

The party upon whom the request is served shall serve a written response within a period designated in the request that is not less than twenty-eight days after the service of the request *or within a shorter or longer time as the court may allow.*

Civ. R. 34(B) (emphasis added); *see also, Midland Steel Prods. Co. v. U.A.W. Local 486*, 61 Ohio St.3d 121, 131 (1991)(recognizing the availability of expedited discovery under Ohio law).

Exigent circumstances, such as those present in this case, justify granting a motion for expediting discovery. *See, Cornwall v. N. Ohio Surgical Ctr.*, 185 Ohio App.3d 337, 2009-Ohio-6975, 923 N.E.2d 1233 (6th Dist.)(affirming discovery order in situation where defendants' actions during discovery justified allowing expedited process).

Here, this Court should permit expedited discovery. ODOT took five months to produce documents in response to the public records requests. Even then, ODOT failed to fully respond to the requests. The requests asked for all documents, including ESI, that “reflect” or “relate in any way” to the project, ODOT’s contract with E.J. Ward, or ODOT’s contract with the succeeding vendor. (See, Exhibit A.)

In its production, ODOT did not produce any electronic information. Instead, it produced uncollated, unsearchable hard-copy pages. Second, rather than producing the documents E.J. Ward requested that relate to the project and contracts—such as correspondence, payment records, accountings, etc.—it simply produced the contracts themselves. This response by ODOT entirely eliminated whole swaths of responsive information from the production.

As such, E.J. Ward is now forced to request the same information from ODOT via the Document Requests. These requests, however, are not new. ODOT has been aware that E.J. Ward is seeking this information since May 2014. Given that, ODOT would not be prejudiced by the shortened response time. This Court should issue an Order expediting ODOT’s discovery responses, and require it to respond within fourteen days.

The parties have discussed that settlement of this matter may be possible. However, E.J. Ward cannot evaluate its counterclaims or settlement position until it has received the information requested in the Document Requests. In its response to the public records requests, ODOT failed to produce any communications or payment information with the succeeding

vendor. If ODOT had provided the incomplete responses in a timely manner, E.J. Ward could have then followed up with ODOT at that time. Instead, due to ODOT's unjustifiable delay in responding, E.J. Ward has been prejudiced. E.J. Ward could have then been in a better position to discuss settlement with ODOT much earlier.

Moreover, ODOT has been provided with all documents in E.J. Ward's possession with regard to the project. ODOT has all communications and documentation with regard to E.J. Ward's conduct on the project. Yet, now more than five months after the initial public records requests, E.J. Ward is still struggling to obtain complete and relevant information from ODOT.

At the pretrial conference held September 26, 2014, ODOT's counsel advised E.J. Ward and the Court that he may move to continue the trial date due to a conflict in his schedule. ODOT improperly terminated the contract of E.J. Ward on April 10, 2013—approximately eighteen months ago. E.J. Ward needs to conclude its involvement with ODOT, move on with its business, and resolve this protracted litigation brought by ODOT. Further delay of this action will do nothing but prejudice E.J. Ward.

For all of the foregoing reasons, E.J. Ward respectfully requests that the Court issue an Order requiring ODOT to respond to the E.J. Ward's First Request for Production of Documents within fourteen (14) days.

Respectfully submitted,



Hansel H. Rhee (0076093)

John P. Gilligan (0024542)

Nicole R. Woods (0084865)

Ice Miller LLP

250 West Street, Suite 700

Columbus, Ohio 43215

T: (614) 462-2700

F: (614) 462-5135

Hansel.Rhee@icemiller.com

John.Gilligan@icemiller.com

Nicole.Woods@icemiller.com

*Counsel for Defendant/Counterclaim-Plaintiff, E.J. Ward,
Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by e-mail and regular U.S. Mail, postage prepaid, this 8 day of October, 2014, to:

William C. Becker, Esq.

Richard J. Silk, Jr., Esq.

Ohio Attorney General's Office

Assistant Attorneys General

Court of Claims Defense

150 E. Gay Street, 18th Floor

Columbus, Ohio 43215

william.becker@ohioattorney_general.gov

rick.silk@ohioattorneygeneral.gov

Counsel for Plaintiff/Counterclaim-Defendant



Nicole R. Woods (0084865)

May 7, 2014

Writer's Direct Number: 614 462-4925
Direct Fax: 614 222-3491
Internet: Vicki.Babbert@icemiller.com

Delivered via Email and Regular Mail

Melissa Ayers
Deputy Director of Communications
Ohio Department of Transportation
1980 West Broad Street
Columbus, OH 43223
Melissa.Ayers@dot.state.oh.us

RE: Open Records Request: DDOT RFP NO. 509-12

Dear Ms. Ayers:



Under the Ohio Open Records Law § 149.43 et seq., I am requesting copies of the following public records believed to be in the possession of the Ohio Department of Transportation ("ODOT"):

Any and all documents; correspondence and/or communication of any kind, including, writings of any type, audio recordings, email, and/or other electronically stored information and/or communications of any kind; and payment or accounting records that record, reflect, or relate in any way to:

1. The planning, development, and implementation of the Automated Fuel Management System ("Fuel Management System") for ODOT;
2. ODOT Contract Number RFP No. 509-12 ("Contract") between ODOT and EJ Ward, Inc.; and
3. The Contract for the Fuel Management System awarded to the vendor or vendors succeeding EJ Ward, Inc.

