UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

CASE NO. 12-CV-80-CEJ

SECURITIES AND EXCHANGE COMMISSION,	)
	)
Plaintiff,	)
v.	)
	)
BURTON DOUGLAS MORRISS,	)
ACARTHA GROUP, LLC,	)
MIC VII, LLC,	)
ACARTHA TECHNOLOGY PARTNERS, LP, and	)
GRYPHON INVESTMENTS III, LLC,	)
	)
Defendants, and	)
	)
MORRISS HOLDINGS, LLC,	)
	)
Relief Defendant.	)
	)

PLAINTIFF'S REPLY TO
DEFENDANT MORRISS' RESPONSE TO PLAINTIFF'S
MOTION TO COMPEL PRODUCTION OF DOCUMENTS (D.E. 168)

I. INTRODUCTION

After four months of refusing to provide a single document responsive to the Commission's January 19, 2012 First Request for Production of Documents, Defendant Burton Douglas Morriss now seeks to delay discovery further and the progress of this case by dumping more than 220 boxes of documents and a terabyte of electronic data on the Commission. Morriss wants to absolve himself of his obligation to search for responsive documents and instead have the Commission scour a massive data dump of paper and electronic data to locate responsive documents interspersed with hundreds of thousands of non-responsive ones. Morriss' proposal to have the Commission locate responsive "needles in a haystack" of non-relevant documents

would unduly burden the Commission, delay discovery, and most importantly, violate Fed. R. Civ. P. 34.

Morriss refused to provide any discovery for the last four months, claiming he lacked resources because the Court had yet to rule on his motion to release insurance proceeds. Ironically, now that Morriss has access to $3 million in insurance proceeds, he refuses to comply with his discovery obligations because he does not wish to spend those funds. Indeed, if Morriss never intended to properly respond to our document requests, he fails to explain why he did not make his current offer four months ago. That would have at least provided the Commission more time to search them.

In his Response, Morriss mischaracterizes the specificity of the Commission's document requests and the factual and procedural background of this case. In particular, Morriss glosses over the fact that the Commission has requested particular sets of documents including, for example, his monthly bank account and brokerage statements. Morriss' claim that he cannot locate and produce documents in response to such discrete document requests simply lacks merit.

Regardless of the improper nature of Morriss' latest request, in order to expedite discovery, on May 18, 2012, the Commission proposed a reasonable compromise regarding the production of the bulk of electronic information. The Commission has offered to relieve Morriss of his obligation to conduct a detailed privilege review by agreeing to enter into a "claw-back" agreement with respect to any inadvertent production of privileged material by Morriss. In addition, the Commission has agreed to limit its first four requests to include only emails to or from seven custodians and those custodians' external correspondence files. The proposal would obviate the need to review thousands of emails and electronic and paper documents for content.

In short, Commission's proposal would significantly streamline the electronic discovery process. Unfortunately, to date, Morriss has refused to accept our proposal.

II. BACKGROUND

In its January 17, 2012 Order Appointing Receiver, the Court required Acartha Group, LLC, MIC VII, LLC, Acartha Technology Partners, LP, and Gryphon Investments III, LLC (collectively, the "Investment Entities"), their employees, or others who possessed any assets, books, records, or other property of the Investment Entities to turn over such documents to the Receiver immediately. (D.E. 16, ¶ 10). The following day, the Receiver met with Morriss and his counsel to obtain all Investment Entites' documents in Morriss' possession. Feb. 14, 2012 Ltr. & Morriss Decl., attached as Ex. A. On that same day, Morriss, Relief Defendant Morriss Holdings, LLC, and the Receiver, agreed to have SpearTip, a third-party data analyst, image twelve computer hard drives in Morriss' possession and hold the images in escrow. Morriss and Morriss Holdings refused to turn the images over to the Receiver, claiming the images included data belonging to them and not the Receivership Entities. SpearTip Security Services Report, attached as Ex. B.

Consequently, Morriss' claim that the Receiver conducted her own imaging of computer drives is incorrect. (D.E. 168 at 7-8). The Receiver does not possess the documents and electronic data in Morriss' possession. In fact, Morriss and Morriss Holdings have *precluded* the Receiver's access to the imaged hard drives Morriss discusses in his Response. (*Id.* at 4). The Receiver may only obtain the imaged hard drives held in escrow by either the consent of all parties or through a court order. Ex. B at 4; (D.E. 128 at 12 & Ex. I). To the Commission's knowledge, neither Morriss nor Morriss Holdings have consented to the Receiver's receipt of the imaged data.

