

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CHARLES TOWNSLEY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.	)	Case No. 1:20-cv-00969-DAE
)	
INTERNATIONAL BUSINESS)	
MACHINES CORPORATION,)	
)	
Defendant.)	

**DEFENDANT’S MOTION FOR A PROTECTIVE ORDER
TO LIMIT SCOPE OF 30(B)(6) DEPOSITION**

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CHARLES TOWNSLEY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.	)	Case No. 1:20-cv-00969-DAE
)	
INTERNATIONAL BUSINESS)	
MACHINES CORPORATION,)	
)	
Defendant.)	

**DEFENDANT’S MOTION FOR PROTECTIVE ORDER
TO LIMIT SCOPE OF 30(B)(6) DEPOSITIONS**

DECLARATION OF EDWARD M. “TED” SMITH

1. I am a Partner at Cornell Smith Mierl Brutocao Burton, LLP. I am serving as lead counsel of record for Defendant International Business Machines Corporation (“IBM”) in the above-captioned matter. I make this statement based on my personal knowledge and familiarity with the discovery documents in this matter. I am over 18 years old and am otherwise competent to make this declaration.

2. Attached as Exhibit A to this declaration is a true and correct copy of Plaintiffs’ Second Requests for Production of Documents to Defendant IBM, dated June 11, 2021.

3. Attached as Exhibit B to this declaration is a true and correct copy of Plaintiffs’ 30(b)(6) Deposition Notice, dated February 28, 2022.

4. Attached as Exhibit C to this declaration is a true and correct copy of my March 8, 2022 letter to Plaintiffs’ counsel. This letter notified Plaintiffs that IBM had issues with Plaintiffs’ “unreasonably overbroad number of topics” contained in their 30(b)(6) deposition notice.

5. The parties engaged in substantive verbal and written negotiations regarding

remaining discovery matters over the course of the following three weeks, including Plaintiffs' requested 30(b)(6) deposition. Attached as Exhibit D to this declaration is a true and correct copy of my April 1, 2022 letter to Plaintiffs' counsel setting forth the agreements reached by the parties regarding these remaining discovery matters, as well as a true and correct copy of Plaintiffs' counsel's email confirming the agreements. Pursuant to these agreements, the parties agreed to extend the original discovery period from April 1, 2022 to May 16, 2022 for the sole purpose of conducting the depositions identified in the April 1, 2022 letter, as well as identified potential discovery motions. The identified deposition in the agreements included Plaintiffs' requested 30(b)(6) deposition; however, the agreements specifically reiterated that "as previously stated, we intend to address the overly broad nature of the requested topics by separate correspondence."

6. Attached as Exhibit E to this declaration is a true and correct copy of my April 12, 2022 letter to Plaintiffs' counsel, setting forth IBM's objections to the topics listed in Plaintiffs' 30(b)(6) deposition notice, as well as proposed compromises to reasonably narrow the scope of the topics.

7. On or about April 13, 2022, Andrew Broadaway (co-counsel for IBM) and I participated in a call with Plaintiffs' counsel, Heidi Coughlin, to discuss the proposed compromises regarding the topics listed in Plaintiffs' 30(b)(6) deposition notice, as set forth in my correspondence to Plaintiffs' counsel on April 12, 2022. Plaintiffs' counsel refused to compromise on any of their 30(b)(6) deposition topics and further communicated her belief that the Court's resolution of Plaintiffs' Motion to Compel would inform the appropriate scope of the 30(b)(6) deposition topics. Plaintiffs' counsel stated that the parties should delay further negotiations regarding the 30(b)(6) deposition topics until after the Court had made its ruling regarding Plaintiffs' Motion to Compel.

8. Following the Court's ruling on Plaintiffs' Motion to Compel, additional communications were exchanged between myself and Plaintiffs' counsel regarding Plaintiffs' 30(b)(6) deposition topics. Plaintiffs remained steadfast in their positions and continued to reject the vast majority of the compromise proposals offered by IBM.

9. On or about May 9, 2022, I had another call with Ms. Coughlin to discuss the 30(b)(6) deposition and other discovery matters. Attached as Exhibit F is a true and correct copy of email correspondence between me and Ms. Coughlin from May 10 – May 13, 2022 wherein the parties agreed to the following with respect to the 30(b)(6) deposition:

- The parties agreed to extend the current May 16, 2022 deadline for Plaintiffs to conduct reasonable 30(b)(6) deposition(s).
- Plaintiffs agreed to review IBM's April 12, 2022 letter providing objections and responses to Plaintiffs' 30(b)(6) topics and determine which topics could be addressed through interrogatories, modified, or withdrawn. Plaintiffs agreed to provide that response to IBM on or before May 16, 2022.
- On or before May 18, 2022, IBM agreed to provide names and dates for individuals to address the remaining 30(b)(6) topics to which IBM agrees to designate 30(b)(6) representative(s).

10. Attached as Exhibit G to this declaration is a true and correct copy of Plaintiffs' counsel's May 16, 2022 letter to me.

11. Attached as Exhibit H to this declaration is a true and correct copy of my May 18, 2022 letter to Plaintiffs' counsel.

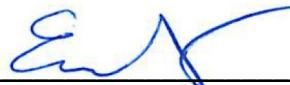
12. Attached as Exhibit I to this declaration is a true and correct copy of Plaintiffs' counsel's May 25, 2022 letter to me.

13. Attached as Exhibit J to this declaration is a true and correct copy of an excerpt of the document production produced by Plaintiff Titon Hoque, Bates numbered Hoque 0049.

My full name is Edward M. “Ted” Smith, my date of birth is December 19, 1968, and my work address is Cornell Smith Mierl Brutocao Burton, LLP, 1607 West Avenue, Austin, Texas 78701.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Travis County, State of Texas, on the 7th day of June, 2022.

Signed: _____



Edward M. “Ted” Smith

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CHARLES TOWNSLEY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.	)	Case No. 1:20-cv-00969-DAE
)	
INTERNATIONAL BUSINESS)	
MACHINES CORPORATION,)	
)	
Defendant.)	

DEFENDANT’S MOTION FOR A PROTECTIVE ORDER
TO LIMIT SCOPE OF 30(B)(6) DEPOSITION

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
WESTERN DIVISION OF TEXAS
AUSTIN DIVISION

NANCY KINNEY, CHARLES
TOWNSLEY, MICHAEL SAURO,
WALTER NOFFSINGER,
ROSA DAVIDSON,
MICHAEL KELLY, TOM KIERL,
CONSTANCE LEWIS, SHERI PARR,
PAUL PHAM, ALVARO PAIZ, TITON
HOQUE, CHRIS MANCUSO, WILBERT
TALMADGE, JANET GELPHMAN,
THANH DO
Plaintiffs,

VS.

INTERNATIONAL BUSINESS
MACHINES CORPORATION,
Defendant.

Civil Action No.: 1:20-cv-00969-LY

**PLAINTIFFS CHARLES TOWNSLEY, MICHAEL SAURO, WALTER NOFFSINGER,
MICHAEL KELLY, ROSA DAVIDSON, TITON HOQUE, JANET GELPHMAN, AND
THANH DO'S 2nd REQUESTS FOR PRODUCTION OF DOCUMENTS TO
DEFENDANT IBM**

Plaintiffs Charles Townsley, Michael Sauro, Walter Noffsinger, Michael Kelly, Rosa Davidson, Titon Hoque, Janet Gelpman, and Thanh Do, by and through undersigned counsel, propound the following discovery directed to Defendant International Business Machines Corporation (“Defendant” or “IBM”). Pursuant to Fed. R. Civ. P. 34, Plaintiffs request that Defendant produce the within requested documents within thirty (30) days from the date of service hereof at the offices Wright and Greenhill, P.C., 900 Congress Ave. Suite 500, Austin TX 78701.

DEFINITIONS

The following definitions will apply to each of the following Discovery Requests:

1. “Document” shall have the most expansive possible meaning under the Federal Rules of Civil Procedure, and shall be construed broadly to include any medium upon which intelligence or information can be recorded or retrieved, and includes, without limitation, the following, whether printed, typewritten, recorded, filmed or reproduced by any mechanical process or written or produced by hand, and whether an original, master or copy, and whether or not claimed to be privileged from discovery, including: spreadsheets, PowerPoint Presentations, contracts, annual reports, agreements, books, records, letters, accounts, notes, summaries, forecasts, appraisals, surveys, estimates, diaries, desk calendars, reports, communications (including intra-company communications), instant messages, lotus notes, box file sharing, emails, facsimiles, memoranda summaries, notes and records of telephone conversations (including voicemail messages), meeting presentations, and conferences programs, notes in reference to personal conversations or interviews, contracts, notices, drafts of any document, business records, charts, schedules, diaries, printouts, computer-stored data (including e-mails), photographs, slides, motion pictures, video recordings, digital or voice recordings and transcriptions thereof, data compilations from which information can be obtained or translated and any other information contained on paper, digitally, in graphical media, or in any other physical form in your actual or constructive possession, custody or control.

