

FILED & JUDGMENT ENTERED
Steven T. Salata

April 24 2023

Clerk, U.S. Bankruptcy Court
Western District of North Carolina



J. Craig Whitley
J. Craig Whitley
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

In re

ALDRICH PUMP LLC, *et al.*,¹

Debtors.

OFFICIAL COMMITTEE OF ASBESTOS
PERSONAL INJURY CLAIMANTS

Plaintiff,

v.

ALDRICH PUMP LLC, MURRAY BOILER
LLC, TRANE TECHNOLOGIES COMPANY
LLC, and TRANE U.S. INC.,

Defendants.

OFFICIAL COMMITTEE OF ASBESTOS
PERSONAL INJURY CLAIMANTS, on behalf
of the estates of Aldrich Pump LLC and Murray
Boiler LLC,

Plaintiff,

v.

Chapter 11

Case No. 20-30608 (JCW)

(Jointly Administered)

Adv. Pro. No. 21-03029

Adv. Pro. No. 22-03028

¹ The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Aldrich Pump LLC (2290) and Murray Boiler LLC (0679). The Debtors' address is 800-E Beaty Street, Davidson, North Carolina 28036.



INGERSOLL-RAND GLOBAL HOLDING
COMPANY LIMITED, TRANE
TECHNOLOGIES HOLDCO INC., TRANE
TECHNOLOGIES COMPANY LLC, TRANE
INC., TUI HOLDINGS INC., TRANE U.S. INC.,
and MURRAY BOILER HOLDINGS LLC,

Defendants.

**ORDER ESTABLISHING
JOINT DISCOVERY PLAN AND REPORT (ESI PROTOCOL)**

This matter comes before the Court on *Plaintiff's Motion on Discovery Procedures*² (the “**Discovery Motion**”) filed by the Official Committee of Asbestos Personal Injury Claimants (the “**Plaintiff**”) ³ in the above-captioned adversary proceedings (collectively, the “**Adversary Proceedings**”). The Court having reviewed the Discovery Motion, *Non-Debtor Defendants' Objection to Plaintiff's Motion on Discovery Procedures*,⁴ *Debtor's Joinder to Non-Debtor Defendants' Objection to Plaintiff's Motion on Discovery Procedures*,⁵ and *Reply in Further Support of Plaintiff's Motion on Discovery Procedures*,⁶ and the Court having considered the arguments of counsel at the March 30, 2023 hearing (the “**Hearing**”); and the Court finding that (a) the Court has jurisdiction for purposes of entering this Order pursuant to 28 U.S.C. §§ 157 and 1334 and (b) venue for purposes of entering this Order is proper in this district pursuant to 28 U.S.C. § 1409; and the Court having determined that just cause exists for the relief set forth herein for the reasons set forth on the record at the Hearing;

IT IS HEREBY ORDERED THAT:

² See Adv. Pro. No. 3:21-ap-03029, ECF No. 119; Adv. Pro. No. 3:22-ap-03028, ECF No. 50; Adv. Pro. No. 3:22-ap-03029, ECF No. 46.

³ Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the CMO (as defined below).

⁴ See Adv. Pro. No. 3:21-ap-03029, ECF No. 121; Adv. Pro. No. 3:22-ap-03028, ECF No. 52.

⁵ See Adv. Pro. No. 3:21-ap-03029, ECF No. 122.

⁶ See Adv. Pro. No. 3:21-ap-03029, ECF No. 123; Adv. Pro. No. 3:22-ap-03028, ECF No. 53.

A. The Discovery Motion

The Discovery Motion is GRANTED, in part, and DENIED, in part, as set forth herein.

B. Joint Discovery Plan and Report (ESI Protocol)

In accordance with Rule 26(f) of the Federal Rules of Civil Procedure (the “**Civil Rules**”), made applicable in these cases by Rule 7026 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), a conference was held for the above-captioned adversary proceedings (collectively, the “**Proceedings**”)⁷ on February 1 and 15, 2023 and March 2, 2023. Representatives attended the conference on behalf of Plaintiff Official Committee of Asbestos Personal Injury Claimants (“**Committee**”) in the above-captioned chapter 11 case (the “**Bankruptcy Case**”) and the above-captioned defendants (“**Defendants**,” and together with Plaintiff, the “**Parties**” and each of them a “**Party**”). Following the conference, the Parties agreed that the following *Joint Discovery Plan and Report (ESI Protocol)* (“**Discovery Plan**” or “**Order**”) shall govern discovery in these Proceedings, including discovery of electronically stored information (“**ESI**”).

The Case Management Order (the “**CMO**”) entered in the Proceedings⁸ shall continue in full force and effect.