Your Department is believed to have custody of these documents but, if it does not, I would request prompt notice of their current location.

If you expect a significant delay (i.e., more than 10 business days) in responding or fulfilling this request, please contact me with information about when I might expect to receive copies of the requested records.

If any portion of this request is denied, I request a detailed statement of the reasons for the withholding and an index or similar statement as to the nature of the documents withheld. To

Melissa Ayers
May 7, 2014
Page 2

expedite this request, I would be willing to discuss specific instances of deletion or other exemption claims. In the event of any deletions, I request that the reason be stated for the partial denial of access.

As required in the Code, I will pay the actual costs of providing these records upon receipt of an invoice detailing the costs. Please notify me if you expect these costs to exceed one hundred dollars.

Sincerely,

ICE MILLER LLP

A handwritten signature in cursive script that reads "Vicki E. Babbert".

Vicki E. Babbert
Paralegal

VEB

From: Babbert, Vicki
Sent: Friday, May 23, 2014 2:11 PM
To: 'aisha.powell@dot.state.oh.us'
Cc: Gilligan, John; Rhee, Hansel
Subject: Open Records Request: DDOT RFP No. 509-12
Attachments: COLUMBUS-#4617479-v1-ODOT_Open_Records_Request.PDF

Dear Ms. Powell,

At the request of Mr. Piccininni, I am redirecting the attached Open Records Request to your attention. Please contact me should you have any questions.

Regards,

Vicki Babbert
Paralegal

IceMiller

LEGAL COUNSEL

Vicki Babbert

Paralegal

Vicki.Babbert@icemiller.com

p 614-462-4925 f 614-222-3491

Ice Miller LLP

250 West Street

Suite 700

Columbus, OH 43215

To learn more about the firm and its services, visit us at
icemiller.com



From: Babbert, Vicki
Sent: Wednesday, June 11, 2014 4:40 PM
To: aisha.powell@dot.state.oh.us
Subject: Open Records Request RFP 509-12
Attachments: COLUMBUS-#4617479-v1-ODOT_Open_Records_Request.pdf

Dear Ms. Powell,

I am following up on the Open Records Request that I emailed to you on May 23, 2014.

Would you please let me know the status of ODOT's response to this request?

Regards,

Vicki Babbert

IceMiller

LEGAL COUNSEL

Vicki Babbert

Paralegal

Vicki.Babbert@icemiller.com

p 614-462-4925 f 614-222-3491

Ice Miller LLP

250 West Street

Suite 700

Columbus, OH 43215

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icemiller.com



From: Powell, Aisha [mailto:Aisha.Powell@dot.state.oh.us]
Sent: Thursday, June 12, 2014 11:05 AM
To: Babbert, Vicki
Subject: RE: Open Records Request RFP 509-12

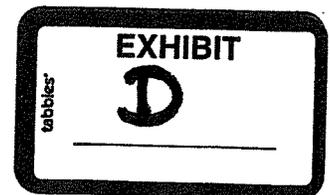
Ms. Babbert:

The offices that have responsive records have not indicated how many records they have or how easily accessible they are (i.e. – whether items have to be pulled from storage). Without knowing the volume or current location of all of the responsive records, I cannot estimate how long it will take to gather and review all responsive items. The records will be provided in a reasonable amount of time.

Thank you,

Aisha R. Powell, Assistant Legal Counsel

Ohio Department of Transportation
Division of Chief Legal Counsel & Equal Opportunity
1980 West Broad Street, 1st Floor (Mail Stop: 1500)
Columbus, Ohio 43223
614.466.6905
614.887.4053 fax



aisha.powell@dot.state.oh.us

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From: Babbert, Vicki [<mailto:Vicki.Babbert@icemiller.com>]
Sent: Thursday, June 12, 2014 8:33 AM
To: Powell, Aisha
Subject: RE: Open Records Request RFP 509-12

Ms. Powell,
Thank you for the quick response. Are you able to give me an estimated date as to when records might begin to be forwarded?
Vicki

IceMiller

LEGAL COUNSEL

Vicki Babbert

Paralegal

Vicki.Babbert@icemiller.com

p 614-462-4925 f 614-222-3491

Ice Miller LLP
250 West Street
Suite 700
Columbus, OH 43215

To learn more about the firm and its services, visit us at
icemiller.com

From: Powell, Aisha [<mailto:Aisha.Powell@dot.state.oh.us>]
Sent: Wednesday, June 11, 2014 7:25 PM
To: Babbert, Vicki
Subject: RE: Open Records Request RFP 509-12

Dear Ms. Babbert:

There are multiple offices within the Department that may have records responsive to your request. Those offices are in the process of gathering responsive documents. As records become available, the Office of Chief Legal Counsel will review those records to determine whether any are exempt from disclosure. As you may know, the Department has an affirmative duty to review, prior to disclosure, any and all records which may be responsive to a public records request, and cannot ignore its obligation to prevent disclosure of certain confidential information that is protected by state or federal law. *State ex rel. Fant v. Enright* (1993), 66 Ohio St.3d 186, 1993-Ohio-188. Once the review of the records is complete, all responsive records that are not exempt from disclosure will be forwarded to you. Please feel free to contact me with any questions or additional requests that you may have.