On January 19, 2012, the Commission served its First Request for Production of Documents From Defendant Burton Douglas Morriss. (D.E. 128, Ex. A). During a telephone conference on February 1, 2012, Morriss' counsel advised the Commission he would begin producing responsive documents on a rolling basis. (D.E. 128, Ex. B). Morriss, however, failed to produce a single document to the Commission.[1] Subsequently, Morriss' counsel advised it would not produce any documents until it received payment of attorneys' fees and expenses from Defendant Acartha Group, LLC's directors' and officers' insurance policy. Feb. 6, 2012, Email, attached as Ex. C.

Soon thereafter, on February 27, 2012, Morris advised the Court he would not provide the Court-ordered sworn accounting of his assets and liabilities, asserting his Fifth Amendment right against self-incrimination. (D.E. 80).

Throughout this case, Morriss repeatedly delayed responding to and producing any documents responsive to the Commission's document requests, claiming he lacked funds to do so. (D.E. 130, 131, 164). On May 8, 2012, however, the Court granted Morriss' Motion for an order confirming that Acartha Group's directors & officers insurers could advance Morrriss' attorneys' fees (D.E. 160). The insurance policy provides coverage for up to $3 million in legal expenses.

On May 17, 2012, Morriss' counsel advised the Commission in a telephone call Morriss would not produce documents responsive to the Commission's request, but instead would provide the Commission all paper documents and approximately one terabyte of electronic data in Morriss' possession. None of these documents have been reviewed for responsiveness to the Commission's request or for any applicable privilege. According to counsel, Morriss would

[1] Moreover, he also failed to complete his production of documents in response to the Commission's October 27, 2011 investigative subpoena. (D.E. 128, Exs. E & F).

provide these documents on condition that the Commission enter into a "claw-back" agreement, whereby the Commission would agree not to claim any waiver of privilege if Morriss inadvertently produced any privileged documents. (D.E 168, Exs. 1 & 2). Morriss' counsel stated documents responsive to the Commission's request would likely be interspersed among the hundreds of boxes of paper documents and millions of electronic files. Morriss' counsel advised it did not wish to conduct a review of the paper and electronic documents because it would be costly and time consuming. In addition, Morriss' counsel did not offer to obtain responsive documents not in Morriss' physical possession, over which he has legal rights, such as his bank and brokerage account statements.

On May 18, the Commission responded to Morriss' offer. In its response, the Commission advised it would agree to enter into the proposed "claw-back" agreement, and would limit Requests 1 through 4 to include only the email and external correspondence files in Morriss' possession sent or received by seven individuals: Morriss, Dixon Brown, John, Wehrle, Wynne Morriss, Ameet Patel, Brian Zeibarth, and Christian Leedy. These individuals were former employees of the Investment Entities and Morriss Holdings. The Commission requested that Morriss provide specific productions in response to its remaining requests, which call for specific documents, which Morriss should be able to locate or obtain. To date, Morriss has refused the Commission's offer.

III. ARGUMENT

A. The Commission's Requests Are Not Overly Broad Or Unduly Burdensome

As an initial matter, it appears that in his Response, Morriss abandons his initial objections and instead only argues the Commission's requests are extraordinarily broad and thus unduly burdensome. (D.E. 168 at 13). Morriss, however, fails to explain how or why that is the

case. Quite tellingly, in his Response, Morriss does not specifically address *any* of the Commission's requests. Such a generalized claim is insufficient to substantiate an undue burden objection. *Chubb Integrated Sys. Ltd. v. Nat'l Bank of Wash.*, 103 F.R.D. 52, 59-60 (D.D.C. 1984) ("An objection must show specifically how a [discovery request] is overly broad, burdensome or oppressive, by submitting evidence or offering evidence which reveals the nature of the burden."); *Coker v. Duke & Co., Inc.*, 177 F.R.D. 682, 686 (M.D. Ala. 1998) (holding that resisting party must make a particular and specific demonstration of fact and cannot rely on simple conclusory assertions about the difficulty of complying with a discovery request).