1. **Discovery Subjects, Commencement, and Schedule.** The Parties intend to engage in discovery related to the claims and defenses raised in the Proceedings. The Parties may commence discovery in the Proceedings following the entry of this Discovery Plan.

2. **Initial Disclosures.** The initial disclosures pursuant to Civil Rule 26(a)(1) were made by the February 8, 2023 deadline set forth in the CMO.

⁷ The Proceedings are comprised of (a) Adversary Proceeding No. 21-03029 and (b) Adversary Proceeding No. 22-03028. The Defendants in Adversary Proceeding No. 22-03029 reserve their rights as set forth in the Case Management Order entered in the Proceedings and in Adversary Proceeding No. 22-03029. *See infra* n.8.

⁸ Adv. Pro. No. 3:21-ap-03029, Dkt. No. 117; Adv. Pro. No. 3:22-ap-03028, Dkt. No. 39; Adv. Pro. No. 3:22-ap-03029, Dkt. No. 35.

3. **Cooperation.** The Parties shall cooperate in good faith throughout the discovery process in the Proceedings and in accordance with the CMO and this Order. The Parties recognize that discovery of ESI is governed by the proportionality standard as set forth in Civil Rule 26(b)(1).

4. **Search and Identification of ESI.** In responding to future requests for the production of documents⁹ and things, the Parties shall follow the methods to search ESI for documents that will be reviewed for responsiveness, privilege, confidentiality, and production as established in this Order. Past production of documents and things in the adversary proceeding captioned *Aldrich Pump LLC and Murray Boiler LLC v. Those Parties Listed on Appendix A to Complaint and John and Jane Does 1-1000*, Adv. Pro. No. 20-03041 (JCW) (Bankr. W.D.N.C.) (the “**Preliminary Injunction Proceeding**”) shall remain subject to the *Joint Discovery Plan and Report (ESI Protocol)* [Dkt. 415] entered in the Preliminary Injunction Proceeding. Past production of documents and things in the estimation proceeding ordered in the main bankruptcy case (the “**Estimation Proceeding**”) [Dkt. 1127] shall remain subject to the *Joint Discovery Plan and Report (ESI Protocol)* entered in relation to the Estimation Proceeding [Dkt 1302, Ex. 1]. As set forth herein and in the CMO, the Parties reserve all rights to seek, and to oppose, further discovery in these Proceedings consistent with the Civil Rules.

5. **Written Discovery Requests.** Each Party may serve interrogatories, requests for production of documents, and requests for admission (collectively, “**Requests**,” and the Party serving the Requests, the “**Requesting Party**”), subject to the terms of this Discovery Plan, the Bankruptcy Rules, the Civil Rules, the CMO, and any other applicable order of the Court.

⁹ For the purposes of this Discovery Plan, “Document” shall have the meaning set forth in Civil Rule 34 but shall exclude Documents that the Parties agree are not reasonably accessible as described in paragraph 11(b) hereof.

6. **Limitations on Discovery.** The Parties agree to the following modifications to the limitations on discovery:¹⁰

(a) Interrogatories

- (1) Maximum of 45 interrogatories, including subparts, by the Defendants (as a group) cumulative to all Parties.
- (2) Maximum of 45 interrogatories, including subparts, by the Plaintiff cumulative to all Parties.

(b) Requests for Admission

- (1) Maximum of 35 requests for admission by the Defendants (as a group) cumulative to all Parties.
- (2) Maximum of 35 requests for admission by the Plaintiff cumulative to all Parties.

(c) Depositions¹¹

- (1) Maximum of 20 depositions for the Defendants (as a group).
- (2) Maximum of 20 depositions for the Plaintiff.
- (3) Prior to the commencement of any depositions, the Parties will agree to meet and confer in good faith to discuss the parameters of a deposition protocol.

7. **Document Production.** Within 30 days after (a) a Party responding to a set of Requests for production (the “**Responding Party**”) has served its responses and objections, (b) the Parties have agreed to the identity of those Custodians (as that term is defined in paragraph 8 below) whose ESI and hard-copy documents are to be searched in connection with that set of Requests and the non-Custodian files, repositories, and share drives to be searched, and (c) the Parties have agreed to the search terms to be applied in that effort, productions of documents that

¹⁰ For the avoidance of doubt, the above-referenced limitations shall not apply to expert discovery (including, without limitation, depositions of expert witnesses), which shall be addressed in a separate order.

¹¹ The Parties reserve their rights to seek authorization to conduct additional depositions upon a showing of good cause.

are not duplicative of the documents produced in the Preliminary Injunction Proceeding shall commence (the “**Production Commencement Date**”) and be made on a rolling basis until complete. Such Production Commencement Date shall be subject to extension or enlargement by agreement of the respective Requesting Party(ies) and the Responding Party(ies) or order of this Court. The Parties shall meet and confer to agree upon production completion deadlines. Absent agreement, such disputes may be brought to the Court for resolution.

