



e-Discovery Dilemmas

American Inns of Court
Pittsburgh Chapter
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Presented by:

Valerie Antonette, Emily Ayoub, Hon. Nora Barry Fischer, Matthew D. Gailey,
James Gordon, John A. Halley, Gregory H. Teufel, and Samuel Yamron

E-Discovery Dilemmas

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DISCOVERY OF ELECTRONICALLY STORED INFORMATION

A. Duty to Investigate. Prior to a Fed. R. Civ. P. 26(f) conference, counsel shall:

1. Investigate the client's Electronically Stored Information ("ESI"), such as email, electronic documents, and metadata, and including computer based and other digital systems, in order to understand how such ESI is stored; how it has been or can be preserved, accessed, retrieved, and produced; and any other issues to be discussed at the Fed. R. Civ. P. 26(f) conference, including the issues in LCvR 26.2.C.

2. Identify a person or persons with knowledge about the client's ESI, with the ability to facilitate, through counsel, preservation and discovery of ESI.

B. Designation of Resource Person. In order to facilitate communication and cooperation between the parties and the Court, each party shall, if deemed necessary by agreement under LCvR 26.2.C.7 or by the Court, designate a single resource person through whom all issues relating to the preservation and production of ESI should be addressed.

C. Duty to Meet and Confer. At the Fed. R. Civ. P. 26(f) conference, and upon a later request for discovery of ESI, counsel shall meet and confer, and attempt to agree, on the discovery of ESI, including:

1. The steps the parties have taken to preserve ESI;
2. The scope of ESI discovery and an ESI search protocol, including methods to filter the data, such as application of search terms or date ranges;
3. Procedures to deal with inadvertent production of privileged information under LCvR 16.1.D;
4. Accessibility of ESI, including but not limited to the accessibility of back-up, deleted, archival, or historic legacy data;
5. The media, format and procedures for preserving and producing ESI, including the media, format, and procedures for the Fed. R. Civ. P. 26(a)(1) initial disclosures;
6. Allocation of costs of preservation, production, and restoration (if possible and/or necessary) of any ESI;
7. The need for a designated resource person, as discussed in Section B above; and
8. Any other issues related to ESI.

Comment (____ 2008)

1. LCvR 26.2.A.1 imposes a duty for counsel to discuss ESI with their client. It does not, in any way, alter a party's and counsel's obligations under law to preserve evidence, including ESI, when litigation is reasonably anticipated. Nothing in this section precludes a party from moving the Court for an appropriate preservation order.

2. Regarding LCvR 26.2.A.2, the person may be an individual party, a party's employee, a third-party, or a party's attorney.
3. Regarding LCvR 26.2.B, the resource person must have sufficient familiarity with the party's ESI to meaningfully discuss technical issues and provide reliable information relative to the preservation and production of ESI. The resource person is permitted to, and, in fact, encouraged to, involve persons with technical expertise in these discussions, including the client, client's employee, or a third party. The resource person may be an individual party, a party's employee, a third party, or a party's attorney, and may be the same person referenced in LCvR 26.2.A.2.
4. Regarding LCvR 26.2.C, the parties have an ongoing obligation to supplement their disclosures. See Fed. R. Civ. P. 26.
5. Regarding LCvR 26.2.C.1, it may be necessary to segregate ESI in order to properly preserve it.
6. Regarding LCvR 26.2.C.4, "accessibility" is used in the same manner as Fed. R. Civ. P. 26(b)(2)(B) ("A party need not provide discovery of [ESI] from sources that the party identifies as not reasonably accessible because of undue burden or cost.").
7. Regarding LCvR 26.2.C.5, the media, format, and procedures for preserving ESI may differ from the media, format, and procedures for producing ESI. For example, a party may preserve ESI in native format, and the parties may agree on production in a different format. See Fed. R. Civ. P. 34(b).