Regardless, the Commission's requests are not overly broad or unduly burdensome. As discussed in detail in its Motion to Compel, the Commission's requests ask for specific types of documents relating to specific topic areas. For example, in Request No. 2, the Commission asks for Morriss' communications with the Investment Entities' existing and potential investors from January 1, 2005, through the present. The request is discrete in nature given the fact that the Investment Entities had only 97 investors, many of whom invested as a group under a single investment manager.

Likewise, in Request No. 5, the Commission requests Morriss' monthly bank statements. (D.E. 128 at 15). Similarly, Request No. 7 asks for documents detailing financial transactions between Morriss and Morriss Holdings, including loans, compensation, salary, or any other payments. (*Id.* at 16). In addition, Request No. 14 asks for documents relating to Morriss' enrollment in and monthly statements for all securities brokerage accounts in his name or over which he has control or beneficial interest. (*Id.* at 18). These requests are limited. Morriss should have little trouble locating and providing these documents or the files that contain them.

B. Morriss' Proposed "Data Dump" Is Improper

Morriss' proposal to dump a terabyte of data and 220 boxes of documents in Response to the Commission's request is not permitted as a matter of law, and will effectively delay litigation and prevent the Commission from conducting meaningful discovery. Although Rule 34 permits a party to produce documents in the usual course of business, the provision prohibits "simply dumping large quantities of unrequested materials onto the discovering party along with the items actually sought." 8A Charles Alan Wright, Arthur R. Miller, and Richard L. Marcus, *Federal Practice & Procedure*, § 2213 (2008).

Indeed, courts have sanctioned parties for failing to meet their obligation to search through documents and produce only those responsive to requests. For example, in *Rothman v. Emory Univ.*, 123 F.3d 446, 455 (7th Cir. 1997), the Seventh Circuit upheld the imposition of monetary sanctions against a party for producing bankers boxes containing both responsive and "numerous other unrelated, nonresponsive materials." In affirming the award of attorney's fees to the requesting party, the Seventh Circuit noted that the offending party "rebuffed his obligation to sort through the documents and produce only those responsive to [the requesting party's] request." *Id.*

Similarly, in *Kozolowski v. Sears, Roebuck & Company*, 73 F.R.D. 73, 76-77 (D. Mass. 1976), a case upon which Morriss relies, the district court entered default judgment against defendant Sears for refusing to produce responsive documents and instead permitting the plaintiff to "hunt through all its documents and find the information himself." In rejecting Sears' discovery proposal as "nothing more than a 'gigantic do it yourself' kit" the district court explained

> [t]he defendant seeks to absolve itself of this responsibility by alleging the herculean effort which would be necessary to locate the documents. The

> defendant may not excuse itself from compliance with Rule 34, Fed. R. Civ. P., by utilizing a system of record-keeping which conceals rather than discloses relevant records, or makes it unduly difficult to identify or locate them, thus rendering the production of the documents an excessively burdensome and costly expedition. To allow a defendant whose business generates massive records to frustrate discovery by creating an inadequate filing system, and then claiming undue burden, would defeat the purposes of the discovery rules.

Id. *See also Wagner v. Dryvit Sys. Inc.*, 208 F.R.D. 606, 610-11 (D. Neb. 2001) ("producing large amounts of documents in no apparent order does not comply with a party's obligation under Rule 34").

Morriss now seeks to do exactly what Rule 34 does not permit, which is to "attempt to hide a needle in a haystack by mingling responsive documents with large numbers of nonresponsive documents." *Hagemeyer North America, Inv. v. Gateway Data Sciences Corp.*, 222 F.R.D. 594, 598 (E.D. Wis. 2004).[2]

In his Response, Morriss improperly conflates his duty to search for responsive documents with his ability to produce documents in the usual course of business. Regardless of the method of production, the responding party must search its own records for the relevant documents, electronically stored information, and tangible things. *In re Ford Motor Co.*, 345 F.3d 1315, 1317 (11th Cir. 2007); *Poole v. Textron, Inc.*, 192 F.R.D. 494, 501-503 (D. Md.