8. **Custodians.** The Parties previously have identified and agreed upon certain custodians for purposes of production of documents in connection with the Preliminary Injunction Proceeding and related search terms. If additional custodians are agreed upon, or ordered, and subject to the procedures set out in paragraphs 9, 11, and 12 below, in response to Requests for production, a Responding Party shall search the ESI and, where not unduly burdensome, the hard-copy documents of current and/or former employees, other individuals or organizations whose ESI or documents are in the Responding Party’s possession, custody, or control (each a “**Custodian**”), whether or not the Custodian was identified in the Rule 26(a)(1) initial disclosures. Nothing in this paragraph or this Order affects any Party’s rights in negotiating additional search terms or parameters for custodians previously agreed to in the Preliminary Injunction Proceeding or new custodians as contemplated in Paragraph 9. Nor is there any obligation to re-produce documents that were previously produced in connection with the Preliminary Injunction Proceeding.

9. **Identification of Custodians and Files to Be Searched.** The Parties shall meet and confer to identify Custodians not previously identified and agreed upon in the Preliminary Injunction Proceeding likely to have discoverable, responsive, and non-duplicative documents, data, or communications and the files of each Custodian where such information is stored. The Requesting Party may designate Custodians whom it believes in good faith to have responsive

documents, data, or communications.¹² The Responding Party may in good faith challenge any such designation within five business days. The Parties shall negotiate in good faith to reach agreement as to the number and identity of Custodians whose files will be searched in connection with the Proceedings and which files will be searched for each Custodian (*e.g.*, and without limitation, hard-copy documents, electronic files, and emails). After reaching agreement on the number and identity of Custodians and the files to be searched for each Custodian, the Requesting Party may request additional Custodians and/or additional files if, in its view, it becomes apparent that such other Custodians or files are likely to have responsive documents. The Parties shall meet and confer in good faith regarding such a request. If the Parties are unable to resolve any dispute regarding Custodian designation, whether concerning the number or identity of Custodians or the files to be searched, the Requesting Party may seek relief from the Court.

10. **Preservation Obligations.** Nothing in this Discovery Plan shall limit or expand the Parties' respective preservation obligations imposed by rule or law.

11. **Search and Identification of Responsive Documents.** In connection with a Responding Party's responses to Requests for production, the Parties shall meet and confer about methods to search for documents that will be reviewed for responsiveness, privilege, confidentiality, and production.

(a) ***Application of Search Methodology.*** The Parties shall meet and confer to develop a search methodology to be applied to identify and limit the volume of documents to be reviewed for responsiveness, including with respect to ESI. The Parties shall use the search terms previously agreed to in connection with the Preliminary Injunction Proceeding as a starting point, and to the extent any Party desires to modify and/or add search terms, the Party seeking the

¹² All parties reserve their rights with respect to whether and to what extent such Custodians may include a Responding Party's respective professionals.

modification and/or addition shall propose search terms to apply to the search of Custodial files, Shared Repositories, or other files, as appropriate, and meet and confer in an attempt to reach agreement as to those terms. If the Responding Party objects to any search terms proposed by the Requesting Party (including because the terms identified return an unmanageable volume of ESI for review), the Responding Party may propose modifications to the terms and, if the volume of ESI is of concern, the Responding Party shall provide a hit report identifying the number of unique hits for such terms. Ultimately, the Requesting Party(ies) and Responding Party must come to an agreement as to the proposed modification of terms, or otherwise the Requesting Party(ies) may seek Court relief. As specified in paragraphs 11(e) and 11(f), the Parties may use certain additional search methods and analytics tools to manage the volume of ESI for review.

(b) ***Not Reasonably Accessible ESI.*** The Parties agree that they will work cooperatively to determine what ESI is reasonably accessible and what is not and agree to consider in good faith reasonable requests for information on ESI management in that effort. ESI of limited accessibility may include those documents created or used by electronic media no longer in use, maintained in redundant electronic storage media, or for which retrieval involves substantial cost. For purposes of this paragraph, the Parties agree that the following sources of ESI are not reasonably accessible:

- (i) Data stored in a backup system for the purpose of system recovery or information recovery, including, without limitation, disaster recovery backup tapes and media, continuity of operations systems, and data or system mirrors or shadows.
- (ii) Voicemail recording, subject to the Requesting Party's reservation of rights to seek such data for individual Custodians where discovery indicates that voicemails may exist responsive to the information requested.