2. “Communication” shall mean any manner or form of communication or message, transaction or transmittal, however produced or reproduced, whether by “document,” as defined above, orally, electronically or otherwise, that was made, distributed or circulated between or among persons, including, without limitation, emails, and any and all documents containing, consisting of, or in any way relating or referring to, either

directly or indirectly, a communication.

3. “RA” shall mean any Resource Action, reduction-in-force, layoff or group termination program affecting two or more employees, and shall refer solely to IBM’s United States’ operations unless otherwise specified.

4. “Personnel File” or “Personnel Records” shall mean any and all documents or information related to an individual employee’s employment relationship with Defendant, including, but not limited to employment decisions (e.g., hiring, compensation, training, promotion, demotion, transfer, termination, layoff, retirement, separation, etc.), whether or not stored in a central file or repository.

INSTRUCTIONS

1. Production format – Plaintiff requests that ESI be produced in its native format with metadata, together with any software required to view the native ESI or otherwise make it useable. The following are examples of native format: Word documents, .DOC and .DOCX; Excel Spreadsheets, .XLS and .XLSX; PowerPoint Presentations, .PPT and .PPTX; Microsoft Access Databases, .MDB and .ACCDB; WordPerfect documents, .WPD; Acrobat Documents, .PDF; Images, .JPG, .JPEG and .PNG.

E-mail messages should be produced in a form or forms that readily support import into standard e-mail client programs: for Outlook messages, .PST format, for IBM Notes e-mail (or Lotus Notes), .NSF format or converted .PST format. If it is necessary to extract attachments and produce them separately from their transmitting messages, they should be produced in their native forms with parent/child relationships to the message and containers preserved and produced in a delimited text file.

Documents that do not exist in native electronic formats or require redaction should

be produced in searchable PDF format with logical utilization preserved.

2. Medium for production: To the extent agreeable to IBM, cost effective and subject to negotiation by the parties, hosted production on a secure website; production on physical media such as a hard drive is also acceptable.

3. Documents and items should be produced with an appropriate indication as to the paragraph under which they are being produced.

4. Where possible, documents are to be produced with sequential and unique Bates labeling.

5. In responding to these Requests, conduct a full search of all information repositories (local, offsite, backup media and archive media (including, without limitation, employees' personal systems, and third party service provider systems accessible by defendant's personnel) to determine the current storage location, origination point, and path traveled (including distribution path and recipients), of each file, image, multimedia component, and audio component of responsive information and/or documents.

REQUESTS FOR PRODUCTION

12. The documents and ESI (including all drafts) that set forth Spring and Fall plans for each of IBM's business units, including HR, for 2014, 2015, 2016, 2017, 2018, 2019, and 2020.
13. Documents that set forth staff reduction targets for IBM's business units, including HR, for 2014, 2015, 2016, 2017, 2018, 2019, and 2020.
14. Documents that set forth hiring targets for IBM's business units, including HR, for 2014, 2015, 2016, 2017, 2018, 2019, and 2020.
15. The full, unredacted deposition transcripts taken of IBM employees in the Langley v. IBM, Case 1:18-cv-00443, including Sam Ladah, Diane Gherson, Alan Wild, Robert LeBlanc, Steve Cowley, Stephen Lasher, Yara Saad, and IBM Corporate Representative, Joanna Daly.

16. The documents and ESI that set forth the detail and/or function of “Summit hires.”
17. The documents and ESI that set forth the detail and/or function of “Millenial Corps.”
18. The documents and ESI that set forth the detail of the “Irresistible People Proposition.”
19. For each of the following RAs, produce documents identifying the name of the employees contemplated for layoff, the ages of the employees contemplated for layoff, the date the RA was commenced, the names of the employees selected for layoff, the ages of employees selected for layoffs, and the date the final selection occurred.
 - a. Solitaire
 - b. Canasta
 - c. Keno
 - d. Baccarat
 - e. Saturn
 - f. Concord
 - g. River
 - h. Ruby
 - i. Acorn
 - j. Orange
 - k. Starburst
 - l. Apollo
 - m. Chrome
 - n. Juno
 - o. Occam
 - p. Oaktree
 - q. AIG 2
 - r. Draco
 - s. Cygnus
 - t. Capital One
 - u. Yellow Jacket
 - v. NAPA
 - w. Windsor
 - x. Newton
 - y. Evolution
 - z. Ocean View
 - aa. Orthos
 - bb. Omega
 - cc. BIE
 - dd. Centricity
 - ee. Rheingold
 - ff. Kindle
 - gg. Ventus
 - hh. Fernando

- ii. Toffee
- jj. Starfish
- kk. Zen
- ll. Moonlight
- mm. Superdome
- nn. Zeus
- oo. Union
- pp. Indigo
- qq. Sapphire
- rr. Wotsit
- ss. Falcon
- tt. Osprey
- uu. Picasso EY
- vv. Cenetaur
- ww. Biblotheca
- xx. Melba
- yy. Tower
- zz. Mercurio
- aaa. Miller
- bbb. Norwegian
- ccc. Wood
- ddd. Magic
- eee. Tignanello
- fff. Amarone
- ggg. Jazztel
- hhh. Top
- iii. Iron Man
- jjj. Tuareg
- kkk. Sonia
- lll. Horizon3
- mmm. Horizon Reloaded
- nnn. Pathfinder
- ooo. DCM
- ppp. Avanza
- qqq. Teide
- rrr. Aquila
- sss. Canon

20. The documents and ESI that reflect the ages or any other age-related demographic data about employees considered and selected for reduction, considered and not selected for reduction, and those not considered for reduction, in any RA not listed in Request #19, that occurred in the United States from January 1, 2014 to present.
21. Produce all complete and partial presentations and documents used by or during SVP Forums that relate to hiring.

22. Produce all complete and partial presentations and documents used by or during SVP Forums that relate to talent management.
23. Produce all complete and partial presentations and documents used by or during SVP Forums that relate to headcount reductions.
24. Produce all complete and partial presentations and documents used by or during SVP Forums that relate to or reference resource actions.
25. The full, unredacted deposition transcripts of Carolyn Austin, Stephen Leonard, Todd Orchard, and Lisa Mihalik from Gerald Iacono v. International Business Machines Corp., et al., in the United States District Court, Central District of California, Western Division, case 2:17-cv-08083-FMO-PLA.
26. From January 1, 2014 until present, all documents created by, transmitted to or shared with Arvind Krishna; including but not limited to emails and attachments sent or received that contain the following terms:
 - a. "Early Professional Hire"
 - b. "Early Professional"
 - c. "Early Professionals"
 - d. "EPH"
 - e. "Seniority Mix"
 - f. "Reduction Initiative"
 - g. "Resource Action"
 - h. "RA"
 - i. "RIF"
 - j. "Retired"
 - k. "Layoff Targets"
 - l. "Millennial"
 - m. "Millennial Corps"
 - n. "Head-count Planning"
 - o. "EEOC"
 - p. "Bain & Company"
 - q. "Bain"
 - r. "Spring Plan"
 - s. "Spring Plans"
 - t. "Fall Plan"
 - u. "Fall Plans"
 - v. "Spring Strategy"
 - w. "Operating Team HR"
 - x. "Operating Team Sales Deployment"
27. From January 1, 2014 until present, all documents created by, transmitted to or shared with Alan Wild; including but not limited to emails and attachments sent or received that contain the following terms:

- a. "Early Professional Hire"
 - b. "Early Professional"
 - c. "Early Professionals"
 - d. "EPH"
 - e. "Seniority Mix"
 - f. "Reduction Initiative"
 - g. "Resource Action"
 - h. "RA"
 - i. "RIF"
 - j. "Retired"
 - k. "Layoff Targets"
 - l. "Millennial"
 - m. "Millennial Corps"
 - n. "Head-count Planning"
 - o. "EEOC"
 - p. "Bain & Company"
 - q. "Bain"
 - r. "Spring Plan"
 - s. "Spring Plans"
 - t. "Fall Plan"
 - u. "Fall Plans"
 - v. "Spring Strategy"
 - w. "Operating Team HR"
 - x. "Operating Team Sales Deployment"
28. From January 1, 2014 until present, all documents created by, transmitted to or shared with Sam Ladah; including but not limited to emails and attachments sent or received that contain the following terms:
- a. "Early Professional Hire"
 - b. "Early Professional"
 - c. "Early Professionals"
 - d. "EPH"
 - e. "Seniority Mix"
 - f. "Reduction Initiative"
 - g. "Resource Action"
 - h. "RA"
 - i. "RIF"
 - j. "Retired"
 - k. "Layoff Targets"
 - l. "Millennial"
 - m. "Millennial Corps"
 - n. "Head-count Planning"
 - o. "EEOC"
 - p. "Bain & Company"

- q. "Bain"
- r. "Spring Plan"
- s. "Spring Plans"
- t. "Fall Plan"
- u. "Fall Plans"
- v. "Spring Strategy"
- w. "Operating Team HR"
- x. "Operating Team Sales Deployment"

Respectfully submitted,

WRIGHT & GREENHILL, P.C.
900 Congress Avenue, Suite 500
Austin, Texas 78701
512/476-4600
512/476-5382 (Fax)



By: _____

Heidi A. Coughlin
State Bar No. 24059615
hcoughlin@w-g.com
Archie Carl Pierce
State Bar No. 15991500
cpierce@w-g.com
Blair Leake
State Bar No. 24081630
bleake@w-g.com

and



By: _____

Kaplan Law Firm
Austin Kaplan
State Bar No. 24072176
akaplan@kaplanlawatx.com

Counsel for the Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent via e-mail to the following attorney of record, in accordance with the Federal Rule of Civil Procedure, on the 11th day of June, 2021.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CHARLES TOWNSLEY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.	)	Case No. 1:20-cv-00969-DAE
)	
INTERNATIONAL BUSINESS)	
MACHINES CORPORATION,)	
)	
Defendant.)	