[2] The cases on which Morriss relies do not support the "needle in the haystack" form of discovery that Morriss seeks to provide. For example, in *Rowlin v. Ala. Dep't of Public Safety*, 200 F.R.D. 459, 462 (M.D. Ala. 2001), the district court required the requesting party review and pay for photocopies of 800 files out of concern the discovery request was an "ambush attack" because the requesting party "inexplicably delayed for eight months (until one month before the dispostive motion deadline) in requesting the voluminous records that he now claims are crucial." In contrast, the Commission served its first request for documents two days after the filing of its Complaint and after Morriss failed to produce all documents responsive to an investigative subpoena. (D.E. 128 at Ex. F). Similarly, in *Hagemeyer*, 222 F.R.D. at 596, the district court did not require the producing party to conduct a review of paper documents because the requesting party had access to the same documents for four years while the producing party was in Chapter 11 bankruptcy. In contrast, Morriss has failed to fully comply with the Commission's investigative subpoenas, did not permit the Receiver to obtain copies of electronic images of computer hard drives, and refused to produce a single document responsive to the Commission's request until May 17, 2012.

2000). In other words, while Morriss may produce documents in the manner in which they appear in the usual course of business, he is obligated to search for and provide documents that are responsive to document requests. *Id.*; *Kozolowski*, 73 F.R.D. at 76; *Rothman*, 123 F.3d at 455. Consequently, Morriss' claim that by providing all electronic evidence and all paper documents in his possession, he has fulfilled his discovery obligations *in toto* is incorrect.

As indicated in his Response, Morriss and his counsel conducted a review of paper documents for his own purposes to find documents, which they believe to be material to the issues raised in the Complaint. (D.E. 168 at 8 & Ex. 3, ¶ 4). Morriss fails to provide any explanation or justification as to why he could not conduct a similar review to locate documents responsive to the Commission's requests.

Indeed, contrary to Morriss' unsubstantiated claims, he is in a much better position than the Commission to locate responsive documents. Morriss should know exactly where the documents responsive the Commission's requests are located because these are *his* documents, which are in his possession and control. Indeed, the vast majority of the requested documents relate to his personal finances. Morriss should be able to easily locate his bank and brokerage records or contact his banks and brokerage firms to request copies of such records, and produce them to the Commission.[3] Likewise, Morriss utilized the computer system and the nineteen hard drives at issue. He should know the location of the electronic files which contain his and his employees' email files and external correspondence. In short, it would be less costly, burdensome, and time consuming for Morriss to conduct a review of his own records. In contrast, to force the Commission to locate responsive documents within hundreds of bankers'

[3] Similarly, Morriss ignores the fact that he has failed to provide a sworn accounting of his assets as required by the Court. Due to his refusal, the only way for the Commission to obtain a full understanding of his finances is through Morriss' complete production of his financial records.

boxes and a terabyte of data, when Morriss likely knows the location of the documents the Commission seeks would be unduly burdensome upon the Commission.[4]

In addition, the production of every document in Morriss' *physical* possession does not end Morriss' discovery obligations. Morriss also must produce all requested financial records that he has a practical ability to obtain, which are not in his physical possession. *Huggins v. Fed. Express Corp.*, 250 F.R.D. 404, 408 (E.D. Mo. 2008). For example, Morriss must obtain copies of his personal accounting and brokerage statements which are not in his physical possession because he maintains control over those accounts.

Last, Morriss' claim that he previously lacked funds to pay his attorneys or does not wish to employ his counsel to conduct a reasonable search is irrelevant. A party cannot absolve itself from responding to discovery obligations based upon a claim of burden, expense, or lack of personnel. *Rowlin*, 200 F.R.D. at 461 (rejecting "Defendants' attempt to absolve themselves of their production responsibilities" by stating they have difficulty maintaining documents and lack personnel to review relevant files); *Coker*, 177 F.R.D. at 686 (holding "a mere showing of burden and expense is not enough" to absolve a party of its discovery duties). This is particularly true here because Morriss' current proposal – to merely dump all documents without any meaningful review by his attorneys or searches conducted by a data vendor – could have been offered back in January, which would have at least provided the Commission more time to review them. Instead, Morriss refused to provide any discovery until May 17, 2012. The Court should not validate Morriss' discovery delay.