- (iii) Mobile devices and ESI or other data stored on mobile devices, including smart phones and tablets,¹³ subject to each Custodian certifying (the “**Mobile Telephone Certification**”) under penalty of perjury either that (A) they did not use a mobile telephone for business purposes¹⁴ during the relevant date range other than making or receiving calls, or (B) if they use a mobile telephone for such business purposes, that all data and information used for such purposes is otherwise stored in the Responding Party’s systems and will be collected from another source or was *de minimis*.¹⁵ This Mobile Telephone Certification shall be provided to the Requesting Party within 30 days of service of written discovery or within 30 days after such later date that the Custodian is identified and agreed upon or ordered by the Court. In any case, this subparagraph also is subject to the Requesting Party’s reservation of right to seek such data from individual Custodians where discovery indicates that data or information on mobile devices may exist and may be responsive to the information requested and the Responding Party’s reservation of right to object to any such request.
- (iv) Legacy data (*e.g.*, data stored on floppy discs).
- (v) Deleted, erased, or overwritten computer files, whether fragmented or whole, which were deleted in the regular course of business before the duty arose to preserve.
- (vi) Data stored in Random Access Memory (*i.e.*, RAM), cache memory, or in temporary or cache files, including internet history, web browser cache, and cookie files, wherever located.
- (vii) Encrypted data/password protected files, where the key or password cannot be ascertained without extraordinary efforts.
- (viii) Data stored on printers, photocopiers, scanners, and fax machines.
- (ix) Data stored as server, system, or network logs.
- (x) Instant/chat messaging (including, *e.g.*, Slack or WhatsApp), subject to each Custodian certifying (the “**Instant Message Certification**”) under penalty of perjury that they did not, during the relevant date range, use any instant messaging program, application, or platform for business purposes, other than use that was *de*

¹³ For the avoidance of doubt, the term “mobile devices” does not include laptop computers.

¹⁴ For the avoidance of doubt, business purposes include, without limitation, the taking of notes, creation or editing of documents, and communications thereto, in each case for work-related purposes.

¹⁵ “*De minimis*,” as used in this paragraph 11(b)(iii) and in paragraph 11(b)(x) below, refers to a use that is negligible and, in any event, unrelated to any substantive work on Project Omega or the Debtors’ chapter 11 case.

minimis. This Instant Message Certification shall be provided to the Requesting Party within 30 days of service of written discovery or within 30 days after such later date that the Custodian is identified and agreed upon or ordered by the Court. In any case, this subparagraph also is subject to the Requesting Party's reservation of right to seek such data and information from individual Custodians where discovery indicates that data or information in instant messaging programs, applications, or platforms may exist and may be responsive to the information requested and the Responding Party's reservation of right to object to any such request.

(c) ***Shared Repositories and Drives.*** The Parties shall, in good faith and using reasonable measures, identify and search shared repositories, shared databases, and shared drives reasonably likely to contain discoverable documents or communications ("**Shared Repositories**").

(d) ***Date Range.*** The Parties agree that the search of ESI, in either Custodian files or Shared Repositories, should be limited to the time period during which relevant information was most likely created or received. For the purposes of discovery in the Proceedings, the Requesting Party and the Responding Party will meet and confer to determine the applicable date range(s) applicable to the subject requests. The Requesting Party and the Responding Party each reserve the right to argue that a different date range should be applied to identify documents for review and potential production in response to a particular request for production. If the Requesting Party and the Responding Party are unable to resolve any dispute regarding the applicable date range(s), the Requesting Party may seek relief from the Court.

(e) ***Use of Predictive Coding, Clustering, or Technology Assisted Review.*** Before a Responding Party employs culling tools, such as predictive coding, clustering, or Technology Assisted Review, to remove from review documents otherwise identified using the search terms and date range referenced herein, the Responding Party shall advise the Requesting Party of its intention to use such tools and, if utilized, timely provide the Requesting Party the parameters in which the Responding Party intends to use such tools. Within seven days of being

notified of the Responding Party's intention to use predictive coding or other analytic tools listed in this paragraph, the Requesting Party may object in writing. In the event of an objection, the Parties shall meet and confer and attempt to reach resolution. If no resolution is met, the Parties may raise disputed issues with the Court.

(f) ***Use of Other Review Analytics.*** The Parties may use other reasonable analytics or tools, including, without limitation, de-duplication, email threading, inclusiveness-only review and production, and technology-assisted review to streamline the review of ESI, to the extent that those review analytics and tools are consistent with other provisions in this Discovery Plan, including provisions relating to the Form of Production (*see infra* paragraph 12). The analytic tools any Responding Party intends to use shall be timely disclosed to the Requesting Parties. Those analytics used for non-culling purposes need not be disclosed.

