

IN THE CIRCUIT COURT FOR HOWARD COUNTY, MARYLAND

Authsec, Inc.

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Plaintiff

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Case No. 13-C-06-067710

v.

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Steven Roberts, et al.

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Defendants

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MEMORANDUM AND ORDER

The Court has met with counsel several times to discuss the best method for effectuating discovery in this case which is part of the Business and Technology Case Management Program. The parties have been unable to reach full agreement on how discovery should proceed of electronically stored information in their possession or control including the methods of accessing information and the formats that such information will be provided.

After discussions with counsel, it was agreed that the Court pursuant to Maryland Rule 5-706 would appoint a computer forensics and data recovery expert who would assist the parties and the court with the timely, efficient and effective discovery required to bring this case to resolution. After discussions with counsel and technical representatives of the parties, the Court appoints Phillip A. Rodokanakis to serve as this expert. Counsel and representatives of the parties familiar with the technical aspects of the computer systems at issue met with Mr. Rodokanakis and the Court to discuss the protocol necessary to accomplish discovery in this case. The parties were asked to submit proposed forms of orders, which they did, and after a review the Court enters this order to govern the parties discovery.

The expert shall be a neutral party and will be under the direction of the Court. The expert shall however, seek to find methods that will reduce the cost and complexity of tasks that the expert is asked to perform by a party and shall communicate with the parties to achieve this end as well as providing the parties the needed data, records or confirmation requested.

For the reasons stated and upon agreement of the parties, it is this 17th day of July, 2007, ordered that discovery between the parties shall proceed as set forth below:

1. Appointment of Court's Expert.

The Court appoints Phillip Rodokanakis as the Court's computer and data recovery forensic expert in this matter (hereafter "Court's Expert"). The Court's Expert shall be compensated at his usual and customary hourly rate for services as follows:

- A. By the party requesting forensic examination ("Requesting Party").
- B. By the party whose drives are being imaged, if the Court's Expert determines the image(s) provided to be insufficient as referenced in 2.B. ("Responding Party").
- C. Equally shared by the Plaintiff and Defendants for all Court requested actions and all other matters.
- D. The Court reserves the right to re-allocate the burden for payment based upon the actions of the parties.

2. Imaging Relevant Hard Drives.

- A. Subject to the approval of the Court's Expert, including as to method, manner and sufficiency, each party shall image the hard drives of all

computers, portable media or storage devices (hereinafter the "Requested Computers") that a Requesting Party makes a request for forensic examination and produce that image to the Court's Expert as directed by the Court's Expert for examination.

- B. Should the image be insufficient as determined by the Court's Expert, the Court's Expert or his representative may make a forensic copy of each of the hard drives of the Requested Computers. The Court's Expert will create forensic images of all identified and applicable computer hard drives, external hard drives, thumb drives, removable storage media and related electronic storage devices. These devices shall be preferably imaged to the EnCase (E01) or DD (raw Disk Dump) image file formats. In the event that one of the parties images the drives to another non-forensically sound format (e.g., Norton Ghost), the Court's Expert will attempt to convert the drive images to a forensically sound format at the expense of the Responding Party. In the event that the non-forensically sound images cannot be converted to a forensically sound image, the Court's Expert will immediately notify the Court and the parties.

3. File and Folder Search of Imaged Drives.

Forensic Examination shall be conducted by the Court's Expert substantially in the following manner:

- A. Requesting Party will provide a requested scope of examination, for example, a list of filenames and keywords to the Court's Expert, and

simultaneously copy the request to the Responding Party, along with identification of the hard drives of the Requested Computers to be searched.