[4] In addition, based on his Response's vague description of the paper and electronic documents (D.E. 168 at 3 n.1 and 4), it appears that many of those documents are actually property of the Receiver, and Morriss should have been turned over to the Receiver pursuant to the Court's January 17, 2012 Order Appointing Receiver. Morriss provides no explanation as to why he failed to comply with the Court's order and impermissibly withheld them from the Receiver.

C. The Commission's Compromise Is Fair

Although the Commission's First Request for Production of Documents is proper and should be responded to in full, the Commission has offered to modify Requests 1 through 4, in order to relieve Morriss of his obligation to conduct a detailed privilege review and assuage his concerns of conducting a page-by-page content review of the bulk of the electronic and paper documents in his custody and control.

Requests 1 through 3 ask for any and all communications Morriss had with the Investment Entities, existing and potential Investment Entities' investors, and Morriss Holdings, and Request 4 asks for all documents relating to any email accounts Morriss used during the relevant time period. The Commission has offered to limit these requests to include only the emails and external correspondence files of Morriss and six other individuals.[5] (D.E. 168 at Ex. 2).

In addition, the Commission has offered to enter into a "claw-back" agreement, whereby it would not claim any waiver of Morriss' or Morriss Holdings' privileges if such documents are inadvertently produced to the Commission. This proposal would allow Morriss to produce the majority of relevant electronic communications without conducting a privilege review or time consuming page-by-page content review. Instead, Morriss need only provide the electronic email and paper files for himself and six other individuals. Morriss should be able to locate the email data files for each individual, without conducting a costly or time-consuming review. Because the Commission's remaining requests, as discussed above, are specific in nature and relate directly to Morriss' personal finances, Morriss should fulfill his obligation to conduct a search for responsive documents.

[5] These individuals are Dixon Brown, John Wehrle, Wynne Morriss, Ameet Patel and Christian Leedy, who were officers and employees of the Investment Entities, and Brian Zeibarth, who was Morriss Holdings' accountant.

Unfortunately, to date, Morriss has not accepted the Commission's practical and reasonable offer.

IV. CONCLUSION

For the foregoing reasons, the Commission respectfully requests the Court grant the Commission's Motion to Compel, overrule Morriss' objections, reject Morriss' document production proposal, and require him to conduct a reasonable search for and produce, by a date certain, all documents responsive to the Commission's First Request for Production of Documents subject to the Commission's proposal outlined in Section III.C above.

Respectfully submitted,

May 31, 2012

By: s/ Adam L. Schwartz

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CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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February 14, 2012

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VIA EMAIL AND REGULAR MAIL
Catherine Hanaway
The Ashcroft Group, LLC
222 South Central Avenue, Suite 110
St. Louis, MO 63105

Re: *Securities and Exchange Commission v. Burton Douglas Morriss, et al.*
No. 4:12-cv-00080-CEJ

Dear Ms. Hanaway:

This is in response to your letter of February 8, 2012. In your letter, you address various issues, including, but not limited to, document production, Acartha Group, L.L.C.'s ("Acartha Group") D & O insurance policy and matters pertinent to the administration of the Receivership estate. I will separately address each of these issues.

First, in your letter you state that you "have suspended ... efforts to inventory documents located at Morriss Holdings" until the issues pertinent to the payment of defense costs are resolved. Please be advised that Mr. Morriss' obligation of production and an accounting under the January 17, 2012 Orders continues regardless of whether funds exist for the payment of your fees. A lack of funds simply does not excuse Mr. Morriss' obligation to comply with the directives of the Court. *See, e.g., Technical Chem. Co. v. IG-LO Products Corp.*, 812 F.2d 222, 224 (5th Cir. 1987); *Herstgaard v. Cherryden, LLC*, No. 1:07CV02-MP/AK, 2009 WL 2191862 (N.D. Fla. July 22, 2009).

Our concern is amplified by the circumstances surrounding previous production efforts required under the January 17, 2012 Receivership Order. On January 18, 2012, Mr. Morriss certified that he had identified all of the items described in Paragraph One of the Receivership Order and which were located at 7820 Maryland Avenue, Clayton, Missouri, for purposes of production to the Receiver. Yet, subsequent to this date, we (i) received two additional boxes of documents; (ii) were informed that another box would be produced; and (iii) learned that additional Receivership property may be contained in the basement, a location that was not identified on January 18, 2012. All Receivership property, including the documents referenced in your February 8, 2012 letter, must be immediately delivered to me at the above address. Please contact my legal assistant, Karla Asbury, in order to make the necessary arrangements. If these

issues pertaining to production of the remaining Receivership property are not promptly addressed, we will bring this matter to the attention of the Court.