12. **Form of Production.** The Parties agree to produce responsive non-privileged documents in the manner set out in this Discovery Plan. The Parties agree to take reasonable steps not to degrade the searchability or legibility of any information as part of the document review and production processes. Documents previously produced in the Bankruptcy Case (including in connection with other adversary proceedings) shall be deemed to be reproduced as they were in those proceedings and their production need not be duplicated herein and the format need not be modified to meet any different requirements of this Discovery Plan. Additionally, if particular responsive information warrants a format different than those set out below, the Parties shall meet and confer in an effort to agree on a mutually acceptable format.

(a) ***Format of ESI.*** The Parties shall produce responsive non-privileged ESI in the format set out in **Attachment A** hereto unless otherwise agreed in writing or ordered by the Court.

(b) ***Format of Electronically Scanned Hard Copies.*** The Parties shall produce electronically scanned hard-copy documents in the applicable format set out in Attachment A unless otherwise agreed in writing or ordered by the Court. In particular, the Parties shall format such documents with optical character recognition, or OCR, as described in Attachment A and include the metadata fields identified in Attachment A where that metadata is available.

(c) ***Complete Families.*** The Parties shall produce electronic documents and email communications as complete families. The Parties shall not dissociate attachments to emails or other documents from parent emails or documents even if the attachments are exact duplicates of other documents in the production. Parent documents and any attachments shall be assigned sequential Bates numbers. If a responsive, non-privileged email or document has a privileged attachment, a Party may replace the attachment with a Bates-numbered slip sheet indicating that it has been produced as a replacement for a document withheld in its entirety on privilege grounds or may redact from the face of the attachment privileged material that appears in or on an otherwise discoverable non-privileged document.

(d) ***Email Threading.*** The Parties agree that email threading and inclusiveness-only review and production may be applied to production documents such that only the most inclusive version of any responsive, non-privileged email chain is produced; *provided that* the email-threading process is performed by an e-discovery vendor in a manner consistent with standard practices in the industry and that all independent responsive, non-privileged branches of the chain are produced (including any email within a chain containing any attachment) and *provided further that* entries for every email withheld appear on the privilege log regardless of where it appears in the chain. For the avoidance of doubt, if a thread has unique documents attached, that thread will be considered inclusive, and shall be produced.

(e) **Global De-duplication.** The Responding Party shall apply automated document deduplication, performed by an e-discovery vendor in a manner consistent with standard practices in the industry, across ESI identified for review and production such that only one copy of any responsive document is produced; however, de-duplication shall be performed only at the document family level such that attachments are not de-duplicated against identical stand-alone versions of such documents and vice-versa.

(f) **Related Metadata.** The Responding Party shall include in its production “Other Custodian” metadata, to the extent available, identifying each Custodian who appears from the available ESI to have maintained a copy of the produced document in his or her files (where such copy was removed from production through the de-duplication process).

(g) **Privilege Redactions.** Where requested documents contain responsive information together with privileged or protected information, the Responding Party, to the extent it can do so without undue burden and while preserving for production the responsive information, shall produce the requested documents with only the privileged or protected information redacted. The words “Redacted – Privileged” shall appear over the redacted portion or portions of such documents. The Responding Party shall log all information redacted on the basis of privilege or protection on its privilege logs as provided in Paragraph 13. The Parties shall not redact responsive documents on the basis of relevance.

(h) **Personal Identifying Information Redactions.** Where requested documents contain responsive information together with personal identifying information that is required to be redacted for filings under Bankruptcy Rule 9037, the Responding Party shall apply any required redactions and produce the requested documents. A black bar shall appear over the redacted portion or portions of such documents. The Responding Party shall not be required to provide a log for documents redacted for personal identifying information.

13. **Privilege Logs.** Within 45 days after substantial completion of a Responding Party's document production has been made with respect to any particular set of requests for production of documents in the Proceedings, the Responding Party shall provide a privilege log in accordance with subparagraphs (a) through (d) below, identifying responsive documents withheld in whole or in part (*i.e.*, redacted) on the basis of privilege. All privilege logs must comply with applicable law, and nothing herein modifies or abridges the obligations thereto with respect to assertions of privilege or requirements for production of (including of detail in) a privilege log.

(a) ***Document-by-Document Privilege Log.*** Except as provided in subparagraph (c) below, the Responding Party shall log documents on a document-by-document basis. The Responding Party shall include in its privilege logs the categories, or fields, of information identified in **Attachment B** hereto, to the extent available, unless agreed otherwise in writing or pursuant to an order of Court.