DEFENDANT'S MOTION FOR A PROTECTIVE ORDER
TO LIMIT SCOPE OF 30(B)(6) DEPOSITION

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHARLES TOWNSLEY, MICHAEL
SAURO, WALTER NOFFSINGER, ROSA
DAVIDSON, MICHAEL KELLY, TITON
HOQUE, JANET GELPHMAN, THANH DO

Plaintiffs,

V.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.

CASE NO. 1:20-CV-00969-LY

**NOTICE OF DEPOSITION OF DEFENDANT INTERNATIONAL BUSINESS
MACHINES CORPORATION'S CORPORATE REPRESENTATIVE**

TO: Defendant International Business Machines Corporation, by and through its attorneys of record, Edward M. “Ted” Smith, Andrew Broadway, Alan Lin, CORNELL SMITH MIERL BRUTOCAO BURTON, LLP 1607 West Avenue, Austin, Texas 78701.

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiffs, by and through their undersigned counsel, will take the oral and videotaped deposition of Defendant International Business Machines Corporation's Corporate Representative on a date to be determined by utilizing a secure web-based option before a certified Court Reporter. Take notice that the court reporter will also be appearing remotely and will not be in the physical presence of the deponent.

The deposition will continue from day to day until completed and will be conducted before an officer or other person duly authorized to administer oaths. The deposition will be recored by video and stenographic means. The deposition may be used as testimony at the trial of this case.

Defendant International Business Machines Corporation is requested, pursuant to Federal Rule of Civil Procedure 30(b)(6), to designate one or more persons to testify on its behalf regarding topics (a) through (k). The following definitions will apply to each of the topics.

DEFINITIONS

1. **“All Business Segments”** shall mean Cloud & Cognitive Software (and all its previous iterations), Global Business Services (GBS), Global Technology Services (GTS), Systems, and Global Finance (IGF/GF), as well as Global Markets (previously known as Sales & Development), and all major shared service organizations such as HR and Finance.
2. **“All Geographic Regions”** shall mean North America (NA), Latin America (LA), Europe, Middle East and Africa (MEA), Asia Pacific (AP), Japan and Greater China Group (GCG).
3. **“Documents”** shall mean written or digital communications, including but not limited to, emails, email attachments--whether attached on the email or shared via Box or Dropbox, spreadsheets, PowerPoints, Slack, Same Time, or text messages.
4. **“High-Level Executives”** shall mean any person employed at IBM as a Band C, B, A or AA.

TOPICS

- a) IBM’s headcount composition since 2014, including but not limited to, total headcount by year for All Business Segments and All Geographic Regions.
- b) For All Business Segments and All Geographic Regions: i) the date of notification for each wave; ii) the date of separation for each wave; iii) the number of employees separated; iv) the average age of all employees immediately prior to commencement of the RA; and v) the average age of all employees immediately after completion of all waves of the following resource actions:
 - (a) Apollo
 - (b) Chrome
 - (c) Saturn
 - (d) Solitaire
 - (e) Baccarat
 - (f) Concord
 - (g) Maple
 - (h) Palm
 - (i) Sycamore
- c) IBM’s planning and execution to Near Shore or Offshore its employees for All Business Segments since 2014.
- d) IBM’s planning and execution of Skills for Value for All Business Segments and All Geographic Regions.
- e) IBM’s efforts to recruit, attract, engage and/or retain Millennials since 2014.
- a) IBM’s efforts to recruit, attract, engage and/or retain Early Professional Hires (EPH) since 2014.

- b) The process by which Resource Actions are initiated, managed, tracked and reported internally.
- c) IBM's development and use of any workforce management and location-based strategies used to analyze and manage the physical location of its employees, whether US or non-US, including but not limited to:
 - 1. Skills for Value (SFV)
 - 2. Project X.
- b) HR Spring Plans for All Business Segments since 2014.
- c) HR Fall Plans for All Business Segments since 2014.
- d) The total number of employees hired by IBM since 2014, by year, for All Business Segments and All Geographic Regions.
- e) The total number of Early Professional Hires hired since 2014, by year, for All Business Segments and All Geographic Regions.
- f) The creation, purpose, and function of "Millennial Corps."
- g) The creation, purpose, and function of "Summit Hires."
- h) The creation, purpose, and function of "CbD."
- i) From 2014, information provided to IBM's Board of Directors regarding efforts to transform IBM's workforce.
- j) The identity of persons participating in preparation of the spreadsheets IBMK-D-000001 – IBMK-D-000011.
- k) All sources of information, including documents and data on which spreadsheets IBMK-D-000001 – IBMK-D-000011 are based.

SUBPOENA DUCES TECUM

The witness is instructed to bring with them the items listed on the attached Exhibit A.

Respectfully submitted,

WRIGHT & GREENHILL, P.C.
900 Congress Avenue, Suite 500
Austin, Texas 78701
512/476-4600
512/476-5382 (Fax)



By: _____
Heidi A. Coughlin
State Bar No. 24059615
hcoughlin@w-g.com
Archie Carl Pierce
State Bar No. 15991500

cpierce@w-g.com

Blair Leake

State Bar No. 24081630

bleake@w-g.com

and



By: _____

Kaplan Law Firm

Austin Kaplan

State Bar No. 24072176

akaplan@kaplanlawatx.com

COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2022, the above NOTICE OF DEPOSITION was sent via email to the following counsel of record.

Edward M. "Ted" Smith
Andrew Broadaway
Alan Lin
CORNELL SMITH MIERL
BRUTOCAO BURTON, LLP
1607 West Avenue
Austin, Texas 78701
tsmith@cornellsmith.com
abroadaway@cornellsmith.com
alin@cornellsmith.com



Heidi A. Coughlin

EXHIBIT A

1. All documents reviewed by the corporate representative(s) in preparation for the 30(b) deposition.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CHARLES TOWNSLEY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.	)	Case No. 1:20-cv-00969-DAE
)	
INTERNATIONAL BUSINESS)	
MACHINES CORPORATION,)	
)	
Defendant.)	

DEFENDANT'S MOTION FOR A PROTECTIVE ORDER
TO LIMIT SCOPE OF 30(B)(6) DEPOSITION

EXHIBIT C



Edward M. "Ted" Smith
512-334-2246
tsmith@cornellsmith.com

March 8, 2022

VIA EMAIL (HCOUGHLIN@W-G.COM)

Heidi A. Coughlin
Wright & Greenhill, P.C.
900 Congress Avenue
Suite 500
Austin, Texas 78701-3495

Re: *Townsley, et. al. v. IBM Corporation*; Cause No. 1:20-cv-00969-LY; In the United States District Court for the Western District of Texas, Austin Division

Dear Heidi:

We are in receipt of your correspondence of February 28, in which you request the depositions of nine (9) additional witnesses, as well as a corporate representative witness(es) pursuant to FRCP 30(b)(6) (regarding which you have designated an unreasonably overbroad number of topics which we will address by separate correspondence).

As you are most certainly aware, FRCP 30(a)(2)(A) limits the amount of depositions in a cause of action to ten per side, not per party. Plaintiffs have already noticed five (5) depositions: Laura Pimentel (deposition taken on February 11), Sam Ladah (deposition taken on February 14), Tom Fleming (deposition taken on March 4), Deb Bubb (deposition noticed for March 8), and Nickle LaMoreaux (deposition noticed for March 24). Along with the requested 30(b)(6) corporate witness(es), that amounts to six (6) depositions.

Accordingly, we request that you identify the four (4) remaining depositions you seek to take out of the nine (9) witnesses listed in your February 28 correspondence. Thank you for your professional cooperation.

Sincerely,

A handwritten signature in blue ink, appearing to be "E. Smith", written over a light blue circular stamp.

Edward M. "Ted" Smith



**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CHARLES TOWNSLEY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.	)	Case No. 1:20-cv-00969-DAE
)	
INTERNATIONAL BUSINESS)	
MACHINES CORPORATION,)	
)	
Defendant.)	