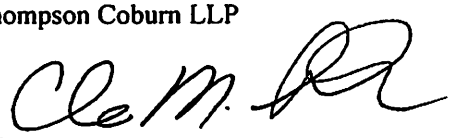
Second, your letter also addresses issues pertinent to the D & O Policy belonging to Acartha Group. In this regard, please note that we have not yet received the important information requested in our letter of February 8, 2012 or the information you promised to supply during our call that same day. We would appreciate the courtesy of a reply so that we may resume our discussion regarding your request to our assent to the payment of your fees under the policy.

Third, I do not agree with your assertions regarding the assignment of responsibility for any potential losses during the course of the Receivership, *e.g.*, diminution of value of the assets. This Receivership began with approximately $56,000 in available cash and a request by former management to return other funds purportedly held in escrow to investors. While we plan to make every effort to preserve and enhance the value of the Receivership assets, needless to say, the lack of available funding poses serious concerns. That being said, as I mentioned to you during our initial conversation, I continue to welcome information as to the handling of the assets held by the Receivership estate. I am interested in learning whether Mr. Morriss plans to supply me with this sort of information (which has not been received to date) or to continue to invoke the Fifth Amendment.

I look forward to hearing from you.

Best regards,

Thompson Coburn LLP



By
Claire M. Schenk

CMS/kja
Enclosure
cc: Steve Higgins
Matt Darrough

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BURTON DOUGLAS MORRISS,
ACARTHA GROUP, LLC,
MIC VII, LLC,
ACARTHA TECHNOLOGY PARTNERS, LP, and
GRYPHON INVESTMENTS III, LLC,

Defendants, and

MORRISS HOLDINGS, LLC,

Relief Defendant.

DECLARATION AND CERTIFICATION

I, Burton Douglass Morriss, declare and certify as follows:

1. I have been presented with a copy of both the Asset Freeze Order and the Order Appointing Receiver entered by the United States District Court for the Eastern District of Missouri.

2. I am currently represented by counsel and have had counsel Les Lane present with me during the inspection of the premises at 7820 Maryland Avenue, Clayton, MO 63105 ("the Premises") by the Receiver on January 18, 2012.

3. Through counsel, and in the presence of the Receiver, Counsel for the Receiver and other individuals employed by Counsel, I have identified all of the items described in Paragraph 1 of the Order Appointing Receiver that are physically on "the Premises" as of this date.

4. From the entry of the Order Appointing Receiver on January 17, 2012, I have not removed nor am I aware of anyone else removing any of the items described in Paragraph 1 in the Asset Appointing Receiver.

5. It is my understanding that all such items described in Paragraph 1 of the Order Appointing Receiver, that are physically present at "the Premises" were separately marked by an employee of Counsel for the Receiver.

6. To the best of my information, knowledge and belief, I have identified all of the items described in Paragraph 1 of the Order Appointing Receiver that are physically located, as of this date, on "the Premises".

Dated: January 18, 2012

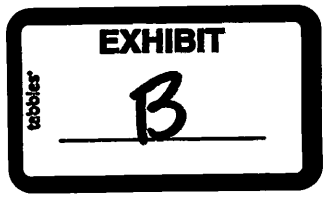
Burton Douglas Morriss

Security Services Report:
Incident Response and Analysis

ST1205_Acartha Collection

January 23, 2012

SPEARTIP
1714 Deer Tracks Trail, Suite 260 | St. Louis, MO 63131
636.532.5055 | www.SpearTip.net



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Client Information	Thompson Coburn One US Bank Plaza St. Louis, Missouri 63101
Case Number	ST1205_Acartha
Author	Kristopher Bleich, Senior Security Advisor SpearTip, LLC 1714 Deer Tracks Trail, Suite 260 St. Louis, Mo 63131
SpearTip Personnel Involved	Kristopher Bleich, Senior Security Advisor Daniel Quinlan, Security Advisor
SpearTip Approval	Jarrett Kolthoff, Chief Executive Officer
Data Classification	Confidential