(b) ***Players' List.*** Within 5 business days after providing each privilege log, the Responding Party will provide a list of all individuals appearing on the privilege log (the "**Players' List**"). The Players' List shall identify each individual by relationship to the Responding Party. The Players' List will identify for each individual during the period of time covered by the entries in the Responding Party's privilege logs at least the following information to the extent applicable and reasonably available: individual's employer or organization, the dates of employment and/or affiliation with Defendants, the relationship (*i.e.*, job titles or roles) to Defendants, e-mail addresses appearing on the privilege log (including any personal e-mail addresses), and usernames appearing on the privilege log. The Players' List will note where information was not reasonably available.

(c) ***Categorical Privilege Logging.*** The Parties shall meet and confer about the potential use of categorical privilege logs. Absent agreement on the use of categorical privilege logs, any Party may seek relief from the Court on this issue.

(d) ***Common Interest Assertions.*** If a Responding Party raises common interest or joint defense as a privilege/protection type on the privilege log, the Responding Party shall describe facts sufficient to make a *prima facie* showing of the applicability of the common interest or joint defense protection, including (as applicable) the identification of: (a) the parties to the common interest or joint defense arrangement; (b) whether it is a written, oral, or implied arrangement; (c) the date the common interest began or the common interest agreement was created and/or effectuated; and (d) the nature of the shared common interest(s) that are subject to the agreement.

(e) ***Post-Filing Documents.*** Consistent and in connection with the discussion regarding applicable date ranges for production of responsive documents, the Requesting Party and Responding Party shall meet and confer regarding the requirement to log privileged documents, communications, or information or trial preparation material or work product generated after the filing of the petitions initiating the Bankruptcy Case (*i.e.*, June 18, 2020). If the Requesting Party and Responding Party are unable to resolve any dispute regarding the need to log such aforementioned privileged documents, communications, or information or trial preparation material or work product, the Requesting Party may seek relief from the Court.

(f) ***Privilege Disputes.*** The Parties shall log documents consistent with any resolution of the privilege disputes set forth in paragraph C.4 of the CMO by order of the Court or agreement of the Parties.

14. **Meet and Confer.** If the Parties have a dispute regarding any discovery issue related to any of the Proceedings, the Parties must meet and confer in a reasonable timeframe prior to filing a discovery-related motion.

15. **Discovery-Related Motions.** All motion papers under Bankruptcy Rules 7026-7037 and 9016 shall be filed and served consistent with the *Order Establishing Certain Notice, Case Management and Administrative Procedures* [Dkt. 123].

16. **Scope of Discovery.** Nothing in this Discovery Plan constitutes an agreement regarding the appropriate substantive scope of discovery, the responsiveness of any document or category thereof, or the relevance or admissibility of any document or category thereof. The Parties reserve all objections as to discoverability, relevance, authenticity, use, and admissibility.

17. **Resolution of Disputes.** The Parties agree to meet and confer in good faith regarding matters related to the production of ESI set forth in this Discovery Plan, the production of ESI not set forth in this Discovery Plan, and the Parties' obligations, if any, in respect of both. If a Responding Party determines that it cannot comply with any material aspect of this Discovery Plan, such Party shall promptly inform the Requesting Party why compliance is impracticable. If the Parties are unable to resolve a dispute concerning interpretation of or compliance with this Discovery Plan or the production of ESI, whether or not pursuant to this Discovery Plan, the Parties shall submit the dispute to the Court for adjudication, *provided that* the Parties have previously met and conferred regarding the dispute. Nothing herein shall affect the Parties' respective burdens of proof or persuasion in connection with any motion or dispute submitted for resolution by the Court.

18. **No Waiver.** Nothing in this Discovery Plan, including any meet-and-confer obligation specified, constitutes a waiver of any privilege or protection available by law, including any Party's attorney-client privilege or the protection afforded to work product and trial

preparation materials. Inadvertent production of information subject to a claim of privilege or protection is addressed in and shall be governed by paragraph M of the *Agreed Protective Order Governing Confidential Information* entered in the Bankruptcy Case [Dkt. 345].

19. **Modifications.** The Parties may, by agreement, modify any provision in this Discovery Plan. If the Parties are unable to agree on a proposed modification, the Party requesting the modification may seek relief from the Court.