Thank you,

Aisha R. Powell, Assistant Legal Counsel

Ohio Department of Transportation
Division of Chief Legal Counsel & Equal Opportunity
1980 West Broad Street, 1st Floor (Mail Stop: 1500)
Columbus, Ohio 43223
614.466.6905
614.887.4053 fax
aisha.powell@dot.state.oh.us

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From: Babbert, Vicki [<mailto:Vicki.Babbert@icemiller.com>]
Sent: Wednesday, June 11, 2014 4:40 PM
To: Powell, Aisha
Subject: Open Records Request RFP 509-12

Dear Ms. Powell,

I am following up on the Open Records Request that I emailed to you on May 23, 2014.

Would you please let me know the status of ODOT's response to this request?

Regards,

Vicki Babbert

IceMiller

LEGAL COUNSEL

Vicki Babbert

Paralegal

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Columbus, OH 43215

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Thank you.

ICE MILLER LLP

IN THE COURT OF CLAIMS OF OHIO

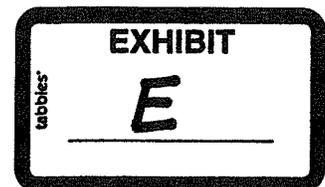
OHIO DEPARTMENT OF :
TRANSPORTATION, :
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Plaintiff/Counterclaim-Defendant, :
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v. : Case No. 2014-00405-PR
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E.J. WARD, INC., :
 :
 :
Defendant/Counterclaim-Plaintiff. :

**PLAINTIFF/COUNTERCLAIM-DEFENDANT'S FIRST SET OF
INTERROGATORIES AND REQUEST FOR PRODUCTION
OF DOCUMENTS TO DEFENDANT/COUNTERCLAIM-PLAINTIFF**

TO: Hansel H. Rhee
John P. Gilligan
Nicole R. Woods
Ice Miller LLP
250 West Street, Suite 700
Columbus, Ohio 43215

Plaintiff/Counterclaim-Defendant requests that you respond to the following interrogatories. Your answers are to be made in writing, under oath, and in the spaces provided. If additional space is needed, attach additional sheets. Please respond within twenty-eight (28) days of service upon you, and please serve a copy of your responses hereto upon Defendant's attorney at the address listed.

You are reminded that by virtue of Civil Rule 26(E) you must reasonably supplement your responses hereto as additional information becomes available.



In accordance with the provisions of Civil Rule 34, Plaintiff/Counterclaim-Defendant further requests to inspect and copy the documents described herein which are in the possession, custody or control of Defendant/Counterclaim-Plaintiff. Within twenty-eight (28) days of service upon you of this request, please produce the documents at the Office of the Attorney General, 150 East Gay Street, 18th Floor, Columbus, Ohio 43215-3130, or other suitable location agreed upon by the parties.

DEFINITIONS

A. Where the name or identity of a person is requested, state full name, home address and phone number; and also business address and phone number, if known.

B. Unless otherwise indicated, these Interrogatories refer to the time, place and circumstances of the occurrence mentioned or complained of in the pleadings.

C. Where knowledge or information or possession of a party is requested, such request includes knowledge of the party's agents, representatives and, unless privileged, his attorneys. When the answer is made by a corporate plaintiff, state the name, address and title of the person supplying the information and making the affidavit, and the source of this information.

D. "Document" means the original and any nonidentical copy of any handwritten, printed, typed, photocopied, reproduced, recorded, photographed or microfilmed material or data compilation from which information can be obtained in the possession, custody or control of the Defendant/Counterclaim-Plaintiff, including but not limited to correspondence, writings, memoranda, notes, studies, agendas, phone records, tape recordings, maps, charts, microfilm, microfiche and computer data.

E. At the option of Defendant/Counterclaim-Plaintiff, in lieu of producing documents requested, you may attach true and correct copies of those documents to these interrogatories as Exhibits hereto, and they will be deemed to be a part of these interrogatories to which response is made under oath.

**INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS**

1. State all facts, produce all documents, and identify all witnesses by name, address, and relationship to the Defendant/Counterclaim-Plaintiff which and who support the allegations in Paragraph 111 of your Counterclaim.

ANSWER:

2. State all facts, produce all documents, and identify all witnesses by name, address, and relationship to the Defendant/Counterclaim-Plaintiff which and who support the allegations in Paragraph 117 of your Counterclaim.

ANSWER:

3. State all facts, produce all documents, and identify all witnesses by name, address, and relationship to the Defendant/Counterclaim-Plaintiff which and who support the allegations in Paragraph 123 of your Counterclaim.

ANSWER:

4. Produce the documents, including emails and correspondence that support your counterclaim.

ANSWER:

5. Produce the documents, including emails and correspondence that provided Plaintiff/Counterclaim-Defendant notice of this counterclaim.

ANSWER:

6. Identify the name, address, and relationship to Defendant/Counterclaim-Plaintiff of the individual(s) with the most and best knowledge of this counterclaim.