DEFENDANT'S MOTION FOR A PROTECTIVE ORDER
TO LIMIT SCOPE OF 30(B)(6) DEPOSITION

EXHIBIT D

From: Heidi Coughlin <hcoughlin@w-g.com>
Sent: Friday, April 1, 2022 4:44 PM
To: Ted Smith
Cc: Lizz Gobellan; Andrew Broadaway; Alan Lin; Carl Pierce; Blair Leake; Austin Kaplan; Emily Wojnar; Morgan Shell
Subject: Re: Townsley, et al. v. IBM

Ted,
This looks fine to me.
-Heidi

HEIDI A. COUGHLIN

WRIGHT & GREENHILL, P.C

900 CONGRESS AVE, SUITE 500 | AUSTIN, TEXAS 78701

DIRECT: 512-708-5234 | MAIN: 512-476-4600 | FAX: 512-476-5382

HCoughlin@w-g.com | WrightGreenhill.com | [Bio](#)

THIS MESSAGE IS PRIVILEGED AND CONFIDENTIAL. IF YOU ARE NOT THE INTENDED RECIPIENT, PLEASE DELETE THE COMMUNICATION.

On Apr 1, 2022, at 10:55 AM, Ted Smith <tsmith@cornellsmith.com> wrote:

Good Morning.

Attached is correspondence in response to your letter of March 30.

There were only slight revisions to those proposed in your March 30 letter, so we are really hoping that we will be able to reach agreement on this as drafted.

In that regard, and given that today is the final day of the discovery period under the Court's Scheduling Order, please feel free to call if it would be helpful to resolve any remaining issues in the agreement.

Thanks,

Ted

Ted Smith
Cornell Smith Mierl Brutocao Burton, LLP
(512) 334-2246 (Direct)

From: Lizz Gobellan <lgobellan@w-g.com>
Sent: Wednesday, March 30, 2022 4:35 PM
To: Ted Smith <tsmith@cornellsmith.com>; Andrew Broadaway <abroadaway@cornellsmith.com>; Alan

Lin <alin@cornellsmith.com>

Cc: Heidi Coughlin <hcoughlin@w-g.com>; Carl Pierce <cpierce@w-g.com>; Blair Leake <bleake@w-g.com>; Austin Kaplan <akaplan@kaplanlawatx.com>; Emily Wojnar <ewojnar@w-g.com>

Subject: Townsley, et al. v. IBM

Good Afternoon Mr. Smith,

Please see the attached correspondence from Ms. Coughlin regarding the above matter.

Thank you.

Lizz Gobellan

Legal Assistant to: Heidi A. Coughlin

WRIGHT & GREENHILL, P.C | 900 Congress Avenue, Suite 500 | Austin, Texas 78701

direct: 512-708-5266 | **main:** 512-476-4600 | **fax:** 512-476-5382

lgobellan@w-g.com | WRIGHTGREENHILL.COM

<2022 04 01 Ltr to H. Coughlin re Discovery Compromise.pdf>



Edward M. "Ted" Smith
512-334-2246
tsmith@cornellsmith.com

April 1, 2022

VIA EMAIL (HCOUGHLIN@W-G.COM)

Heidi A. Coughlin
Wright & Greenhill, P.C.
900 Congress Avenue
Suite 500
Austin, Texas 78701-3495

Re: *Townsley, et. al. v. IBM Corporation*; Cause No. 1:20-cv-00969-LY; In the United States District Court for the Western District of Texas, Austin Division

Dear Heidi:

This letter is in response to your correspondence of March 30 (responding to IBM's most recent proposal of March 24) regarding the parties' efforts to reach a compromise as to the remaining discovery in this matter.

IBM can agree to the following compromise:

1. Plaintiffs will take the depositions of Nickle LaMoreaux (currently rescheduled at Plaintiffs' request to April 19), Deborah Butters (currently scheduled for April 12), Diane Gherson (currently available on April 22) and the previously noticed 30(b)(6) deposition(s) (TBD - as previously stated, we intend to address the overly broad nature of the requested topics by separate correspondence);
2. Plaintiffs and IBM shall be allowed to take the depositions of designated experts (TBD);
3. Plaintiffs agree not to take the deposition of Arvind Krishna in exchange for a complete copy of Dr. Krishna's deposition in the matter of *Schenfeld v. IBM* (including transcripts, exhibits and video), which will be designated and treated as "Confidential" pursuant to the terms of Judge Yeakel's Protective Order;
4. Subject to and conditioned upon Plaintiffs not using or introducing their previous deposition or affidavit testimony (including transcripts or video) at trial or in support of a motion, IBM agrees not to call or use affidavit testimony for the same purposes for the following witnesses for which Plaintiffs had previously requested a deposition and are agreeing to forego under this agreement:



April 1, 2022

Page 2

- Colleen Murphy
- Zane Zumbadaleh
- Carol Gordon
- Arvind Krishna
- Stephen Leonard
- Carrie Altieri
- Bridget Van Kralingen
- Nisha Gopinath
- Robin Suess

In the event Plaintiffs do use or introduce previous deposition or affidavit testimony (including transcripts or video) of any of the witnesses identified above at trial or in support of a motion, this agreement shall not apply to the extent IBM shall be allowed to call or use affidavit testimony of such witness for rebuttal purposes.

5. IBM shall provide complete copies of the depositions (including transcripts, exhibits and video) of Robert LeBlanc and Stephen Lasher provided in the *Langley* case, as well John Kelly in the *Schenfeld v. IBM* case, all of which will be designated and treated as “Confidential” pursuant to Judge Yeakel’s Protective Order;
6. Plaintiffs and IBM will agree to extend the discovery deadline set forth in Judge Yeakel’s Scheduling Order to May 16, 2022 for the sole purpose of conducting the depositions set forth in this agreement; or for filing a Motion to Compel regarding Plaintiffs’ request to provide attachments to documents produced (Plaintiffs’ 3-15-22), a Motion to Compel regarding documents provided to the EEOC, a Motion to Compel regarding Plaintiffs’ Third Request for Production of Documents, or a Motion to Compel regarding Plaintiffs’ supplementation of their responses to Defendant’s discovery requests.
7. Plaintiffs and IBM reserve the right to seek leave of Court to conduct additional depositions (other than that of Arvind Krishna) that may be warranted as a result of the production of additional documents by Plaintiffs or IBM, or the Court ordering Plaintiffs or IBM to produce additional documents.



April 1, 2022
Page 3

Please advise if these terms are agreeable to Plaintiffs.

Sincerely,

A handwritten signature in blue ink, appearing to read 'E. Smith', with a stylized flourish at the end.

Edward M. "Ted" Smith



**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CHARLES TOWNSLEY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.	)	Case No. 1:20-cv-00969-DAE
)	
INTERNATIONAL BUSINESS)	
MACHINES CORPORATION,)	
)	
Defendant.)	

DEFENDANT'S MOTION FOR A PROTECTIVE ORDER
TO LIMIT SCOPE OF 30(B)(6) DEPOSITION

EXHIBIT E



Edward M. "Ted" Smith
512-334-2246
tsmith@cornellsmith.com

April 12, 2022

VIA EMAIL (HCOUGHLIN@W-G.COM)

Heidi A. Coughlin
Wright & Greenhill, P.C.
900 Congress Avenue
Suite 500
Austin, Texas 78701-3495

Re: *Townsley, et. al. v. IBM Corporation*; Cause No. 1:20-cv-00969-LY; In the United States District Court for the Western District of Texas, Austin Division

Dear Heidi:

As previously discussed, I am writing regarding IBM's concerns with Plaintiffs' February 28, 2022, 30(b)(6) Deposition Notice and designation of topics. Specifically, Plaintiffs have designated 18 topics with multiple sub-parts. Such designation is patently overbroad, many topics are irrelevant to the litigation, and the burden placed on IBM to produce the number of witnesses required to testify on your topics—as propounded—would be far disproportionate to the needs of the case. However, in an effort to avoid filing a motion for protection, or require Plaintiffs' filing of a motion to compel, IBM is open to attempting to reach a compromise and identifying a reasonable range of topics to cover in a 30(b)(6) deposition. Please see IBM's position with regard to each topic (or request for further information regarding your designation), as follows:

1. *IBM's headcount composition since 2014, including but not limited to, total headcount by year for All Business Segments and All Geographic Regions.*

Your request for IBM's "headcount" composition is vague and ambiguous and appears to seek information entirely irrelevant to Plaintiffs' claims. Total headcount by year is not relevant to begin with, and headcount for "All Business Segments" and "Geographic Regions," including regions outside the United States is certainly not relevant. Although IBM may be willing to provide information that is reasonable in scope, proportional to the needs of the case, and relevant to the claims, this information is more appropriate for an Interrogatory and the question(s) should propounded as such, and be appropriately limited to the United States and relevant business groups.