- B. The Court's Expert will review any keywords submitted by the requesting party and provide suggestions to the requesting party as to any keywords that in the opinion of the Expert might be improved or which might result in a multitude of non-responsive search hits.
- C. The Responding Party shall have three (3) business days from the date of the requested examination to file with the Court any request for relief arguing that discovery should not be had. The Responding Party shall provide a copy by-email of such filing to the Court's Expert who shall not perform the work until otherwise directed by the Court. If no filing is made, or upon order of this Court, Court's Expert may proceed with the requested examination.
- D. Court's Expert will perform a search in accordance with the requested scope of all of Requesting Party's identified criteria, including filenames and/or keywords in question on the entirety of each physical drive or media referenced. This search is to be inclusive of both logical and physical file structure, deleted files and unallocated space.
- E. Court's Expert will identify all matches found that are identical or nearly identical to the identified search criteria of the Requesting Party. A match shall be defined as including those instances where filenames have been truncated due to deletion or other file

modification activity as well as filenames which have been appended or otherwise altered but are consistent in part and substance with the original name.

F. In the event that some of the keywords agreed to by the parties yield a multitude of search hits, which will require an inordinate amount of time and resources to process, the Court's Expert will notify the parties and the Court and seek guidance with a view of narrowing the scope of the search. In such instances, the Expert will provide a listing of the keywords in question and the number of items yielding hits, along with a recommendation for scaling back the scope of the search.

G. The Court's Expert shall provide the files returning hits based on the search criteria agreed to by the Parties, to the Responding Party. Depending on the volume of the search hits and the preference expressed by the Requesting Party, the returned files could be provided in paper, electronic format or both. The Responding Party and their attorneys shall have a period of three (3) business days to file with the Court any request for relief arguing that discovery should not be produced to the Requesting Party, or requesting additional time for any privilege review. The Responding Party shall provide a copy of such filing to the Court's Expert who shall not produce that portion of his results objected to by the Responding Party until otherwise directed by the Court.

- H. If a match for a logical file is identified, the Court's Expert will provide a complete copy of the entire file in its original native format including all original meta-data. All time and date stamps for these identified files shall also be provided, including creation date, last accessed date, last modified date, and date of deletion if applicable, as well as the location and path of such file.
- I. If a match is found for an identified keyword, which exists within the body of a file or document with a file name other than those identified in the plaintiff's list, the Court's Expert will provide a complete copy of the entire file in its original native format including all original meta-data. All time and date stamps for these identified files shall also be provided, including creation date, last accessed date, last modified date, and date of deletion if applicable as well as the path and location for such file.
- J. If a match is found for a text string consistent with an identified keyword, which does not exist as a logical file, the Court's Expert will manually carve out the content yielding a search hit including 45 words of contiguous preceding and trailing text. Upon request, the Court's Expert will specify the location of such content on the physical disk. The carved out strings will be provided in text file format.
- K. If requested, the Court's Expert will run appropriate search expressions to recover all deleted INFO2 file entries (Recycle Bin records) from each physical drive. All such matches identified should

include the name and path of the file deleted and the date of its deletion.

- L. If requested, the Court's Expert will capture the server transaction history/logs for all servers identified.
- M. The protocol outlined above is not intended to limit the permissible scope of forensic examination.
- N. Subject to the provisions of 3.C. and further ruling of this Court, the Court's Expert shall report and share his results with the Court, and with counsel for each of the parties.
- O. The Court's Expert may at any time bring to the Court's attention any problems that arise with effectuating this Order and suggests alterations in the Order to accomplish the intent of this Order.

4. The imaging and inspection ordered above is in no way an order limiting or restricting future requests for inspection which may be issued, and as may be justified under the Maryland Rules.

5. Unless otherwise specifically stated this Order shall remain in effect indefinitely until such time as it is modified, superseded or terminated by further order of the Court.

6. Plaintiff and Defendants may seek legal and equitable relief for violation of this Order. In addition, a willful violation of this Order may be punishable as a contempt of Court.

7. All parties and counsel and their agents shall fully cooperate with the Court's Expert and provide needed assistance to him in the performance of his tasks under this Order.

It is this 17th day of July, 2007;

ORDERED that the terms and conditions of this Order are approved and ordered.

Dennis M. Sweeney /s/
Dennis M. Sweeney
Judge