ANSWER:

7. Produce your job cost report for this project.

ANSWER:

8. State the name, address and relationship to the Defendant/Counterclaim-Plaintiff of all expert witnesses to the allegations in the Defendant/Counterclaim-Plaintiff's counterclaim and produce:
 - (a) The expert's CV;
 - (b) All documents generated by this expert with regard to this case;
 - (c) All documents received by this expert with regard to this case;
 - (d) All documents reviewed by this expert with regard to this case;
 - (e) All billings for fees and expenses by this expert;

- (f) All publications by this expert;
- (g) A copy of all laws, standards and treatises relied upon by this expert for the opinions arrived at in this case.

ANSWER:

9. With regard to the expert(s) identified in the previous request, please identify:
- (a) All opinions of this expert regarding this lawsuit;
 - (b) The basis for these opinions.

ANSWER:

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General



WILLIAM C. BECKER (0013476)
RICHARD J. SILK, JR. (0074111)
Ohio Attorney General's Office
Assistant Attorneys General
Court of Claims Defense
150 E. Gay Street, 18th Floor
Columbus, Ohio 43215
(614) 466-7447 FAX (614) 644-9185
william.becker@ohioattorneygeneral.gov
rick.silk@ohioattorneygeneral.gov
Counsel for
Plaintiff/Counterclaim-Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Plaintiff/Counterclaim-Defendant's First Set of Interrogatories and Request for Production of Documents to Defendant/Counterclaim-Plaintiff was sent by regular U.S. Mail, postage prepaid, this 23 day of June, 2014, to:

Hansel H. Rhee
John P. Gilligan
Nicole R. Woods
Ice Miller LLP
250 West Street, Suite 700
Columbus, Ohio 43215
Attorneys for Defendant E.J. Ward, Inc.



WILLIAM C. BECKER (0013476)
Principal Assistant Attorney General

AFFIDAVIT

STATE OF OHIO)
) SS:
COUNTY OF _____)

I, _____, having first been duly sworn and cautioned, do hereby state that I provided the answers to these Interrogatories and that the answers which I provided are true to the best of my knowledge, information and belief.

AFFIANT

Sworn to before me and subscribed in my presence this ____ day of _____, 2014.

NOTARY PUBLIC

August 18, 2014

Writer's Direct Number: 614 462-2278
Direct Fax: 614 222-3483
Internet: Hansel.Rhee@icemiller.com

Delivered via E-mail and Regular U.S. Mail

William C. Becker, Esq.
Richard J. Silk, Jr., Esq.
Ohio Attorney General's Office
Principal Assistant Attorneys General
Court of Claims Defense
150 E. Gay Street, 18th Floor
Columbus, OH 43215

**RE: Ohio Department of Transportation v. E.J. Ward, Inc.
Case No. 2014-00405-PR; Court of Claims of Ohio**

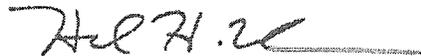
Dear Counsel,

Enclosed please find a service copy of the *Defendant/Counterclaim-Plaintiff, E.J. Ward, Inc.'s Response to Plaintiff/Counterclaim-Defendant's First Set of Interrogatories and Request for Production of Documents*, with regard to the above-captioned matter.

The CDs containing our documents in response to your First Request for Production of Documents will be hand delivered to you tomorrow.

Sincerely,

Ice Miller LLP



Hansel H. Rhee

HHR/pr
Enc.



4688506v1

IN THE COURT OF CLAIMS OF OHIO

OHIO DEPARTMENT OF :
TRANSPORTATION, :
 : Case No. 2014-00405-PR
Plaintiff/Counter-Defendant, :
 :
v. :
 :
E.J. WARD, INC., :
 :
Defendant/Counter-Plaintiff. :

**DEFENDANT/COUNTERCLAIM-PLAINTIFF, E.J. WARD, INC.'S
RESPONSE TO PLAINTIFF/COUNTERCLAIM-DEFENDANT'S
FIRST SET OF INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26, 33, and 34 of the Ohio Rules of Civil Procedure, Defendant/Counterclaim-Plaintiff, E.J. Ward, Inc. ("E.J. Ward"), by and through counsel, hereby responds to Plaintiff/Counterclaim-Defendant, Ohio Department of Transportation's, First Set of Interrogatories and First Request for Production of Documents as follows:

GENERAL OBJECTIONS

E.J. Ward makes the following general objections to ODOT's First Set of Interrogatories and First Request for Production of Documents. These objections will not be repeated in their entirety in response to specific discovery requests, but are applicable to each response as indicated therein.

1. E.J. Ward objects to, and have disregarded, the "Definitions" preceding ODOT's Interrogatories and Requests for Production (the "Discovery Requests"), to the extent that they impose any additional duties or requirements on Defendants beyond those imposed by the Ohio Rules of Civil Procedure and/or the Local Rules for Ohio Court of Claims.

2. E.J. Ward objects to each Discovery Request that calls for information protected by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege. Nothing contained in this response is intended to be or should be construed as a waiver of the

attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege, protection or doctrine.