1. Summary

1.1 January 18, 2012

On January 18, 2012 at approximately 4:30PM, Kristopher Bleich, Senior Security Advisor for SpearTip, and Daniel Quinlan, Security Advisor for SpearTip, arrived at 7820 Maryland Avenue, St. Louis, Missouri for the collection of forensic images. They were met by Mike Choi, IT personnel for Thompson Coburn. Mr. Bleich and Mr. Quinlan were introduced to Claire Schenk and Stephen Higgins, also counsel for Thompson Coburn. Mr. Bleich and Mr. Quinlan were informed by Mr. Choi, that forensic images needed to be collected of two servers and one PC workstation.

Mr. Bleich and Mr. Quinlan were then introduced to Doug Morris, owner of the facility and subject computer systems and his attorney Les Lane. Mr. Bleich and Mr. Quinlan received a short brief from Ms. Schenk, Mr. Higgins, with Mr. Lane present, where it was again indicated that forensic images would be collected of two servers and one PC workstation. Mr. Choi pointed out the workstation and the two servers to Mr. Bleich. Mr. Bleich and Mr. Quinlan deployed computer systems necessary for the forensic collection and waited for an employee to complete daily work on his workstation, in order to begin the imaging process on that system. Shortly after the brief, Ms. Schenk, Mr. Higgins and Mr. Choi left the premises.

Mr. Bleich inquired from Mr. Morris and one employee onsite as to what was stored on the servers. Neither Mr. Morris nor the employee could specifically answer the question. At approximately 6:00PM, Mr. Bleich asked Mr. Morris for the IP address and administrator login information for the servers, in order to allow for a "live collection" or a normal shutdown of the servers. Without knowledge of the applications running on the servers, a "hard shutdown"(pulling the plug) was not recommended. Carrying out a "hard shutdown" of the servers risked corruption or destruction of data located on the servers. Mr. Morris stated that he would contact "Jimmy" for IP address and login information.

Mr. Bleich and Mr. Quinlan remained onsite awaiting the requested information, and at approximately 7:00 PM, Mr. Bleich contacted Mr. Morriss to determine if the information had been obtained. At that time, Mr. Morriss had not been able to obtain the administrator credentials nor the IP addresses. Without the administrator credentials for the servers, both a physical forensic imaging and a "live capture" forensic imaging were impossible without risking the corruption or destruction of data housed on those servers. Mr. Bleich then asked to begin forensically imaging the PC desktop, however Mr. Morriss and Mr. Lane agreed that the PC desktop was not related to the matter and was not to be forensically imaged. Mr. Bleich referred to the briefing given by the counsel of Thompson and Coburn and that the PC desktop was to be imaged; however, Mr. Morriss and Mr. Lane restated that the PC desktop was not to be imaged.

Mr. Bleich contacted Ms. Schenk by telephone and explained the events that had occurred after her

departure. After phone conversations between Mr. Lane, Ms. Schenk and Mr. Higgins, it was decided onsite imaging would again commence around 9:00AM the following morning, after Mr. Morris had obtained IP address and login information for the servers.

1.2 January 19, 2012

On January 19, 2012 at 9:00AM, Kristopher Bleich, Senior Security Advisor for SpearTip, and Daniel Quinlan, Security Advisor for SpearTip, arrived at 7820 Maryland Avenue, St. Louis, Missouri, to conduct a forensic collection of the hard drives for two servers located onsite. At approximately 9:50AM, Mr. Bleich and Mr. Quinlan were met by Doug Morris, who provided an IP address for one of the servers. Mr. Morris told Mr. Bleich that he did not have the login username or password for the servers, and that Jim Mahassek, IT coordinator for Morris Holdings, did not know the password. Mr. Morris stated that the password information was written down but that Mr. Mahassek did not have it in his possession. Mr. Bleich informed Mr. Morris that the password would be necessary if the systems were to be shut down normally or a live collection completed.

Mr. Bleich and Mr. Quinlan deployed computer systems necessary for the forensic collection and awaited login credentials from Mr. Morris. At approximately 10:40AM, Mr. Morris advised Mr. Bleich that he was still waiting on obtaining login information from Mr. Mahassek.

