



**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

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October 8, 2019

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RE: *John P. Ferguson, et al. v. Capital Development Insurance
Company, LLC, et al.*, C.A. No. 2018-0831-KSJM

Dear Counsel:

This letter resolves Plaintiffs' pending Motion to Compel, C.A. No. 2018-0831-KSJM Docket ("Dkt.") 14, and defense counsel's pending Motion for Leave to Withdraw as Counsel, Dkt. 18.

Plaintiffs' Motion to Compel is GRANTED. Plaintiffs served the document requests that are the subject of this motion on April 2, 2019. Dkt. 12. Defendants served responses on May 10, 2019, but did not produce any documents or data in response to the requests. Dkt. 13. Defendants' lack of production prompted Plaintiffs to file the instant motion on June 11, 2019. Dkt. 14.

In their response to Plaintiffs' Motion to Compel, Defendants describe Plaintiffs' discovery requests, which were served on the heels of failed settlement

negotiations, as a “thinly-veiled attempt to exert pressure on Defendants.” Dkt. 15 at 1. They observe that Plaintiffs have failed to propose search protocol to guide Defendants’ search and collection of responsive documents. *Id.* at 2. They argue that Plaintiffs should be ordered to meet and confer concerning discovery protocol and that Defendants should not be obligated to produce documents before a meet and confer. *Id.* at 7–8.

As Defendants correctly note, this Court encourages transparency in the discovery process generally, and particularly as it concerns the discovery of electronically stored information. *Id.* at 6–7. Toward the goal of transparency, and for the purposes of efficiency, this Court also encourages the proponent of discovery to propose protocol the recipient may use when collecting electronically stored information. But Defendants’ efforts to weaponize this general guidance is misguided. The Guidelines to which Defendants refer are not rules of this Court, and sometimes the parties determine that the recipients of discovery should draft the initial proposal given their superior knowledge of their own data repositories. In any event, recipients of discovery may not use a proponent’s failure to propose search and collection protocol as a basis for ignoring their discovery obligations, which is precisely what Defendants have done in this case.

Defendants should collect and produce documents responsive to Plaintiffs' discovery requests. If Plaintiffs fail to propose a search and collection protocol within ten days of this letter opinion, then Defendants shall design a search and collection protocol sufficient to meet their discovery obligations.

Bailey & Glasser LLP's Motion for Leave to Withdraw as Counsel is GRANTED, with conditions. In Delaware, entities may not appear *pro se*; they must be represented by counsel before this Court. See *Harris v. RHH P'rs, LP*, 2009 WL 891810, at *2 (Del. Ch. Apr. 3, 2009) (citing *Transpolymer Indus. v. Chapel Main Corp.*, 582 A.2d 936 (Del. 1990) (TABLE)). Immediately upon receipt of this letter opinion, Bailey & Glasser LLP will deliver a copy of this opinion to their clients and advise the entity defendants of this rule. They shall additionally advise that the entity defendants' failure to be represented by counsel in this Court will result in the entry of a default judgment against them. The entity defendants shall have thirty days from the date of this letter opinion to secure substitute counsel. If, at the end of those thirty days, the entity defendants have failed to secure substitute counsel, Baily & Glasser's motion shall be granted, and the Court will entertain a motion for default judgment against the entity defendants.

C.A. No. 2018-0831-KSJM

October 8, 2019

Page 4

During those thirty days, if Defendants have not obtained new counsel, Bailey & Glasser will advise their current clients on search and collection protocol.

IT IS SO ORDERED.

Very truly yours,

/s/ Kathaleen St. Jude McCormick

Vice Chancellor

KSJM/lef

cc: All counsel of record (*via File & ServeXpress*)

General Information

Court Delaware Court of Chancery

Docket Number 2018-0831