3. E.J. Ward objects to each Discovery Request to the extent it seeks admission of legal conclusions.

4. E.J. Ward objects to each Discovery Request to the extent it requests information that is irrelevant, immaterial, and/or not reasonably calculated to lead to the discovery of admissible evidence, or requests information beyond the scope of the Rules of Civil Procedure.

5. E.J. Ward objects to each Discovery Request to the extent it purports to require E.J. Ward to provide information not within its possession, custody, or control.

6. E.J. Ward objects to each Discovery Request to the extent it seeks information already within ODOT's knowledge, possession, custody or control, or is equally or more easily available to ODOT, on the grounds that such request is unduly burdensome and oppressive.

7. E.J. Ward objects to each Discovery Request to the extent it is overly broad and/or unreasonably burdensome so as to render it impractical to respond to in any reasonable time or manner.

8. E.J. Ward objects to each Discovery Request to the extent that it calls for information that can be obtained more efficiently by other means of discovery.

9. E.J. Ward objects to each Discovery Request to the extent that it calls for a narrative response, as narrative responses are not required by the Ohio Rules of Civil Procedure, and such information can be better discovered through depositions.

10. The following responses are based upon information available at the time of this response. Discovery is continuing and the responses are accordingly subject to revision. Further discovery, independent investigation, and analysis may supply additional facts and add meaning to known facts, as well as establish entirely new factual conclusions and legal contentions, all of which may lead to additions, changes to, or variations from the responses set forth herein.

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

1. **State all facts, produce all documents, and identify all witnesses by name, address, and relationship to the Defendant/Counterclaim-Plaintiff which and who support the allegations in Paragraph 111 of your Counterclaim.**

ANSWER: Subject to and without waiving the General Objections, please see documents produced herewith, bates numbered EJW000001-EJW075137.

In response to this Request, E.J. Ward incorporates the witnesses listed in response to Discovery Request No. 6.

E.J. Ward specifically objects to this Request insofar as demanding it to “state all facts” is unduly burdensome, overly broad, and requires a narrative response. Discovery is still ongoing in this matter and “all facts” may or may not have been entirely determined. In addition, certain facts upon which E.J. Ward intends to rely are set forth in the documents produced herewith and will not be repeated here. (By way of example, see document number EJW065058 [*April 15th letter from EJ Ward to ODOT.*]) Further, E.J. Ward states that the exact facts that it intends to rely upon to support the allegations in Paragraph 111 of its Counterclaim have not been determined, but it incorporates all factual allegations set forth in its Counterclaim.

Without waiving that objection, and by way of example only, E.J. Ward’s actual damages, lost profits, and overhead costs will be proven through the documents provided in response to these Discovery Requests. In addition, E.J. Ward intends to provide evidence of damage to its reputation through evidence showing that its bonding ability and borrowing ability have been adversely affected through this unnecessary litigation as well as its relationships with contractors. Finally, current and potential customers—such as Dublin, Ohio and the City of Edmonton, Canada—have been contacted by individuals with intimate knowledge of this litigation and those relationships have also been adversely affected.

2. **State all facts, produce all documents, and identify all witnesses by name, address and relationship to the Defendant/Counterclaim-Plaintiff which and who support the allegations in Paragraph 117 of your Counterclaim.**

ANSWER: Subject to and without waiving the General Objections, please see the specific objections and responses to Discovery Request No. 1.

3. **State all facts, produce all documents, and identify all witnesses by name, address and relationship to the Defendant/Counterclaim-Plaintiff which and who support the allegations in Paragraph 123 of your Counterclaim.**

ANSWER: Subject to and without waiving the General Objections, please see the specific objections and responses to Discovery Request No. 1.

4. **Produce the documents, including emails and correspondence that support your counterclaim.**

ANSWER: Subject to and without waiving the General Objections, please see documents produced herewith, bates numbered EJW000001-EJW075137.

5. **Produce the documents, including emails and correspondence that provided Plaintiff/Counterclaim-Defendant notice of this counterclaim.**

ANSWER: Subject to and without waiving the General Objections, please see documents produced herewith, bates numbered EJW000001-EJW075137.

6. **Identify the name, address, and relationship to Defendant/Counterclaim-Plaintiff of the individual(s) with the most and best knowledge of this counterclaim.**

ANSWER: Subject to and without waiving the General Objections, E.J. Ward identifies the following individuals. All employees of E.J. Ward can be contacted through counsel:

1. Markay Ward
President
E.J. Ward
2. Robert Kettyle
Vice President of Sales & Operation
E.J. Ward
3. David Girard
Vice President of Engineering
E.J. Ward
4. Martin Huck
Project Manager
E.J. Ward
5. Donald Melochick
Regional Sales Manager
E.J. Ward
6. Jeanne Fox
Previously employed at E.J. Ward during the time of the project as Software
Manager.

7. **Produce your job cost report for this project.**

ANSWER: Subject to and without waiving the General Objections, please see documents produced herewith, bates numbered EJW000001-EJW075137.

8. **State the name, address and relationship to the Defendant/Counterclaim-Plaintiff of all expert witnesses to the allegations in the Defendant/Counterclaim-Plaintiff's counterclaim and produce:**

- (a) The expert's CV;
- (b) All documents generated by this expert with regard to this case;
- (c) All documents received by this expert with regard to this case;
- (d) All documents reviewed by this expert with regard to this case;
- (e) All billings for fees and expenses by this expert;
- (f) All publications by this expert;
- (g) A copy of all laws, standards and treatises relied upon by this expert for the opinions arrived at in this case.

