



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE OXBOW CARBON
LLC UNITHOLDER LITIGATION

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Consol. C.A. No.12447-VCL

ORDER REGARDING ADDITIONAL DISCOVERY

WHEREAS:

A. Defendant Christina O'Donnell and Defendant and Counterclaim-Plaintiff Eric P. Johnson filed a motion detailing discovery misconduct by Oxbow Carbon LLC ("Oxbow"), Oxbow Carbon & Minerals Holdings, Inc., Inghram Investments LLC, Oxbow Carbon Investment Company LLC and William I. Koch's (collectively, the "Koch Parties").

B. The Koch Parties opposed the motion in its entirety.

C. An in-person conference was held on May 26, 2017, and counsel to all parties in the above-captioned litigation (each a "Party" and collectively the "Parties") attended.

D. Having considered briefing on the motion and the presentations of the Parties, the Court concludes that relief is appropriate.

IT IS HEREBY ORDERED:

1. The Koch Parties have produced documents without transparently identifying their source and have done so in a manner that is inordinately confusing.

Accordingly, the Koch Parties shall identify the following documents in their productions, by Bates range:

a. Handwritten notes, unless the handwritten notes are attached to or associated with e-mails, in which case such information will be identified if currently known.

b. Text messages.

c. Attorney timesheets or invoices reflecting time billed by attorneys.

d. Documents containing text that is not searchable.

2. The Koch Parties have produced multiple identical and near-identical copies of the same document that vary in the scope of their redactions without taking reasonable steps to show how the different versions correspond. This has caused their production to be overly and unnecessarily confusing. Accordingly, the Koch Parties shall identify by Bates range any documents in in Oxbow productions G-L, GG-LL, GGG-LLL, and 20-36 that were not exact duplicates of previously-produced documents. Whether a document is an exact duplicate will be determined using MD-Hash values.

3. The Koch Parties' representations regarding their document production have been untimely and unreliable. The Koch Parties continued this practice during and after the meet-and-confer with the court. For example, in response to a question

from the court, a lawyer for the Koch Parties suggested that the only way to identify particular documents would be to re-review the entire production. That statement was plainly wrong, as the Koch Parties never would have sought to locate the documents through a complete re-review if doing so for their own purposes. In their submission to the court, the Koch Parties mischaracterized this exchange. Because of the Koch Parties' lack of transparency, a senior Delaware lawyer shall oversee the preparation of a table containing the following information and shall certify its accuracy:

- a. The name of each Koch Party custodian or Mintz Levin custodian who is currently employed by either the Koch Parties or Mintz Levin.
- b. The date of the custodian interview or, if none occurred, a statement to that effect.
- c. The names and firm affiliations of the persons who conducted the interview.
- d. A statement as to whether the interview was conducted using a script or other structured form of questioning.
- e. A statement as to whether the custodian was asked if the custodian used any personal email for business use or to communicate with any persons concerning issues relevant to this litigation.

f. A statement as to whether any responsive documents contained in any personal email account identified during the course of the custodian interview or otherwise identified during discovery have been (i) collected, (ii) reviewed, and (iii) either (a) produced or (b) logged for privilege.

g. A statement as to whether the custodian was asked if the custodian used text messaging for business use or to communicate with any persons concerning issues relevant to this litigation.

h. A statement as to whether any responsive text messages have been (i) collected, (ii) reviewed, and (iii) either (a) produced or (b) logged for privilege.

4. The Koch Parties shall forensically collect and produce or log any responsive text messages within the custodial files of Robert Popeo, William Koch, and Pierre Azzi, or counsel shall certify that they have already done so.

5. The Koch Parties shall comply with the foregoing obligations within seven calendar days of the entry of this order.

6. The agreement of the Parties reflected in the Stipulation and Order Regarding the Sharing and Use of Documents Produced in This Litigation (Dkt. 674) shall extend to any deposition, proceeding, or trial in this litigation. As such, the Koch Parties may not, on privilege grounds, shield any Party from discovery of documents or testimony to which any Party is entitled.

7. The Koch Parties shall:

a. Produce replacement TIFFs for any documents produced with redactions such that the all iterations of the documents appear in their least redacted format.

b. De-duplicate the list of joint trial exhibits to (i) include only one version of any document used, and (ii) include the most complete version of any document or email thread, including that which contains the least redactions.

c. As part of the joint trial exhibit de-duplication process, provide a user-friendly and comprehensive chart in a sortable and keyword-searchable Excel spreadsheet identifying, by Bates and Deposition Number, if applicable, any exhibit proposed by any of the other Parties with the replacement exhibit.

8. On a going-forward basis, the Parties shall use the following protocol for addressing document production deficiencies:

a. Each Party shall designate a partner-level Delaware lawyer who will be responsible for receiving and addressing document deficiency issues (the “Deficiency Designees”).

b. The Party identifying any deficiency shall raise it in writing, sent by email to the Deficiency Designees of the responsible parties, and copying the other Deficiency Designees.

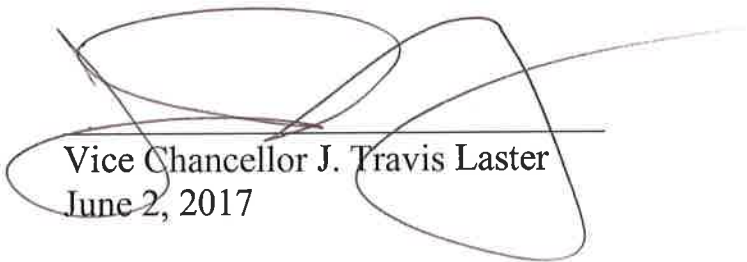
c. The Deficiency Designees of the responsible parties shall acknowledge receipt in writing within twenty-four hours and either (1) cure the identified deficiency or (2) explain any reason for why the production was not deficient. If a response cannot be provided within twenty-four hours, then the Deficiency Designees of the responsible parties shall explain why and provide an estimate as to when a full response will be provided.

d. If the issues are not resolved within 96 hours, then at the election of the party identifying the deficiencies, the Parties shall submit a joint letter to the Court identifying their positions and attaching competing forms of order (a "Joint Letter"). The written exchanges preceding the joint letter shall be attached as exhibits.

e. For each issue, each Party may submit a section of the Joint Letter that shall not exceed five pages, double spaced, in 14 pt. font.

9. Johnson and O'Donnell may recall any deponent at their election for the purpose of asking non-duplicative questions. In such event the Parties shall work in good faith to make witnesses available within three days' notice or as soon as reasonably practicable.

10. No deadline set forth in this Order shall require a filing outside of ordinary business hours. If a deadline would fall outside of ordinary business hours, then the deadline shall be 10:00 a.m. on the next business day.



Vice Chancellor J. Travis Laster
June 2, 2017