

Susan Kamuda and Edward Kamuda et al., Plaintiffs

v.

**Sterigenics U.S., LLC; Sotera Health, LLC; Bob Novak; Roger Clark; and
GTCR, LLC; Defendants**

No. 18 L 10475

Circuit Court of Cook County, Illinois County Department, Law Division

Entered January 06, 2020

Lawler, Christopher E., Judge

ORDER

This matter is before the court for status on discovery and case management.

I.

In Illinois, discovery is broad and allows parties to seek "any relevant matter, including documents and other tangible things[.]" Ill. Sup. Ct. R. 201(b)(1). To prevent abuse, Illinois Supreme Court Rule 201 vests courts with broad discretion to supervise the process. *Carlson v. Jerousek*, 2016 Ill. App. (2d) 151248, 30.

Discovery's broad scope extends to electronically stored information ("ESI"). Ill. Sup. Ct. R. 201(b)(4). ESI includes, among other materials, any "data or data compilations in any medium from which electronically stored information can be obtained." *Id.* Because of unique challenges, Rule 201(c) provides additional protections against abusive ESI requests. Ill. Sup. Ct. R. 201(c)(3). Abuse includes overly burdensome or expensive requests. *Carlson*, 2016 Ill. App. (2d) 151248 27.

II.

At issue is whether the parties should produce electronic discovery materials in the "native" or "TIFF+" formats. Rule 214(b) provides

"With regard to electronically stored information as defined in Rule 201(b)(4), if a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms." Ill. Sup. Ct. R. 214(b).

On December 16, 2019, the parties submitted written briefs in preparation for the December 18 case management conference. On December 18, the Court heard oral arguments. In support of Plaintiffs' position, a retained consultant testified and provided a PowerPoint presentation. With leave, Defendants submitted a written response to the consultant's presentation on December 27. Plaintiffs submitted a written reply on January 3, 2020.

Plaintiffs request ESI in the native format. Plaintiffs argue the TIFF+ format would impose unreasonable costs and create unnecessary challenges to potential witnesses and deponents. In their reply brief, Plaintiffs also contend that as the party requesting discovery, Rule 214 entitles them to their preferred ESI format.

Defendants request ESI in the TIFF+ format. Defendants argue TIFF+ is not unreasonably expensive, represents the standard practice in electronic discovery matters, and best serves cybersecurity interests.

To resolve the ESI issue, Defendants offered a compromise. Under Defendants' proposal, the parties would

produce Microsoft Excel spreadsheets, PowerPoint presentations, and Word documents with tracked changes and comments in the respective native formats. All other materials, including emails, would be in the TIFF+ format.

Since December 18, the Court has considered the parties' arguments and submitted materials. After careful review, the Court appreciates Defendants' offer to compromise and resolve the ESI issue this early in the proceedings. Yet the parties disagree. And "[a]bsent agreement, ESI must be produced as ordinarily maintained or in a form reasonably usable to the requesting party." The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production, 19 SEDONA CONF. J. pp. 171-72, Comment 12.b.

In addition, the Court agrees that Rule 214 entitles Plaintiffs to their requested ESI format. See Ill. Sup. Ct. R. 214(b). Plaintiffs specifically request the native format, which the Court has no reason to doubt is reasonably usable. The parties must therefore produce all ESI, including emails, in the respective native format.

That said, the Court recognizes the parties' concerns about cybersecurity, minimizing costs, and eliminating unnecessary delays. The Court is therefore willing to revisit this decision if reasonable needs arise. Parties may show such reasonable needs by affidavits from their vendors or consultants.

III.

Being fully advised in the premises, the Court ORDERS:

(1) Under Illinois Supreme Court Rules 201(b)(4) and 214(b), the parties should produce all ESI in the respective native formats.

(2) This matter remains set for status at 12:00 pm on Monday, February 3, 2020.

(a) To present a motion on February 3, parties should file and deliver courtesy copies to Chambers by January 27, 2020.

(3) This matter is set for status at 10:00 am on Friday, March 6, 2020.

(a) To present a motion on March 6, parties should file and deliver courtesy copies to Chambers by February 28, 2020.

(4) This matter is set for status at 10:00 am on Friday, April 10, 2020.

(a) To present a motion on April 10, parties should file and deliver courtesy copies to Chambers by April 3, 2020.

(5) This matter is set for status at 10:00 am on Friday, May 1, 2020.

(a) To present a motion on May 1, parties should file and deliver courtesy copies to Chambers by April 24, 2020.

(6) This matter is set for status at 10:00 am on Friday, June 5, 2020.

(a) To present a motion on June 5, parties should file and deliver courtesy copies to Chambers by May 29, 2020.

(7) This matter is set for status at 12:00 pm on Friday, July 10, 2020.

(a) To present a motion on July 10, parties should file and deliver courtesy copies to Chambers by July 2, 2020.

Entered on January 6, 2020.
Judge Christopher E. Lawler, No. 2098

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