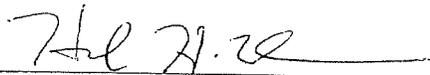
ANSWER: Subject to and without waiving the General Objections, E.J. Ward states that it has not engaged an expert in this matter at this time. This response will be supplemented in accordance with the Ohio Rules of Civil Procedure after any expert witness(es) has been identified.

9. **With regard to the expert(s) identified in the previous request, please identify:**

- (a) All opinions of this expert regarding this lawsuit;
- (b) The basis for these opinions.

ANSWER: Subject to and without waiving the General Objections, please see response to Discovery Request No. 8.

Respectfully submitted,



Hansel H. Rhee (0076093)

John P. Gilligan (0024542)

Nicole R. Woods (0084865)

Ice Miller LLP

250 West Street, Suite 700

Columbus, Ohio 43215

P: (614) 462-2700

F: (614) 462-5135

Email: Hansel.Rhee@icemiller.com

John.Gilligan@icemiller.com

Nicole.Woods@icemiller.com

Attorneys for Defendant/Counterclaim-Plaintiff, E.J. Ward, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by e-mail and regular U.S. Mail, postage prepaid, this 18th day of August, 2014, to:

William C. Becker, Esq.
Richard J. Silk, Jr., Esq.
Ohio Attorney General's Office
Assistant Attorneys General
Court of Claims Defense
150 E. Gay Street, 18th Floor
Columbus, Ohio 43215
william.becker@ohioattorney_general.gov
rick.silk@ohioattorneygeneral.gov

Counsel for Plaintiff/Counterclaim-Defendant



Hansel H. Rhee (0076093)

1 File



OHIO DEPARTMENT OF TRANSPORTATION

CENTRAL OFFICE • 1980 WEST BROAD STREET • COLUMBUS, OH 43223
JOHN R. KASICH, GOVERNOR • JERRY WRAY, DIRECTOR

September 26, 2014

Hansel Rhee, Esq.
Ice Miller LLP
250 West Street
Suite 700
Columbus, Ohio 43215

Re: EJ Ward Public Records Response

Dear Mr. Rhee,

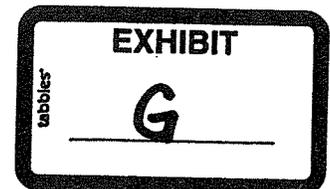
Enclosed herein are documents responsive to your public records requests in the EJ Ward v. ODOT matter. They were printed from the ODOT email system by our legal intern, Angel Doyle. Hence, her name appears at the top of many of the documents.

There are additional documents in our files which we will endeavor to make available mid-next week, and we appreciate your patience as we accumulate, review and produce these records. In the interim, should you have any questions, please feel free to call me at 614-466-2739.

Respectfully,

A handwritten signature in black ink, appearing to read "T. Pannett", written over a horizontal line.

Thomas P. Pannett
Assistant Legal Counsel.





OHIO DEPARTMENT OF TRANSPORTATION

CENTRAL OFFICE • 1980 WEST BROAD STREET • COLUMBUS, OH 43223
JOHN R. KASICH, GOVERNOR • JERRY WRAY, DIRECTOR

Friday, October 03, 2014

Hansel Rhee, Esq.
Ice Miller LLP
250 West Street
Suite 700
Columbus, Ohio 43215

Re: EJ Ward Public Records Response

Dear Mr. Rhee,

Enclosed herein are remaining documents that are responsive to your public records requests in the EJ Ward v. ODOT matter. They were printed from the ODOT email system by our legal intern, Angel Doyle. Hence, her name appears at the top of many of the documents.

Should you have any questions, please feel free to call me at 614-466-2739.

Respectfully,

A handwritten signature in black ink, appearing to read "T. Pannett", with a large flourish at the end.

Thomas P. Pannett
Assistant Legal Counsel



IN THE COURT OF CLAIMS OF OHIO

OHIO DEPARTMENT OF
TRANSPORTATION,

Plaintiff/Counter-Defendant, :

v. :

E.J. WARD, INC., :

Defendant/Counter-Plaintiff. :

Case No. 2014-00405-PR

**DEFENDANT/COUNTERCLAIM-PLAINTIFF, E.J. WARD, INC.'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
TO PLAINTIFF/COUNTER-DEFENDANT
OHIO DEPARTMENT OF TRANSPORTATION**

Pursuant to Ohio Rule of Civil Procedure 34, E.J. Ward, Inc. ("Ward") hereby requests that the Ohio Department of Transportation ("ODOT") produce for inspection, examination, and copying the following documents or items which are in its possession, custody or control, or that of its attorneys, agents, or representatives. Such production is to take place at the offices of Ice Miller LLP, 250 West Street, Columbus, Ohio 43215, within twenty-eight (28) days after service of this Request, or earlier, as the Court may order.