April 12, 2022

Page 2

2. *For All Business Segments and All Geographic Regions: i) the date of notification for each wave; ii) the date of separation for each wave; iii) the number of employees separated; iv) the average age of all employees immediately prior to commencement of the RA; and v) the average age of all employees immediately after completion of all waves of the following resource actions:*
 - a. *Apollo*
 - b. *Chrome*
 - c. *Saturn*
 - d. *Solitaire*
 - e. *Baccarat*
 - f. *Concord*
 - g. *Maple*
 - h. *Palm*
 - i. *Sycamore*

This designation inappropriately seeks irrelevant and overbroad global data and information. RAs are planned and executed separately in the US and other countries given different legal requirements. Moreover, in responding to Plaintiffs' interrogatories, IBM has already provided the date of notification and separation for the RAs that impacted the Plaintiffs – GMST, CDWP, HYCD, CGTZ, CGMP, SYMP and DCPL. IBM has also produced date of birth information for the relevant business groups as of December 31, 2016 and December 31, 2020. IBM will not produce information for RAs that did not impact the Plaintiffs; however, IBM would consider providing additional information for the GMST, DCWP, HYCD, CGTZ, CGMP, SYMP and DCPL RAs that impacted the Plaintiffs. But in all events, this is not a proper 30(b)(6) topic and should be propounded as an interrogatory.

3. *IBM's planning and execution to Near Shore or Offshore its employees for All Business Segments since 2014.*

As Titon Hoque was the only Plaintiff that was even remotely affected by offshoring through Skills4Value, IBM is willing to produce a witness from GTS who could speak to offshoring planning and execution that affected US-based employees of GTS from 2016-2020. Any other "Near Shore" or "Offshore" planning would have been in groups that did not affect Plaintiffs and are therefore not relevant.



April 12, 2022

Page 3

4. *IBM's planning and execution of Skills for Value for All Business Segments and All Geographic Regions.*

Same response as Topic #3, and IBM will produce the same witness with the same limitations.

5. *IBM's efforts to recruit, attract, engage and/or retain Millennials since 2014.*

IBM objects to this topic as assuming that IBM had specific “efforts” to “recruit, attract, engage and/or retain Millennials” since 2014, which it did not. IBM also objects that the terms “attract” and “engage” are vague and ambiguous. Nonetheless, in the interest of compromise, IBM will produce a witness to testify on this topic.

6. *IBM's efforts to recruit, attract, engage and/or retain Early Professional Hires (EPH) since 2014.*

IBM notes that the terms “attract” and “engage” are vague and ambiguous. However, IBM will produce a witness to testify as to IBM’s recruitment of Early Professional Hires.

7. *The process by which Resource Actions are initiated, managed, tracked and reported internally.*

IBM views this a request for multiple different topics, but it is willing to produce witness(es) to testify on these topics.

8. *IBM's development and use of any workforce management and location-based strategies used to analyze and manage the physical location of its employees, whether US or non-US, including but not limited to:*
- a. *Skills for Value (SFV)*
 - b. *Project X.*

Project X referred to a potential divestiture of certain service delivery operations from the Global Technology Services group circa 2015 and is thus not relevant to any Plaintiffs’ claims or any of IBM’s defenses. Accordingly, IBM will not produce a witness on Project X. As to the request for a witness on Skills for Value, IBM incorporates its response to Topic #3, and IBM will produce the same witness with the same limitations.



April 12, 2022

Page 4

9. HR Spring Plans for All Business Segments since 2014.

This topic is vague and ambiguous and IBM is not certain what testimony you are seeking. There is no “HR” spring planning process pertinent to each business group. Moreover, we are not clear on whether you are seeking testimony on the spring plan process or the specifics of the spring plans. Can you please clarify?

10. HR Fall Plans for All Business Segments since 2014.

Like with topic #9, this topic is also vague and ambiguous and we are not certain what testimony you are seeking. Are you wanting someone who can discuss the fall planning process? Or are you seeking someone with knowledge of a particular individual Fall Plan? IBM could produce a witness on the former; if the latter, this topic could potentially require dozens of witnesses and would thus be impermissibly overbroad. Please clarify what testimony you are seeking on this topic.

11. The total number of employees hired by IBM since 2014, by year, for All Business Segments and All Geographic Regions.

Again, this designation inappropriately seeks global data and for “All Business Segments,” including groups in which Plaintiffs never worked. More importantly, this is not a proper 30(b)(6) topic—no person knows these data points off hand nor can they memorize them to provide competent testimony. However, as a compromise, IBM is willing to consider providing the number of hires of US regular employees for the particular business units in which each Plaintiff was employed for years 2016-2020, along with data regarding voluntary departures and attrition.

12. The total number of Early Professional Hires hired since 2014, by year, for All Business Segments and All Geographic Regions.

Same response as for Topic #11. In addition, Early Professional Hires was not a defined term prior to 2015. IBM could identify which hires were EPH in the information proffered as a compromise to Topic #11.

13. The creation, purpose, and function of “Millennial Corps.”

IBM notes that the Millennial Corps was not established by IBM, but rather independently established and run by employees. It also has no connection to any Plaintiffs’ separations and is



April 12, 2022

Page 5

not relevant to the claims and defenses in this case. However, IBM will endeavor to locate and produce witness to testify on this topic.

14. The creation, purpose, and function of "Summit Hires."

IBM notes that Summit Hires is a term specific to new, entry level hires into the Global Market business group and that there are no Summit Hires in other groups. Nor is there any evidence that Plaintiff Townsley's separation had anything to do with Summit Hires, and thus, this topic is not relevant to the claims or defenses in this case. However, IBM will produce a witness to testify on this topic as it pertains to Summit Hires in Global Markets.

15. The creation, purpose, and function of "CbD."

IBM notes that CbD is a term specific to the GBS business group, and that none of the Plaintiffs in this case worked in GBS. Therefore, the topic is not relevant to the claims and defenses in the case. Nonetheless, IBM will produce a witness to testify on this topic as it pertains to GBS.

16. From 2014, information provided to IBM's Board of Directors regarding efforts to transform IBM's workforce.

IBM objects to this request as impermissibly overbroad, vague, and disproportionate to the needs of the case. However, at this juncture, IBM suggests that Diane Gherson may be able to answer whatever questions you might have about this topic in her capacity as a fact witness.

17. The identity of persons participating in preparation of the spreadsheets IBMK-D- 000001 – IBMK-D-000011.

This is not an appropriate 30(b)(6) topic. IBM is willing to provide, in response to an Interrogatory, the name and job title of the person who pulled the data.

18. All sources of information, including documents and data on which spreadsheets IBMK-D-000001 – IBMK-D-000011 are based.

Same response as Topic #17; IBM is willing to provide the name of the database from which the person identified pulled the data.



April 12, 2022

Page 6

As stated previously, IBM is willing to negotiate these topics in good faith and identify a reasonable number of witnesses to appear for a 30(b)(6) deposition. But the topic designation—as drafted—is simply untenable. Please let me know if you would like to discuss any of these matters further so we can identify the correct witnesses and schedule deposition dates.

Sincerely,



Edward M. “Ted” Smith



**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CHARLES TOWNSLEY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.	)	Case No. 1:20-cv-00969-DAE
)	
INTERNATIONAL BUSINESS)	
MACHINES CORPORATION,)	
)	
Defendant.)	

DEFENDANT'S MOTION FOR A PROTECTIVE ORDER
TO LIMIT SCOPE OF 30(B)(6) DEPOSITION

EXHIBIT F

From: Heidi Coughlin <hcoughlin@w-g.com>
Sent: Friday, May 13, 2022 11:04 AM
To: Ted Smith
Cc: Lizz Gobellan
Subject: Re: Townsley v IBM

Ted,
We agree. When can we expect a response to 4-5?
-Heidi

On May 11, 2022, at 5:02 PM, Ted Smith <tsmith@cornellsmith.com> wrote:

Heidi,

In response to your email below, we can agree to the following:

1. We agree to conduct Rambin and Stewart's depositions over Zoom.
2. With respect to the 30(b)(6) deposition, we would propose the following slightly modified approach, which we think will make our discussions more efficient and productive:
 - We agree to extend the current May 16, 2022 deadline for Plaintiffs to conduct reasonable 30(b)(6) deposition(s).
 - Plaintiffs have agreed to review IBM's April 12, 2022 letter providing objections and responses to Plaintiffs' 30(b)(6) topics and determine which topics can be addressed through interrogatories, modified, or withdrawn. Plaintiffs will provide that response to IBM on or before May 16, 2022.
 - On or before May 18, 2022, IBM will provide names and dates for individuals to address the remaining 30(b)(6) topics to which IBM agrees to designate 30(b)(6) representative(s).
3. IBM agrees that each Plaintiff can file his or her own response to IBM's MSJ, regardless of whether IBM files one or more MSJs.
4. We will get back to you on items 4 and 5 in your email by May 16 as you request.

Please confirm that the above accurately reflects the parties' agreements.