LCvR 26.3 CERTIFICATION BY SERVING OR FILING ELECTRONIC DOCUMENTS

Unless actual notice to the contrary is given in writing by the serving party, service under these Local Civil Rules of any electronic document containing an electronic representation of the original signature of any person shall constitute a certification by the server that as of the time of service he or she is in possession of the signer's actual original signature on a hard copy of the electronic document served. Service by a party or any counsel under LCvRs 33, 34 or 36 of responses to interrogatories, requests for production or requests for admission ("Written Discovery") shall constitute a certification by the server of such responses that no alteration has been made to the Written Discovery as originally served upon such party or counsel. The filing with the Court for any purpose by any party or counsel of Written Discovery or responses thereto served in electronic form pursuant to LCvRs 33, 34 and 36 shall constitute the certification by such party or counsel that the content of such electronic document so filed is the same as when it was served or received by the filing party.

Rule 26(f) Conference e-Discovery Topics

- The document retention system and Litigation Hold presently in place and being implemented.
- The costs and burdens associated with anticipated production of ESI and the Litigation Hold and the desired limitations on the scope of both, along with the justifications for those limitations; including any ESI that is regarded as not reasonably accessible.
- The nature and location of the relevant ESI in the client's possession, custody, or control (data map).
- The most reasonable formats for production of various forms of ESI.
- The anticipated and desired process for gathering, reviewing, and producing ESI, and associated costs, burdens, and timelines.
- What types of ESI are desired from the other side and the preferred formats: key dates, key players, key data, and key words.

e-Discovery Timeframes

- Local Rules, Court orders, and party agreements can vary these deadlines;
- Rule 26(a) initial disclosures are due within 14 days after the Rule 26(f) conference;
- Rule 26(f) conference must occur at least 21 days before the Rule 16 scheduling conference with the Court;
- No specific deadline for the Rule 16 scheduling conference, but the pretrial scheduling order is required to be issued within 90 days after the entry of appearance of a defendant and within 120 days after service of the complaint;
- The "appearance of a defendant" typically occurs within 20 days after service of the complaint;
- Courts frequently set the Rule 16 scheduling conference earlier than required and like to allow at least 10 days after the scheduling conference to prepare the scheduling order;
- Thus, the Rule 26(f) conference typically will need to occur within 60-80 days after the service of the complaint.

SAMPLE EVIDENCE PRESERVATION EMAIL TO CLIENT

Client:

In preparation for our upcoming meeting, and in follow up to our discussions on [date], this is the email I promised you that you can forward to the relevant employees concerning preservation of evidence related to the ABC Company v. XYZ Company case. If you have any questions, comments, or desired changes to the below before forwarding, please let me know. **Delete this paragraph before forwarding as well.** Hopefully I can also relay and explain this information in person to at least the key people while I am there at our upcoming meeting.

We have the obligation to preserve any evidence potentially relevant to the ABC Company v. XYZ Company case. Evidence may include just about anything, such as physical objects (such as _____ in this case), voice mail messages, videos, data and documents stored on a computer, traditional paper correspondence, documents, and notes. We should at this point consider what is potentially relevant very broadly; it should include any communications with ABC Company people, or any documents, items or communications in any way related to the contract with ABC Company; related to _____; related to _____; related to _____; or related to the damages suffered by XYZ Company because of ABC's breach of the contract or ABC's alleged damages caused by XYZ Company's alleged breach of contract or otherwise. Because _____ is relevant to the ABC Company v. XYZ Company case, relevant evidence may include anything related to _____, though ABC may not be entitled to copies of documents related to XYZ's other customers, or we may

be entitled to remove customer identifying information before such documents are produced.

I understand that there is no document retention policy in place that needs to be suspended. If there were a policy in place to routinely destroy documents of a certain age, etc., or if such a policy is later adopted, we would need to suspend that policy, at least with respect to documents that may be relevant to the ABC Company v. XYZ Company case.

We have already begun the process of gathering emails from key persons involved in the case, but we will also need to make sure we have from them also any other types of documents or evidence that they have or of which they are aware, such as Word documents, PowerPoint presentations, or spreadsheets that are on the file server or mail server or stored on their local hard drives that may not have also been included with the emails that have been provided. Based on discussions with opposing counsel, we will need to image the local hard drives of the key persons, who I presently have listed as:

[list names]

We also need to copy the oldest backup we have of the file server and mail server. I understand that the backups for each day, going five days into the past, are kept on five separate hard drives. We will need to image the one containing the oldest backup. The local hard drive images and the backup image are solely for preservation at this point and the data on them may never be subject to any actual discovery or production in the case. Any production of data from them would be limited to nonprivileged information that is relevant or that is likely to lead to the discovery of information relevant to the case. Similar preservation will be occurring also at ABC, principally to guard against the loss

of data that may be relevant, either deliberately or by accident. If John the IT Guy is capable of imaging the hard drives at issue, we can discuss having him do that, or if not we can have an outside vendor take care of that. We may prefer to use an outside service for that because otherwise we increase the risk of needing John the IT Guy to testify to authenticate the files.