DEFINITIONS

1. The term "Complaint" refers to the Amended Complaint filed by ODOT with this Court on June 23, 2014.
2. The term "Ward" refers to E.J. Ward, Inc. and/or any of its predecessors, successors, assigns, officers, directors, shareholders, employees, and agents.
3. The term "ODOT" refers to the Ohio Department of Transportation and/or any of its predecessors, successors, assigns, officers, directors, shareholders, employees, and agents.



4. The term "FuelMaster" refers to Syn-Tech, Inc. (FuelMaster) and/or any of its predecessors, successors, assigns, officers, directors, shareholders, employees, and agents.
5. The term "Fuel System" refers to the implementation and installation of an Automated Fuel System for ODOT.
6. The term "Contract" refers to ODOT contract number RFP No. 509-12 between ODOT and Ward dated August 27, 2012.
7. The term "Succeeding Contract" refers to ODOT contract number RFP No. 509-12 between ODOT and FuelMaster dated August 26, 2013.
8. The terms "you," "your," or ODOT refer to the Ohio Department of Transportation, and any of its agents or representatives.
9. The term "person" means an individual, corporation, partnership or association, or any other business or governmental entity.
10. The term "reflecting" when used herein, means any document that constitutes, contains, embodies, identifies, states, refers to, relates to, or is in any way relevant to that given subject.
11. The term "document(s)," shall be the same as the definition of document as set forth in Ohio Rule of Civil Procedure 34.
12. The term "document" also includes all "electronically-stored information," which means all data or data compilations stored in any medium and of whatever description, including but not limited to any information contained in any computer, network server, removable storage media, portable electronic device, or cloud-based storage, and all drafts and non-identical copies of the foregoing.

13. The term “communication” when used herein, means any and all of the following: writings, electronic communications (including electronic mail, instant messaging, or text messaging), and any contact, oral or written, formal or informal, at any time or place, and under any circumstances whatsoever in which information of any nature was transmitted or exchanged in any form.

INSTRUCTIONS

1. Unless otherwise indicated, the relevant time period is from **January 1, 2012** until the present date.

2. All scanned paper, email, and native files should be converted/processed to TIFF files, Bates numbered, and include fully searchable text. Additionally, email and native file collections should include linked native files.

3. Bates numbering documents: The Bates number must be a unique, consistently formatted identifier, i.e., an alpha prefix along with a fixed length number. The number of digits in the numeric portion of the format should not change in subsequent productions, nor should spaces, hyphens, or other separators be added or deleted.

4. The following describes the specifications for producing image-based productions and the load files required for loading to Ward’s litigation support software.

- a. Images should be single-page, Group IV TIFF files, scanned at 400 dpi.
- b. The text files should be multi-page.
- c. Files names cannot contain embedded spaces.
- d. Bates numbers should be endorsed on the lower right corner of all images, unless doing so obscures text or other information on the image.
- e. The number of TIFF files per folder should not exceed 500 files.

- f. Rendering to images PowerPoint, AUTOCAD/photographs and Excel files:
- 1) PowerPoint: All pages of the file should be scanned in full slide image format, with any speaker notes following the appropriate slide image.
 - 2) AUTOCAD/photographs: If possible, files should be scanned to single page JPEG (.JPG) file format.
 - 3) Excel: TIFF images of spreadsheets are not useful for review purposes; because the imaging process can often generate thousands of pages per file, a placeholder image, named by the IMAGEID of the file, may be used instead.
- g. Accompanying the image files should be should be a Concordance (.dat) file.
5. To the extent documents produced in response to this request include electronic spreadsheets, you shall produce all formulas embedded in such spreadsheets along with the spreadsheets.
6. The Requests for Production of Documents are continuing, and to the extent your responses to these requests may be enlarged, diminished, or otherwise modified by information acquired by you after the service and filing of responses hereto, you are requested to serve promptly supplemental responses reflecting such changes. In addition, if additional writings are received or discovered before trial, a supplemental document production should be made, providing such additional writings as promptly and as long before trial as possible.
7. Each and every request for a document or writing requires production of the document in its entirety without abbreviation or expurgation, and without redacting any portions of it.
8. More than one paragraph of a document request may ask for the same document. The presence of such duplication is not to be interpreted to narrow or limit the normal

interpretation placed upon each individual request. Where a writing is requested in more than one numbered paragraph, only one copy of it need be produced.

9. If any document is withheld under claim of privilege or work product, furnish a list identifying each document for which the privilege or work product is claimed, together with the following information for each such document: date, sender, recipient, persons to whom copies were furnished, job titles of each of these persons, subject matter of the document, number of pages in the document, the basis on which the privilege or work product is claimed, the paragraph or paragraphs of this Request to which the document responds, the person in whose custody the document is presently located, and whether any matter that is not privileged or not work product is discussed or mentioned in that document.

10. If any document requested was, but is no longer in your possession or subject to your control, or is no longer in existence, identify the documents that are missing, lost, destroyed, corrupted, transferred, deleted, or otherwise disposed of, by author, date, subject matter, file type, file location, and approximate file size. Also state whether the document:

- (a) is missing or lost;
- (b) has been destroyed or corrupted, and if so, explain the circumstances surrounding such destruction or corruption, including the date or approximate date thereof, and the identity of the persons with knowledge of such circumstances.
- (c) has been transferred, voluntarily or involuntarily, to others, and, if so, state the identity of those persons to whom it has been transferred; or
- (d) has been otherwise disposed of or deleted, and if so, explain the circumstances surrounding such disposition or deletion, including the date or approximate date thereof, and the identity of the persons with knowledge of such circumstances.

