

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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BRIGGS & STRATTON CORPORATION,

Plaintiff and  
Counterclaim Defendant

v.

KOHLER CO.,

Defendant and  
Counterclaim Plaintiff

ORDER

ANTITRUST

05-C-025-C

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At the end of April Kohler asked for clarification of its obligation to split costs with Briggs on the discovery of the backup tapes. *See* dkt. 309. Kohler argues that it should not be required to pay 50% of Briggs’ “run-of-the-mill attorneys fees incurred in reviewing the already-restored emails for production.” *Id.* at 2. Kohler argues that these costs are no different from those it incurred while reviewing its own e-mails for production; therefore, Briggs should be required to absorb them, just as Kohler did.

Briggs responds that it hired outside attorneys on an ad hoc basis to review and cull the e-mails, so these are discrete costs separately incurred as a result of the instant discovery request. On the equity front, Briggs points to the Ohio discovery contretemps in this case in which it was ordered to pay review costs of about \$185,000 to a party deemed aligned with Kohler who allegedly gave the same documents to Kohler for free. *See* dkt. 310. (Both parties also mention Briggs’ use of a third-party vendor to attempt to reduce software costs, but this fact is irrelevant to the determination of the instant dispute.)

Understanding both sides' positions, I see no reason to alter the court's earlier order "to split all costs evenly." All costs means all costs. Period.

Entered this 12<sup>th</sup> day of June, 2006.

BY THE COURT:  
/s/  
STEPHEN L. CROCKER  
Magistrate Judge