In addition we need to reach out to any and all other former employees or third parties in our control or who are likely to be cooperative (such as accountants, independent contractors, vendors, etc.) that might have any evidence relevant to the ABC Company v. XYZ Company case. Each person gathering electronic evidence such as emails and Word documents from his or her individual directories on the file server and mail server and/or from any files stored on the hard drive of their desktops should be instructed to simply move those relevant files to a special folder or folders and to identify the relevant folders for John the IT Guy to copy and provide the files to me. They should be instructed to also look through any "deleted items" such as emails in a "deleted" folder, to find any relevant evidence that may have been deleted. The search for relevant evidence should not be limited to desktop computers and the centralized file server and mail server, but also should include any laptops, portable devices, and home computers that may contain relevant evidence.

As for physical items and paper documents, originals should be flagged or otherwise identified for review by an attorney and potential copying. We will probably have an outside service do the copying if it is voluminous. The search for physical items and documents should not only include those items stored at XYZ Company offices, but

anywhere relevant physical items and documents might be stored (such as in a warehouse or if employees ever store files at home).

We are required to preserve and produce not only final versions of documents, but also any drafts that may exist, or any nonidentical copies (such as copies with handwritten notes on them).

For ex employees, we will need to search through their physical files and the electronic files in their directories on the files server and on their local hard drives, hopefully with some input from the ex employees to the extent they are available and willing to provide some guidance in locating those files.

Questions concerning this evidence gathering process should be directed to me. This process should occur without delay, preferably over the next two weeks. In addition, each person asked to look for relevant evidence should document what they did to gather evidence in the form of an email to me. Those emails should:

1. Confirm that each person searched both his or her physical files and electronic files located on the file server and mail server and also any electronic files located on his or her local hard drives on his or her desktop computer, and anywhere else relevant evidence might be stored.
2. Confirm what they found; whether they found any physical documents or items so I can follow up regarding copying those, and whether they found any electronic files that they provided to John the IT Guy for forwarding to me. If a person is confirming with respect to the files of an ex employee, I will need separate confirmation for each ex employee's files.

We should follow up with anyone not providing these confirmations within the next two weeks, until they provide such confirmations. This may sound like a long involved process but should actually be fairly straightforward and quick for most of the employees. Please let me know if you believe that the process will result in significant burden or expense, as we may be able to alter or limit the process in light of such burdens or expenses.

All relevant persons should be instructed not to discuss the ABC Company v. XYZ Company case, or the underlying work, except in the presence of the attorneys for XYZ Company. Any discussions related to the case other than privileged discussions with counsel are discoverable. For example, in a deposition, anyone could be asked whether they discussed this case with any of his or her fellow employees and could be asked to recount his or her memory of what was discussed.

All relevant persons should also be instructed to stop creating any new documents, correspondence, emails, etc. in any way related to the case. Any evidence created in the future would need to be gathered and produced in discovery. Obviously it is not desirable to repeatedly go through this process.

Of course, all relevant persons should be instructed not to destroy any evidence related to the ABC Company v. XYZ Company case. If there is any doubt about whether something is relevant or needs to be retained, please retain it and feel free to contact me with any questions. If you are aware of any relevant evidence that has already been destroyed or deleted, either by accident or on purpose, please let me know immediately.

Everyone receiving this email should be instructed that this email is a
CONFIDENTIAL ATTORNEY CLIENT PRIVILEGED communication that should be
kept confidential and not disclosed to anyone not employed by XYZ Company.

Each person receiving this email should immediately confirm that they have
received it and read it once they have read it. Please do so now. Thank you.