DOCUMENTS TO BE PRODUCED

1. All documents regarding the planning and development of the Fuel System.

RESPONSE:

2. All documents relating to the Contract, including but not limited to, applications for payment, invoices, change orders, and evidences of payment.

RESPONSE:

3. All documents reflecting communications between ODOT and Ward regarding the Fuel System and Contract.

RESPONSE:

4. All documents regarding the Succeeding Contract, including but not limited to, applications for payment, invoices, change orders, and evidences of payment.

RESPONSE:

5. All documents reflecting communications between ODOT and FuelMaster regarding the Fuel System and Contract.

RESPONSE:

6. All documents, including communications, reflecting the allegations that Ward breached the Contract by failing to properly design and install the Fuel System, as alleged in Paragraph 21 of the Complaint.

RESPONSE:

7. All documents, including communications, reflecting the allegations that ODOT performed its obligations under the Contract, as alleged in Paragraph 22 of the Complaint.

RESPONSE:

8. All documents, including communications, reflecting the allegations that ODOT will incur additional costs to remove the non-compliant installation and materials, as alleged in Paragraph 23 of the Complaint.

RESPONSE:

9. All documents, including communications, reflecting the allegations that Ward was aware of defects in the Fuel System and refused to correct the defects in compliance with the Contract, as alleged in Paragraph 28 of the Complaint.

RESPONSE:

10. All documents, including communications, reflecting the allegations that Ward has refused to refund ODOT the monies paid and to reclaim the hardware and software, as alleged in Paragraph 29 of the Complaint.

RESPONSE:

11. All documents, including communications, reflecting the allegations that Ward failed to provide a Fuel System that was merchantable, as alleged in Paragraph 35 of the Complaint.

RESPONSE:

12. All documents, including communications, reflecting the allegations that Ward failed to provide hardware and software that was fit for its particular purpose, as alleged in Paragraph 50 of the Complaint.

RESPONSE:

13. All documents, including communications, reflecting the allegations that Ward has been unjustly enriched to the detriment of ODOT, as alleged in Paragraph 43 of the Complaint.

RESPONSE:

14. All documents, including communications, reflecting the allegations that ODOT is entitled to recover payments made to Ward in the amount of \$2,130,243.84 as well as incidental and consequential damages to the cost of a substitute vendor, as alleged in Paragraphs 23, 30, 36, 41, and 46 of the Complaint.

RESPONSE:

15. All documents, including communications, reflecting the additional costs incurred by ODOT to remove the non-compliant installation and materials as alleged in Paragraphs 23, 36, and 41 of the Complaint.

RESPONSE:

16. All documents, including communications, supporting ODOT's denial of Ward's allegation that ODOT improperly terminated the contract, as alleged in Paragraph 101-103 of ODOT's Answer to Ward's Counterclaim filed June 23, 2014.

RESPONSE:

17. All documents, including communications, supporting ODOT's claim for damages.

RESPONSE:

18. For all expert witnesses whom you expect to call at trial, produce the following:
- a. A professional resume and/or curriculum vitae summarizing the witness's professional qualifications.
 - b. Copies of all publications authored or co-authored by the expert.
 - c. All time records, diaries, and bills prepared and rendered in connection with the witness's investigation and evaluation of any issues involved in the lawsuit.
 - d. The file of the witness in connection with his investigation, evaluation and reporting of the issues involved in the lawsuit, as provided in Ohio Civil Rule 26.
 - e. All reports, calculations, correspondence, telephone slips and evidence of communication between the witness and Plaintiff, his attorneys, agents or investigators and/or any other expert upon whose observations, opinions or conclusions this witness may rely, in whole or in part, to form the basis of the witness's opinions.
 - f. Listing of all testimony provided at deposition or trial during the last four years.

RESPONSE:

Respectfully submitted,



Hansel H. Rhee (0076093)

John P. Gilligan (0024542)

Nicole R. Woods (0084865)

Ice Miller LLP

250 West Street, Suite 700

Columbus, Ohio 43215

T: (614) 462-2700

F: (614) 462-5135

Hansel.Rhee@icemiller.com

John.Gilligan@icemiller.com

Nicole.Woods@icemiller.com

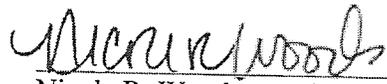
Counsel for Defendant/Counterclaim-Plaintiff, E.J. Ward, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by e-mail and regular U.S. Mail, postage prepaid, this 8 day of October, 2014, to:

William C. Becker, Esq.
Richard J. Silk, Jr., Esq.
Ohio Attorney General's Office
Assistant Attorneys General
Court of Claims Defense
150 E. Gay Street, 18th Floor
Columbus, Ohio 43215
william.becker@ohioattorney_general.gov
rick.silk@ohioattorneygeneral.gov

Counsel for Plaintiff/Counterclaim-Defendant



Nicole R. Woods (0084865)