Thanks,

Ted

Ted Smith
Cornell Smith Mierl Brutocao Burton, LLP
(512) 334-2246 (Direct)

From: Heidi Coughlin <hcoughlin@w-g.com>
Sent: Tuesday, May 10, 2022 5:08 PM
To: Ted Smith <tsmith@cornellsmith.com>
Cc: Lizz Gobellan <lgobellan@w-g.com>
Subject: Townsley v IBM

Ted,

Based on our conversation, please confirm:

1. The parties will conduct both Rabin and Stewart's deposition via Zoom.
2. With respect to IBM's 30(b)(6) depositions, the parties have agreed to extend the current May 16, 2022, deadline for taking the deposition(s).
 - The parties agree IBM will provide names and dates for individuals to address topics contained in Plaintiff's 30(b)(6) notice on or before May 16, 2022.
 - Plaintiffs have agreed to review IBM's letter in response to the 30(b)(6) notice and determine which topics, if any, can be addressed through interrogatories. Plaintiffs will provide that response to IBM on or before May 16, 2022.
3. IBM acknowledges that each Plaintiff is entitled to file his/her own response to IBM's MSJ, regardless of whether IBM files one MSJ or a series of MSJs.
4. In anticipation of IBM's MSJ, Plaintiffs formally request permission to show each Plaintiff all documents produced specific to him/her, regardless of the document's confidentiality designation. *Ex.* Walt Noffsinger would be allowed to review all documents produced by IBM specific to him, i.e. documents Bates labeled IBMK-NOFF, regardless of whether the documents are marked Confidential or AEO. Please advise whether IBM will agree to this request on or before May 16, 2022, at 5:00 PM.
5. Lastly, please produce the attachment referenced in 1) IBMK-000049912 "GM Spring Plan Executive Summary Fri 11 am NOTES TALENT v 16.pptx" and 2) IBMK-TOW-0000130-31 "CLOUD TEAM V6.xlsx" as soon as possible.

Thanks,

HEIDI A. COUGHLIN

WRIGHT & GREENHILL, P.C

900 CONGRESS AVE, SUITE 500 | AUSTIN, TEXAS 78701

DIRECT: 512-708-5234 | MAIN: 512-476-4600 | FAX: 512-476-5382

HCoughlin@W-G.COM | WrightGreenhill.com | [Bio](#)

THIS MESSAGE IS PRIVILEGED AND CONFIDENTIAL. IF YOU ARE NOT THE INTENDED RECIPIENT, PLEASE DELETE THE COMMUNICATION.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CHARLES TOWNSLEY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.	)	Case No. 1:20-cv-00969-DAE
)	
INTERNATIONAL BUSINESS)	
MACHINES CORPORATION,)	
)	
Defendant.)	

DEFENDANT'S MOTION FOR A PROTECTIVE ORDER
TO LIMIT SCOPE OF 30(B)(6) DEPOSITION

EXHIBIT G

WRIGHT & GREENHILL, P.C.
ATTORNEYS AT LAW

900 CONGRESS AVENUE, SUITE 500
AUSTIN, TEXAS 78701-3495
P.O. Box 2166 + 78768

HEIDI A. COUGHLIN

TELEPHONE 512/476-4600
FACSIMILE 512/476-5382
DIRECT DIAL 512/708-5234

E-MAIL HCOUGHLIN@W-G.COM

May 16, 2022

tsmith@cornellsmith.com

Mr. Ted Smith
Cornell Smith Mierl Brutocao & Burton, LLP
1607 West Avenue
Austin, Texas 78701

Re: Case No. 1:20-cv-00969-LY; *Townsley et. al. v. International Business Machines, Corp.*; In the United States District Court for the Western District of Texas, Austin Division

Dear Ted:

Reference is made to your letter of April 12 regarding Plaintiffs' 30(b)(6) Deposition Notice.

You first make an overall general complaint that Plaintiffs' 18 topics in the deposition notice is "patently overbroad." Unlike a deposition under Rule 30(b)(1), the Rule 30(b)(6) notice must describe with reasonable particularity the matters to be examined. The notice must inform the corporation of matters that will be inquired about so that the corporation can determine the identity and number of people whose presence will be necessary to provide an adequate response. The 18 topics we identified are the result of our effort to comply with the letter and the spirit of the Rule. To try and reduce the topics to a handful would have surely opened us to a complaint by you that we failed to identify the topics with reasonable particularity.

You next complain that our designation puts a "burden" on "IBM to produce the number of witnesses required to testify." Under the Rule, the deponent corporation has a duty to designate the witness(es) who will testify and a duty to educate the designated witness(es) on the matters for examination. There is no limitation in the Rule on how many witness(es) the corporation can designate. More importantly, the designated witness(es) need not have any personal knowledge of the matters in the designated topics. The corporation has the option to designate just one witness so long as this witness is properly educated to testify in good faith so he or she can answer "fully, completely, and unequivocally." Of course, this may require the witness to review materials such as past depositions, exhibits, corporate records, employee files, and even meet with people from within the corporation or former directors, officers, and employees, in order to be educated on the topics for which the designee has been selected to testify. The "burden" complained of by IBM here is nothing more than the "duties" Rule 30(b)(6) places on the corporation to educate the witness or witnesses it has selected to testify on its behalf.

Mr. Ted Smith

May 16, 2022

Page 2

I will now address the “position” IBM has taken on each of the individual topics in our notice.

1. *IBM’s headcount composition since 2014, including but not limited to, total headcount by year for All Business Segments and All Geographic Regions.*

The term “headcount” is not vague. It is a term utilized by IBM in numerous documents. For examples, see IBMK-0000163292; IBMK-000048843; IBMK-000077891; and IBMK-DAV-000031. I suspect your IBM designated witness will readily concede “headcount” simply means “a person” or in the context of this lawsuit “one IBM employee.”

Forgive us if we once again do not accept IBM’s decision as to what is “relevant” evidence in this case. “Headcounts” as used by IBM in its RAs are relevant to establishing a baseline for the for the scope and extent of IBM’s stated goal of “transformation.” Plaintiffs allege this “transformation” violated the ADEA.

As to IBM’s attempt to limit discovery “to the United States and relevant business groups,” Plaintiffs have plead IBM’s discriminatory scheme came from the “highest executives” with the goal of “reinventing” and “transforming” IBM as a whole. IBM is a global corporation. The fact that ADEA claims are limited to United States residents does not diminish the relevance and evidentiary value of showing IBM’s discriminatory scheme was global in nature, and the United States or “North America” in IBM’s parlance, was just one component of it. Plaintiffs were part of Maple, Concord, and Palm. Those RAs were not limited to the United States or North America, this is evidenced by IBM’s production and the deposition testimony taken to date. For example, see IBMK-0000163292; IBMK-000065453 to 000065458. IBM’s attempt to limit 30(b)(6) testimony to the United States is puzzling in light of this fact.

2. *For All Business Segments and All Geographic Regions: i) the date of notification for each wave; ii) the date of separation for each wave; iii) the number of employees separated; iv) the average age of all employees immediately prior to commencement of the RA; and v) the average age of all employees immediately after completion of all waves of the following resource actions:*
 - a. *Apollo*
 - b. *Chrome*
 - c. *Saturn*
 - d. *Solitaire*
 - e. *Baccarat*
 - f. *Concord*
 - g. *Maple*
 - h. *Palm*
 - i. *Sycamore*

You make similar objections in response to Topic 2 as you did in Topic 1. You specifically state “IBM will not produce information for RAs that did not impact the Plaintiffs; however, IBM would

Mr. Ted Smith

May 16, 2022

Page 2

consider providing additional information for the GMST, DCWP, HYCD, CGTZ, CGMP, SYMP AN DCPL RAs that impacted the Plaintiffs.”

The fact that a particular RA did not impact a particular Plaintiff again does not diminish the relevance and evidentiary value of how that RA was part of IBM’s overall discriminatory scheme alleged in our Amended Complaint.

3. *IBM’s planning and execution to Near Shore or Offshore its employees for All Business Segments since 2014.*
4. *IBM’s planning and execution of Skills for Value for All Business Segments and All Geographic Regions.*

Again, IBM seeks to limit its response to “US-based employees of GTS from 2016-2020.” And again, we state evidence of IBM’s global, company-wide scheme of age discrimination, of which the United States is just one component, is relevant and constitutes at the minimum “circumstantial evidence” of IBM’s discriminatory intent and corroboration of Plaintiffs claims.

5. *IBM’s efforts to recruit, attract, engage and/or retain Millennials since 2014.*
6. *IBM’s efforts to recruit, attract and/or retain Early Professional Hires (EPH) since 2014.*
7. *The process by which Resource Actions are initiated, managed, tracked and reported internally.*

We understand IBM will produce a witness to address these topics.

8. *IBM’s development and use of any workforce management and location-based strategies used to analyze and manage the physical location of its employees, whether US or non-US, including but not limited to:*
 - a. *Skills for Value (SFV)*
 - b. *Project X.*

Plaintiffs will agree to withdraw this topic in so far as it concerns Project X. However, we cannot agree to limit the topic as it concerns Skills for Value “to offshoring planning and execution that affected US-based employees” for the reasons enumerated above relating to IBM’s company-wide scheme of age discrimination.

9. *HR Spring Plans for All Business Segments since 2014.*
10. *HR Fall Plans for All Business Segments since 2014.*

In an effort to address your assertion that these requests are vague and ambiguous, Plaintiffs propose to agree these requests to the Talent /HR components of Fall and Spring Plans produced by IBM in this case.