The Order has been signed electronically.
The Judge's signature and Court's seal
appear at the top of the Order

United States Bankruptcy Court

ATTACHMENT A

ESI Production Format

The Parties shall produce responsive non-privileged ESI in the following format unless agreed otherwise or pursuant to an order of the Court:

1. **Format.** ESI shall be produced in Concordance, Opticon, or universal format.
2. **TIFFs.** Bates-branded, black and white, Group 4, single page TIFF files at 300 dpi, named according to sequential Bates number will be produced for all ESI documents except spreadsheet file types (*e.g.*, .xls, .xlt, .xml), database file types (*e.g.*, .csv), presentation file types (*e.g.*, .ppt, .pptx, .pptm), and software code file types. Single-page TIFF files will be delivered in unique sequentially numbered folders (*i.e.*, 001, 002, 003) and each folder shall not contain more than 5,000 images. No image file name shall contain spaces or underscore symbols. JPG format may be used for pages that require production of color images. If a document was not produced in color and a Party deems color necessary to understand the document, they may request a color image or native form of that document. All image files shall cross reference to both the log file for Opticon image base (.OPT) and Concordance delimited text file (.DAT). For word-processing file types other than email (*e.g.*, .doc), corresponding TIFF files will reflect any track changes or comments contained in the underlying word-processing documents. If a document is more than one page, the unitization of the document and any attachments and/or affixed note shall be maintained as it existed in the original when creating the image file.
3. **TIFF Reference File.** A log file for Opticon image base (.OPT) that lays out the document unitization of each discrete document will be produced.
4. **Native Format.** Spreadsheet file types, database file types, and presentation file types will be produced in native format. The Parties will provide native files, named according to ProdBegDoc, in a separate folder and provide the path to the native file in the DocLink field of the

.DAT file. Documents produced in native file format shall be produced in the manner such files were maintained electronically in the ordinary course of business. A placeholder TIFF shall be produced indicating the Bates number of the native file and confidentiality designation, if applicable. In the event any document produced in native format is to be used as an exhibit at deposition, trial, or otherwise, the Parties may request that the Party using such exhibit provide the MD5 programmatic hash value of the underlying electronic file from which the exhibit is derived to be provided to all Parties, and such information shall be provided promptly.

5. **Other File Formats.** Non-document files types (*e.g.*, .wav, .mp3, .aiff, .avi, .mov, .mp4) will be produced in native format with accompanying slip sheet.

6. **Request for Natives.** The Parties reserve the right to request native files for individual ESI documents produced in TIFF format.

7. **Redactions to Native Format.** To the extent redactions are necessary in a document to be produced in native form, and the ability to remove such redactions cannot reasonably be applied in native form, the document may be converted to TIFF format, or some comparable image file type, for redaction. To the extent that such conversion erodes the legibility or significant functionality of a document, the Parties agree to meet and confer in good faith to determine how such document can be produced without those limitations, and while still protecting the redacted information.

8. **Hard Copy Documents.** Hard-copy or paper documents shall be converted to Group IV, single page TIFF format image files. All hard copy paper documents shall be logically unitized prior to production. Therefore, when scanning or producing paper documents, distinct documents shall not be merged into a single file or database record, and distinct documents shall

not be split into multiple files or database records. All Parties shall make their reasonable best efforts to unitize documents correctly.

9. **Extracted Text Files.** For each item of ESI, and any hard-copy or paper document that has been converted to TIFF image file, document level TXT files shall be provided in a separate folder and shall have file names that are identical to the first TIFF image file of the corresponding images for a document. Text from native files shall be extracted directly from the native file, except that, where redaction is necessary for a document to be produced in native format, the text file corresponding to such document may be extracted from the OCR of the redacted image file (as opposed to from the native file). Redactions shall be reflected in the multipage TXT file containing OCR for searching purposes.

10. **Unique IDs.** Each TIFF image shall have a unique, sequential Bates number. Each Native file shall have a unique, sequential Bates number applied to the TIFF placeholder indicating that the file has been produced in native format.

11. **Metadata.** Where available, the Parties shall produce the following metadata fields for all ESI and scanned hard-copy or paper files produced, in an ASCII delimited text file (.DAT), using standard Concordance delimiters:

Field Name	Description	Example
ProdBegDoc	Start Bates value.	ABC0500
EndBegDoc	End Bates value.	ABC0500
ProdBegAtt	Start Bates of first attachment.	ABC0501
ProdEndAtt	End Bates of last attachment.	ABC0503
ImageCount	Total pages in document.	1
TO	Email TO recipients.	Smith, Mary; Tjones
FROM	Email sender (author).	Doe, John
CC	Email CC recipients.	Doe, Jane
BCC	Email BCC recipients.	Johnson, Mary
Subject	Email subject line.	Re: Draft Motion to Compel
DateTimeCrt	The date and time the file/email was created.	4/1/2003 8:12:32 AM

