

In the United States Court of Federal Claims

Filed: July 3, 2018

IN RE DOWNSTREAM ADDICKS
AND BARKER (TEXAS) FLOOD-
CONTROL RESERVOIRS

Sub-Master Docket No. 17-9002L

THIS DOCUMENT APPLIES TO:

ALL DOWNSTREAM CASES

SCHEDULING ORDER

On June 29, 2018, the court convened a telephone status conference to address unresolved discovery disputes concerning the timely disclosure of Electronically Stored Information (“ESI”) and the scope of 30(b)(6) depositions. After hearing argument from both parties, the court directed the parties to confer outside the presence of the court, and, if a resolution could not be reached, to file status reports and proposed orders for the court’s consideration by Monday, July 2, 2018.

On July 2, 2018, Plaintiffs filed a Status Report that included a proposal “that would accelerate [the] Government’s production of specific [ESI] so that depositions of certain Government employees can proceed in mid-July.” ECF No. 104 at 1. Specifically, Plaintiffs proposed:

1. Accelerating production of ESI for Government employees Robert Thomas, Jeffery East, and Richard Long, so that Plaintiffs receive the production by July 6, 2018.
2. Rescheduling the 30(b)(6) Robert Thomas deposition from . . . July 12-13, 2018 to July 16-17[, 2018,] so that Plaintiffs have the opportunity to adequately review the Government’s ESI production. Proceeding with Richard Long’s deposition as scheduled for July 18, 2018. And, rescheduling the 30(b)(6) deposition of Jeffery East that is presently scheduled for July 16, 2018 to a mutually agreeable date.

ECF No. 104 at 1.

On that same day, the Government filed a Status Report that proposed “to continue [the Government’s] ongoing document collection[,] pursuant to the parties’ agreed search terms with prioritization of custodians based on deposition date, and with a rolling production of e-mail-related ESI to begin no later than July 13[, 2018] and to end no later than August 10, 2018.” ECF No. 105 at 1. The Government’s July 2, 2018 Status Report also proposed that the Government would “produce ESI from hard drive and network drive locations, and any outstanding non-ESI documents, if any, on a rolling basis to end no later than September 14, 2018.” ECF No. 105 at 1–2.

On that same day, the court convened a telephone status conference, during which the Government confirmed that all ESI will be produced to Plaintiffs by September 14, 2018. Accordingly, the court directed the parties to file a joint status report proposing a schedule governing ESI production. On that same day, the parties filed a Joint Status Report proposing a schedule governing ESI production. ECF No. 107.

After considering the parties' argument at the July 2, 2018 telephone conference and the July 2, 2018 Joint Status Report, the court has determined that the following schedule will govern ESI production in this case:

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| August 10, 2018 | The Government will complete production of e-mail-related ESI from accounts used by Robert Thomas, Richard Long, Gary Chow, Michael Kauffman, and COL Lars Zetterstrom. |
| August 24, 2018 | The Government will complete production of additional ESI stored or maintained on computers or hard drives used by Mr. Thomas, Mr. Long, Mr. Chow, Mr. Kauffman, and COL Zetterstrom, and e-mail-related ESI from accounts used by Jeffery East, Edmund Russo, Kirk Buchanan, and Aaron Byrd. |
| September 14, 2018 | The Government will complete production of additional ESI stored or maintained on network computers or locations identified by Mr. Long, Mr. Thomas, Mr. Chow, Mr. Kauffman, and COL Zetterstrom. |

These deadlines concern production of only those documents responsive to Requests for Production served before June 22, 2018, consistent with the search strings the Government updated and transmitted on July 1, 2018. In addition, ESI production concerning Mr. East is limited to that e-mail-related ESI responsive to Downstream Plaintiffs' Requests for Production 86 and 87, served on May 14, 2018.

This Scheduling Order in no way limits Plaintiffs' ability to seek additional discovery as the court deems appropriate, including text messages, as part of the ESI discovery or otherwise. It also does not reflect the Government's agreement to any additional discovery contemplated. It also does not relieve the Government of its obligation to respond to discovery requests outside of ESI production. This Scheduling Order does not supersede the court's July 2, 2018 Scheduling Order.

IT IS SO ORDERED.

s/ Susan G. Braden
Susan G. Braden
Chief Judge