Mr. Ted Smith

May 16, 2022

Page 2

11. The total number of employees hired by IBM since 2014, by year, for All Business Segments and All Geographic Regions.

Again, IBM seeks to limit its response to “hires of US regular employees.” And again, we reject that limitation.

IBM additionally takes the position that “no person knows these data points offhand nor can they memorize them to provide competent testimony.” A 30(b)(6) deposition is not a memory test. As noted, IBM has the duty to educate its selected witness and may have available any documents necessary to refresh the recollection of that witness.

12. The total number of Early Professional Hires since 2014, by year, for All Business Segments and All Geographic Regions.

Again, IBM seeks to limit its response to “hires of US regular employees.” And again, we reject that limitation.

13. The creation, purpose, and function of “Millennial Corps.”

14. The creation, purpose, and function of “Summit Hires.”

15. The creation, purpose, and function of “CbD.”

We understand IBM will produce a witness to address these topics.

16. From 2014, information provided to IBM’s Board of Directors regarding efforts to transform IBM’s workforce

We continue with our request for a corporate witness to address this topic. Ms. Gherson testified that she did not regularly attend Board of Directors meetings, nor did she regularly prepare the CEO for her presentations to the Board of Directors.

17. The identity of persons participating in preparation of the spreadsheets IBMK-D-000001 – IBMK-D-000011 are based.

18. All sources of information, including documents and data on which spreadsheets IBMK-D-000001 – IBMK-D-000011 are based.

An interrogatory is not a substitute for the deposition of a corporate representative.

The topic of “persons participating in preparation of the spreadsheets” is broader than “who pulled the data” as you suggest. We will be seeking testimony on who requested the information, who compiled the information, the sources for the information, and to whom it was transmitted.

Mr. Ted Smith

May 16, 2022

Page 2

In closing, I will note our deposition notice went out February 28th. IBM, therefore, has had several months to discharge its duties in identifying and educating the appropriate witness or witnesses on these topics.

Sincerely,

Wright & Greenhill, P.C.

By: 
Heidi A. Coughlin

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CHARLES TOWNSLEY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.	)	Case No. 1:20-cv-00969-DAE
)	
INTERNATIONAL BUSINESS)	
MACHINES CORPORATION,)	
)	
Defendant.)	

DEFENDANT'S MOTION FOR A PROTECTIVE ORDER
TO LIMIT SCOPE OF 30(B)(6) DEPOSITION

EXHIBIT H



Edward M. "Ted" Smith
512-334-2246
tsmith@cornellsmith.com

May 18, 2022

VIA EMAIL (HCOUGHLIN@W-G.COM)

Heidi A. Coughlin
Wright & Greenhill, P.C.
900 Congress Avenue
Suite 500
Austin, Texas 78701-3495

Re: *Townsley, et. al. v. IBM Corporation*; Cause No. 1:20-cv-00969-LY; In the United States District Court for the Western District of Texas, Austin Division

Dear Heidi:

I am writing in response to your letter of May 16, 2022, regarding our continued efforts to reach an agreement on reasonable topics regarding Plaintiffs' February 28, 2022, 30(b)(6) Deposition Notice. Despite the parties' multiple communications and attempts to reach a reasonable compromise on these matters, of the 18 designated topics and additional sub-parts contained in Plaintiffs' Notice, it appears from your May 16 letter that Plaintiffs will only agree to withdraw "Project X" from topic 8 and agree to limit topics 9 and 10 "to the Talent/HR components of Fall and Spring Plans produced by IBM in this case." Plaintiffs appear to refuse to further clarify or amend all other topics in their Notice.

As set forth yet again below, the topics contained in Plaintiffs' 30(b)(6) Deposition Notice are vague, ambiguous, and seek irrelevant and overbroad data and information that is not proportional to the needs of this case—particularly in light of Judge Howell's recent discovery Order on April 26, 2022. Moreover, as stated previously, Plaintiffs' overbroad topics, as currently propounded, would require IBM to produce a number of witnesses disproportionate to the needs of the case.

Nevertheless, in yet another effort to avoid having to seek the Court's involvement in a discovery matter that should be able to be resolved by the parties, please see IBM's position with regard to each topic, as follows:

1. *IBM's headcount composition since 2014, including but not limited to, total headcount by year for All Business Segments and All Geographic Regions.*

As previously stated, your request for IBM's "headcount composition" is vague and ambiguous and appears to seek information entirely irrelevant to Plaintiffs' claims. Total headcount by year is not relevant to begin with, and headcount "including but not limited to" "All Business Segments"



May 18, 2022

Page 2

and “All Geographic Regions,” including regions outside the United States is certainly not relevant. In addition, as we noted in our prior letter, this topic is more appropriate for an interrogatory and should be propounded as such. In accordance with Judge Howell’s April 26, 2022 Order, IBM will present Lisa Mihalik, Vice President, Human Resources, HR Services, to testify as to IBM’s total headcount in the United States since 2017, and IBM’s headcount since 2017 in the business groups in which the current Plaintiffs were employed at the time they were separated from IBM. Ms. Mihalik is available to have her deposition take on June 9, 2022.

2. *For All Business Segments and All Geographic Regions: i) the date of notification for each wave; ii) the date of separation for each wave; iii) the number of employees separated; iv) the average age of all employees immediately prior to commencement of the RA; and v) the average age of all employees immediately after completion of all waves of the following resource actions:*
- a. *Apollo*
 - b. *Chrome*
 - c. *Saturn*
 - d. *Solitaire*
 - e. *Baccarat*
 - f. *Concord*
 - g. *Maple*
 - h. *Palm*
 - i. *Sycamore*

As previously stated, this designation inappropriately seeks irrelevant and overbroad global data and information and should be propounded as an interrogatory. RAs are planned and executed separately in the US and other countries given different legal requirements. There are also data-privacy regulation issues with respect to obtaining and producing data for employees outside the United States. Moreover, in responding to Plaintiffs’ interrogatories, IBM has already provided the date of notification and separation for the RAs that impacted the Plaintiffs – GMST, CDWP, HYCD, CGTZ, CGMP, SYMP and DCPL. IBM has also produced date of birth information for the relevant business groups as of December 31, 2016 and December 31, 2020. IBM will not produce information for RAs that did not impact the Plaintiffs; however, in accordance with Judge Howell’s April 26, 2022 Order, IBM will present Ms. Mihalik to testify as to the requested topics on resource actions that took place using Concord, Maple or Palm funding in the United States in



May 18, 2022

Page 3

one of the business groups in which one of the Plaintiffs worked at the time he or she was separated from IBM.

3. IBM's planning and execution to Near Shore or Offshore its employees for All Business Segments since 2014.

As previously stated, Titon Hoque was the only Plaintiff that was even remotely affected by offshoring through Skills4Value, and including regions outside of the United States is not relevant. However, in accordance with Judge Howell's April 26, 2022 Order, IBM will present Ms. Mihalik to testify as to offshoring planning and execution since 2017 that affected US-based employees of the business groups in which the current Plaintiffs were employed at the time they were separated from IBM.

4. IBM's planning and execution of Skills for Value for All Business Segments and All Geographic Regions.

Same response as Topic #3, and IBM will produce Ms. Mihalik with the same limitations.

5. IBM's efforts to recruit, attract, engage and/or retain Millennials since 2014.

As previously stated, IBM objects to this topic as assuming that IBM had specific "efforts" to "recruit, attract, engage and/or retain Millennials" since 2014, which it did not. IBM also objects that the terms "attract" and "engage" are vague and ambiguous. Nonetheless, in the interest of compromise, IBM will produce Ms. Mihalik to testify on this topic.

6. IBM's efforts to recruit, attract, engage and/or retain Early Professional Hires (EPH) since 2014.

As previously stated, IBM notes that the terms "attract" and "engage" are vague and ambiguous. However, IBM will produce Ms. Mihalik to testify as to IBM's recruitment of Early Professional Hires.

7. The process by which Resource Actions are initiated, managed, tracked and reported internally.

As previously stated, IBM views this a request for multiple different topics. However, in the interest of compromise, IBM will produce Kristin Mailen, VP of Finance, Cognitive Enterprise



May 18, 2022

Page 4

Services, to testify on these topics. Ms. Mailen is available to have her deposition taken on June 8 or 10, 2022.

8. *IBM's development and use of any workforce management and location-based strategies used to analyze and manage the physical location of its employees, whether US or non-US, including but not limited to:*
 - a. *Skills for Value (SFV)*
 - b. *Project X.*

We understand from your May 16 letter that Plaintiffs withdraw "Project X" from this topic. Accordingly, IBM will not produce a witness on Project X. As to the request for a witness on Skills for Value, IBM incorporates its response to Topic #3, and IBM will produce Ms. Mihalik with the same limitations.