Field Name	Description	Example
DateCreated	The date the file/email was created.	4/1/2003
TimeCreated	The time the file/email was created.	8:12:32 AM
DateTimeSent	The date and time the email was sent.	4/1/2003 8:12:32 AM
DateSent	The date the email was sent.	4/1/2003
TimeSent	The time the email was sent.	8:12:32 AM
DateTimeRcv	The date and time the email was received.	4/1/2003 8:12:32 AM
DateReceived	The date the email was received.	4/1/2003
TimeReceived	The time the email was received.	8:12:32 AM
DateTimeMod	The date and time the file/email was last saved.	4/1/2003 8:12:32 AM
DateModified	The date the file/email was last saved.	4/1/2003
TimeModified	The time the file/email was last saved.	8:11:32 AM
FileExt	Extension of the file.	.doc
Filename	The name of the file.	Filename.doc
FileSize	The size of the file or message in bytes.	802
DocType	The file type determined by the file signature (Excel, Word etc.).	Microsoft Office Word
MD5HASH		
Custodian	The Custodian associated with the item.	Doe, John
Other Custodians	All custodians who retained a duplicative copy of the file in their ESI files, to the extent that copy was removed by de-duplication.	Doe, John; Doe, Jane; Smith, Mary
DocLink	The relative path to the associated native file.	\\export\00000000000003E8.xls
ExtractText	The extracted text for an item. This field will populate with the path to the text file location and the text will be delivered separately.	“This is sample text. It can be extracted from a document or email or can be generated when converting to TIFF format.”
Privilege Redaction	For documents containing both privileged and non-privileged information with only the privileged information redacted	Privilege Redaction

Field Name	Description	Example
Confidentiality	Confidentiality designation pursuant to protective order	Professional Eyes Only; Confidential; None

ATTACHMENT B

Privilege Log Requirements

The Responding Party (or Responding Parties) shall provide the following information, where available, for each document withheld on the basis of privilege or protection from disclosure and for all information withheld on the basis of privilege or protection from disclosure by use of redactions, to the extent that providing such information would not waive any privilege or protection:¹⁶

Preferred Field Name	Description	Example
Parent/Child	Identifying whether a document is the parent document or child document in a family.	Parent; Child
ProdBegDoc	Start Bates number for redacted documents.	[Bates Prefix]_0000500
EndAtt ID or ProdEndAtt	End identifier value of last attachment. Bates number for redacted documents.	[Bates Prefix]_0000503
DocType	The file type (Excel, Word, PowerPoint, Email, PDF, etc.).	Microsoft Office Word
Author/From	Who drafted or sent the document or message, as applicable.	Doe, Jane
TO	Email TO recipients and those who received the document, as applicable.	Smith, Mary; Doe, Jane
FROM	Email sender (author).	Doe, John
CC	Email CC recipients.	Jones, Thomas
BCC	Email BCC recipients.	Johnson, Mary

¹⁶ In addition to the information set out in the table that follows, the privilege log will include a column that will state whether a document is a parent, child, or standalone document. The log also will include a column that identifies each logged document's "Attachment Index." Together, the information in these two columns will tell the Requesting Party where to locate on the privilege log the family members, if any, of a listed document that are themselves privileged. For logged documents that have non-privileged family members which the Debtors have produced, the Debtors will provide, either in another column on the log or in an accompanying list, the starting Bates number of at least one such produced family member. Using that Bates number, the Requesting Party may identify all additional produced family members.

Preferred Field Name	Description	Example
Date	The date and time the file was created, or if an email the date and time the email was received by the custodian.	4/1/2003 8:12:32 AM
Subject / Document Title	For emails, the subject line of the email including “re” or “fwd” as applicable, subject to redaction if it includes privileged or otherwise protected material; For documents other than emails, the title of the document including the file type signature, subject to redaction if it includes privileged or otherwise protected material.	Re: Settlement Conditions Fwd: Settlement Considerations Motion to Compel Draft 2.2.2022.docx Re: [REDACTED]
Emails	Number of emails in chain	3
Pages	Number of pages of information withheld for withheld documents (as	20
Custodian	The specific Custodian from which the document was collected.	Doe, John
Other Custodians	All Custodians who retained a duplicative copy of the file in their ESI files, to the extent known.	Doe, John; Doe, Jane; Smith, Mary
Redacted or Withheld	Identifying whether a document was withheld in its entirety or produced with redactions.	Produced with Redactions or Withheld Entirely
Privilege / Protection Type	Privilege and/or protection asserted.	Attorney-Client Privilege, Trial Preparation Material

Preferred Field Name	Description	Example
Description	Brief explanation of basis for withholding or redacting document with enough information for Requesting Party to assess claimed basis in accordance with Fourth Circuit law.	
Identification of Attorney(s) on E-mail	The specific attorney(s) or non-attorney legal personnel (at the direction of an attorney) appearing in a list of recipients will be specifically identified using an asterisk.	Doe, John*