At approximately 11:45 AM, Mr. Morris provided Mr. Quinlan with the necessary credentials to access the two servers. Mr. Quinlan logged onto both servers, performing a "soft shutdown" on the server mounted on the bottom rack and preparing the server mounted on the top rack for a forensic "live capture". The forensic collection process of the two servers, beginning with the logon, commenced at approximately 11:50 AM.

Identifying information of the HP ProLiant DL380 server mounted on the top rack of the server room, as well as the hard drives contained within, was documented and is provided in **Attachment 1**. The forensic collection was performed utilizing AccessData's FTK, Version 3.3 and the "live capture" feature, which imaged the running server by transmitting the hard drive data over the local network to SpearTip's forensic laptop. This imaging technique did not require SpearTip to shut down the server before acquisition. However, the server was powered down after imaging to inspect the system date and time contained in the BIOS and the physical information (model and serial number) of the hard drives contained within the server. At approximately 7:23 PM, the BIOS date and time was checked and verified to be correct (**Attachment 2**).

Identifying information of the HP ProLiant DL380 server mounted on the bottom rack of the server room, as well as the hard drives contained within, was documented and is provided in **Attachment 3**. The forensic collection was performed utilizing AccessData's FTK Imager, and involved physically removing each hard drive from the server once it was safely powered down at approximately 11:50

AM. The drives were connected to SpearTip's forensic laptop via Tableau hardware write blockers to prevent any data alteration on the original drives. The hard drive in position 2 was not imaged because it failed to operate due to what seemed to be a physical issue. While the server was powered down, the system date and time contained in the BIOS was inspected and the physical information (model and serial number) of the hard drives contained within the server were noted. At approximately 6:01 PM, the BIOS date and time was checked and verified to be correct **(Attachment 4).**

At approximately 3:25PM, Mr. Bleich made contact with Les Lane, Mr. Morris' attorney. Mr. Bleich presented a Chain of Custody document to Mr. Lane for his review **(Attachment 5).** Mr. Bleich explained to Mr. Lane that this document was procedural and simply confirmed the "release" of the forensic images to SpearTip. Mr. Lane did not object to the collection of the forensic images but indicated that his client would not sign a Chain of Custody document for the images. Mr. Bleich annotated the refusal on the Chain of Custody document.

The forensic collection process completed at approximately 7:30PM. Mr. Bleich and Mr. Quinlan powered on both servers and ensured they were operating correctly to ensure business continuity. After ensuring their proper operation, Mr. Bleich and Mr. Quinlan left Morris Holdings at approximately 7:35PM.

The forensic images collected are stored in E0 format on one Western Digital hard drive, serial number WCANKH831506. These images will be stored in SpearTip evidence storage at the following address, pending forensic analysis, initiated by consent of all parties or applicable court order.

1714 Deer Tracks Trail, Suite 260
St. Louis, Missouri 63131

A copy of this report will be forwarded to the Source and filed under ST1205_Acartha. Any further information on this analysis will be submitted in an additional supplemental report. Point of contact is the undersigned.

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Kristopher Bleich, EnCE, C|EH, CDFE, Security+
Senior Security Advisor, Director of Forensic Services
SpearTip, LLC

Attachments (1-5)

1. Top server diagram
2. Top server date/time
3. Bottom server diagram
4. Bottom server date/time
5. Chain of Custody

[redacted]

-----Original Message-----
From: Ottolini, Lisa [mailto:lottolini@ashcroftlawfirm.com]
Sent: Monday, February 06, 2012 4:57 PM
To: Schwartz, Adam
Cc: mbartle@gbmglaw.com
Subject: New Development

Adam,

I've attached a letter from the Receiver that we received today objecting to payment of our fees and expenses from the Chubb policy for your information. Obviously, we will not be able to contract with a data vendor, accountant, or move forward with document accumulation until this issue is resolved. I will keep in touch with any developments.

Lisa

Lisa Ottolini
(314) 863-7001 (office)
(314) 853-7951 (mobile)
(314) 754-9955 (fax)
lottolini@ashcroftlawfirm.com | http://www.ashcroftlawfirm.com/

EXHIBIT C
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communicated by email. In the event you want future communications to be sent in a different method, please contact me immediately.