Best regards,

Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

FORM TECH CONCRETE FORMS, INC.))	
Plaintiff,))	Civil Action No. 07-1365
vs.))	Judge Donetta W. Ambrose
JAMES SWEENEY))	
Defendant.))	

Fed. R. Civ. P. 26(f) REPORT OF THE PARTIES

Counsel for the parties and unrepresented parties shall confer regarding the matters identified herein and prepare a signed report in the following form to be filed at least 21 days before the Initial LR 16.1 Scheduling Conference or at such other time as ordered by the court. This report form may be downloaded from the Court’s web site as a word-processing document and the information filled in as requested on the downloaded form. The dates to be provided in the report are suggested dates and may be accepted or modified by the Court.

1. Identification of counsel and unrepresented parties.

Representing Plaintiff Form Tech Concrete, Inc.:

Thomas H. May
Two PPG Place – Suite 400
Pittsburgh, PA 15222-5402
Phone: (412) 392-5437
Fax: (412) 392-5372
tmay@ dmclaw.com

Mark R. Filipp
Kemp Klein Law Firm
201 W. Big Beaver Road – Suite 600
Troy, MI 48084
Phone: (248) 528-1111, Ext. 580
Fax: (248) 528-5129
Mark.filipp@kkue.com

Representing Defendant James Sweeney:

Robert T. Slovak
Douglas W. Lukasik
Gardere Wynne Sewell LLP
1601 Elm Street – Suite 3000
Dallas, Texas 75201
Phone: (214) 999-4334
Fax: (214) 999-4667
rslovak@gardere.com
dlukasik@gardere.com

Cynthia E. Kernick
Reed Smith LLP
435 Sixth Avenue
Pittsburgh, PA 15219
Phone: (412) 288-4176
Fax: (412) 288-3063
ckernick@reedsmith.com

2. Set forth the general nature of the case:

This is a claim for misappropriation of trade secrets, breach of duty of loyalty and tortious interference with contract. Defendant denies all of Plaintiff's claims, and Defendant may also seek leave to add counterclaims against Plaintiff for defamation.

3. Date Rule 26(f) Conference was held, the identification of those participating therein and the identification of any party who may not yet have been served or entered an appearance as of the date of said Conference:

The Rule 26(f) Conference was held on November 26, 2007. Participating were Thomas May and Robert Slovak.

4. Date of Rule 16 Initial Scheduling Conference as scheduled by the Court:

The Rule 16 Initial Scheduling Conference is scheduled for December 4, 2007 at 9:30 a.m.

5. Identify any party who has filed or anticipates filing a dispositive motion pursuant to Fed. R. Civ. P. 12 and the date(s) by which any such anticipated motion may be filed:

Neither party anticipates a Rule 12(b)(6) motion.

6. Designate the specific Alternative Dispute Resolution (ADR) process the parties

have discussed and selected, if any, and specify the anticipated time frame for completion of the ADR process. Set forth any other information the parties wish to communicate to the court regarding the ADR designation:

See the ADR selection form attached. The parties agree that the ADR process will be completed within 60 days of December 4, 2007.

- 7. Set forth any change that any party proposes to be made in the timing, form or requirements of Fed. R. Civ. P. Rule 26(a) disclosures, whether such change is opposed by any other party, whether any party has filed a motion seeking such change and whether any such motion has been ruled on by the Court:**

No changes are anticipated at this time.

- 8. Subjects on which fact discovery may be needed.** (By executing this report, no party shall be deemed to (1) have waived the right to conduct discovery on subjects not listed herein or (2) be required to first seek the permission of the Court to conduct discovery with regard to subjects not listed herein):

Plaintiff anticipates seeking discovery in the form of written discovery and depositions in support of his claims including but not limited to the deposition of Defendant, James Sweeney. In addition, depositions of officials of Doka USA, Plaintiff Sweeney's current employer, are anticipated.

Defendant anticipates that it will serve requests for production and interrogatories and will take depositions of, at least, (a) officials of Plaintiff (including Mark Gordon, a corporate representative and Mr. Sweeney's successor), (b) representatives of Washington Group, and (c) other third parties who are former employees of Form Tech.

- 9. Set forth suggested dates for the following**

The parties elect to schedule a Post-Discovery Status Conference.