9. *HR Spring Plans for All Business Segments since 2014.*

10. *HR Fall Plans for All Business Segments since 2014.*

As previously stated, these topics are vague and ambiguous and IBM is not certain what testimony you are seeking. You state in your May 16 letter that "Plaintiffs propose to agree these requests to the Talent/HR components of Fall and Spring Plans produced by IBM in this case." We are confused by this response, but will agree to produce Ms. Mihalik who can provide testimony as to the talent component of the Spring and Fall Plan process at IBM since 2017.

11. *The total number of employees hired by IBM since 2014, by year, for All Business Segments and All Geographic Regions.*

As previously stated, this designation inappropriately seeks global data and for "All Business Segments," including groups in which Plaintiffs never worked. It also improperly seeks this information using a deposition that would be more appropriately requested through an interrogatory. However, IBM will present Ms. Mihalik to testify as to IBM's total headcount in the United States since 2017, and IBM's headcount since 2017 in the business groups in which the current Plaintiffs were employed at the time they were separated from IBM.



May 18, 2022

Page 5

12. The total number of Early Professional Hires hired since 2014, by year, for All Business Segments and All Geographic Regions.

As previously stated, this designation inappropriately seeks global data and for “All Business Segments,” including groups in which Plaintiffs never worked. Like topic 11, this topic also would be more appropriately addressed by an interrogatory. However, IBM will present Ms. Mihalik to testify as to the number of Early Professional Hires by IBM in the United States since 2017, and the number of Early Professional Hires by IBM since 2017 in the business groups in which the current Plaintiffs were employed at the time they were separated from IBM.

13. The creation, purpose, and function of “Millennial Corps.”

As previously stated, IBM notes that the Millennial Corps was not established by IBM, but rather independently established and run by employees. It also has no connection to any Plaintiffs’ separations and is not relevant to the claims and defenses in this case. However, IBM will produce Ms. Mihalik to testify on this topic.

14. The creation, purpose, and function of “Summit Hires.”

As previously stated, IBM notes that Summit Hires is a term specific to new, entry level hires into the Global Market business group and that there are no Summit Hires in other groups. Nor is there any evidence that Plaintiff Townsley’s separation had anything to do with Summit Hires, and thus, this topic is not relevant to the claims or defenses in this case. However, IBM will produce Ms. Mihalik to testify on this topic as it pertains to Summit Hires in Global Markets.

15. The creation, purpose, and function of “CbD.”

As previously stated, IBM notes that CbD is a term specific to the GBS business group, and none of the Plaintiffs in this case worked in GBS. Therefore, the topic is not relevant to the claims and defenses in the case. However, IBM will produce Ms. Mihalik to testify on this topic as it pertains to GBS.

16. From 2014, information provided to IBM’s Board of Directors regarding efforts to transform IBM’s workforce.

As previously stated, IBM objects to this request as impermissibly overbroad, vague, and disproportionate to the needs of the case. Moreover, since the time of Plaintiffs’ initial request seeking this topic from a 30(b)(6) witness, Plaintiffs have deposed both the former Chief Human



May 18, 2022

Page 6

Resources Officer at IBM – Diane Gherson – and IBM’s current Chief Human Resources Officer – Nickle LaMoreaux. These witnesses have provided testimony on this topic, and therefore any additional “corporate representative” testimony would be both superfluous and not proportional to the needs of this case.

17. The identity of persons participating in preparation of the spreadsheets IBMK-D- 000001 – IBMK-D-000011.

18. All sources of information, including documents and data on which spreadsheets IBMK-D-000001 – IBMK-D-000011 are based.

As previously stated, these are not an appropriate 30(b)(6) topics and should instead be addressed in interrogatory form. However, IBM will produce Ms. Mihalik to testify on these topics.

We have made multiple good faith efforts to seek a reasonable compromise with regard to the topics requested by Plaintiffs for a 30(b)(6) deposition. In your most recent response of May 16, 2022, Plaintiffs essentially reiterated their previous stances on all of the 18 topics with the exception of only two minor amendments. In this letter, IBM is agreeing to produce witnesses on nearly every topic you have designated, narrowed consistent to Judge Howell’s order. Please notify us if you wish to set the depositions on the dates offered, limited as herein described, or if Plaintiffs will continue to insist on seeking to compel 30(b)(6) testimony on the topics as set forth in your May 16 letter.

Sincerely,



Edward M. “Ted” Smith



**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CHARLES TOWNSLEY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.	)	Case No. 1:20-cv-00969-DAE
)	
INTERNATIONAL BUSINESS)	
MACHINES CORPORATION,)	
)	
Defendant.)	

DEFENDANT'S MOTION FOR A PROTECTIVE ORDER
TO LIMIT SCOPE OF 30(B)(6) DEPOSITION

EXHIBIT I

WRIGHT & GREENHILL, P.C.
ATTORNEYS AT LAW

900 CONGRESS AVENUE, SUITE 500
AUSTIN, TEXAS 78701-3495
P.O. Box 2166 + 78768

HEIDI A. COUGHLIN

TELEPHONE 512/476-4600
FACSIMILE 512/476-5382
DIRECT DIAL 512/708-5234

E-MAIL HCOUGHLIN@W-G.COM

May 25, 2022

tsmith@cornellsmith.com

Mr. Ted Smith
Cornell Smith Mierl Brutocao & Burton, LLP
1607 West Avenue
Austin, Texas 78701

Re: Case No. 1:20-cv-00969-LY; *Townsley et. al. v. International Business Machines, Corp.*; In the United States District Court for the Western District of Texas, Austin Division

Dear Ted:

Reference is made to your letter of May 18, 2022.

For the same reasons we set forth in our letter of May 16, we cannot agree with your proposal to restrict the scope of the upcoming 30(b)(6) depositions based on geography, time, business group, and other limitations.

The documents cited in Plaintiffs' May 16 letter make clear that our designated topics seek relevant evidence proportional to the case. Those documents establish that the "transformation" of IBM's workforce, alleged by Plaintiffs to have violated the ADEA, originated from the highest levels of management and was global in nature. They also establish IBM's ability to collect and readily produce information pertaining to the same geographies, time periods, and business groups identified in our deposition topics.

Judge Howell's order did not limit discovery as you suggest. The order was limited to Requests for Production numbers 19 and 20 and did not address the issues specifically raised by our efforts to depose IBM as a corporate entity under 30(b)(6). Judge Howell ordered discovery as to the "Resource Action/Restructuring Pools" of Concord, Maple, and Palm. Concord, Maple, and Palm are not geographically limited to the United States. Concord, Maple, and Palm were explicitly global initiatives that were assigned metrics and goals on a global comparative basis—as opposed to a U.S.-only basis your proposed 30(b)(6) restrictions would suggest.

I do agree Plaintiffs' May 16 letter addressing topics 9 and 10 requires clarification. The response should have read: "In an effort to address your assertion that these requests are vague and ambiguous, Plaintiffs propose to agree to limit these requests to the Talent /HR components of Fall and Spring Plans produced by IBM in this case."

Mr. Ted Smith
May 25, 2022
Page 2

Lastly, with regards to available dates to conduct the 30(b)(6) depositions, I am available June 20, 22 or 23.

Sincerely,

Wright & Greenhill, P.C.

By: 
Heidi A. Coughlin

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CHARLES TOWNSLEY, *et al.*,

Plaintiffs,

V.

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Defendant.

Case No. 1:20-cv-00969-DAE

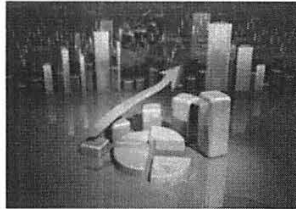
DEFENDANT'S MOTION FOR A PROTECTIVE ORDER
TO LIMIT SCOPE OF 30(B)(6) DEPOSITION

EXHIBIT J



IBM Confidential: Do not download, copy, print or distribute – Page 5

Objective, Reminders and Eligibility Parameters



Objective

- Retain the best skilled team members needed for IBM's long-term success, and the success of your organization.



Reminders

- Understand the work environment
- No backfills. Request for backfill may be brought forward 90 days after departure
- No bumping

Eligibility Parameters for Identification

Eligible for Identification in a Job Group:

All full-time and part-time regular U.S. IBM employees are eligible, including:

- Executives
- Employees in the Performance Management process, unless they have already accepted a Performance Separation Plan
- U.S. employees on temporary and international assignments outside of the U.S., except those in the Global IBMer program
- Employees who are foreign nationals employed by IBM U.S.
- Employees on Leave of Absence (LOA), including those on Parental Bonding Leave, and Short Term Disability (STD)

Ineligible for Identification in a Job Group:

- Employees on Long Term Disability (LTD)
- Supplemental employees & Contractors
- Employees in the Global IBMer Program
- Employees on international assignment into the U.S.
- Employees currently serving in the military or returned from military service within the last year as the legally mandated protection period may be applicable.
- All new hires who joined IBM within the last 12 months, if using staff reduction methodology
- PTECH hires who joined IBM within the last 36 months

*Note: Employees on LOA, STD, temporary assignment, and international assignment would be in the job group they were in prior to going on their LOA, STD, temporary assignment or international assignment.