- a. Date(s) on which disclosures required by Fed. R. Civ. P. 26(a) have been or will be made:**

January 4, 2008

- b. Date by which any additional parties shall be joined:**

February 4, 2008

- c. Date by which the pleadings shall be amended:**

March 4, 2008

- d. **Date by which fact discovery should be completed:**
May 5, 2008
 - e. **If the parties agree that discovery should be conducted in phases or limited to or focused on particular issues, identify the proposed phases or issues and the dates by which discovery as to each phase or issue should be completed:**
N/A
 - f. **Date by which plaintiff's expert reports should be filed:**
N/A
 - g. **Date by which depositions of plaintiff's expert(s) should be completed:**
N/A
 - h. **Date by which defendant's expert reports should be filed:**
N/A
 - i. **Date by which depositions of defendant's expert(s) should be completed:**
N/A
 - j. **Date by which third party expert's reports should be filed:**
N/A
 - k. **Date by which depositions of third party's expert(s) should be completed:**
N/A
10. **If the parties agree that changes should be made to the limitations on discovery imposed by the Federal Rules of Civil Procedure or Local Rule or that any other limitations should be imposed on discovery, set forth such changes or limitations:**
No changes are suggested at this time.
11. **Set forth whether the parties have considered the need for special deadlines, procedures or orders of court dealing with discovery of electronically-stored information (electronic discovery), including the need for the preservation of discoverable information and the protection of the right to assert privilege(s) after the production of privileged information and if so, set forth the results of such consideration:**

At this time, the parties do not believe that any special deadlines or procedures dealing with discovery of electronically-stored information are required. The parties have preliminarily agreed that should electronically stored information be found to exist in this case, it will be produced via OCR, single-page .tif images on CD-Rom.

12. **Set forth whether the parties have elected to schedule the Post-Discovery Status Conference following the completion of Fact Discovery or Expert Discovery; in either event the parties shall be prepared at the Post-Discovery Status Conference to discuss and/or schedule the following:**

The parties have elected to schedule a post discovery status conference following the completion of fact discovery and will be prepared at that time to discuss the following:

- a. **Settlement and/or transfer to an ADR procedure;**
- b. **Dates for the filing of expert reports and the completion of expert discovery as itemized in sub-paragraphs 9.f. through 9.k., above, if the parties elected to defer such discovery until after the Post-Discovery Status Conference;**
- c. **Dates by which dispositive motions pursuant to Fed. R. Civ. P. 56, replies thereto and responses to replies should be filed;**
- d. **Dates by which parties' pre-trial statements should be filed;**
- e. **Dates by which *in limine* and *Daubert* motions and responses thereto should be filed;**
- f. **Dates on which motions *in limine* and *Daubert* motions shall be heard;**
- g. **Dates proposed for final pre-trial conference;**
- h. **Presumptive and final trial dates.**

13. **Set forth any other order(s) that the parties agree should be entered by the court pursuant to Fed. R. Civ. P. 16(b) or 26(c):**

None at this time.

14. **Set forth whether the parties anticipate that the court may have to appoint a special master to deal with any matter and if so, specify the proposed role of any such master and any special qualifications that such master may require to perform such role:**

It is not anticipated that the court would need a special master at this time.

15. **If the parties have failed to agree with regard to any subject for which a report is required as set forth above, except for proposed dates required in paragraph 9, above, briefly set forth the position of each party with regard to each matter on which agreement has not been reached:**

At this time the parties are in agreement on the matters required to be addressed in the Rule 26(f) report.

16. **Set forth whether the parties have considered the possibility of settlement of the action and describe briefly the nature of that consideration:**

Preliminary settlement discussions have occurred but have not advanced to the point where there is any progress to report.

Respectfully submitted,

By: /s/Thomas H. May
Thomas H. May
Two PPG Place – Suite 400
Pittsburgh, PA 15222-5402
Phone: (412) 392-5437
Fax: (412) 392-5372
tmay@dmclaw.com
Counsel for Plaintiff,
Form Tech

By: /s/Robert T. Slovak
Robert T. Slovak
Gardere Wynne Sewell LLP
1601 Elm Street – Suite 3000
Dallas, Texas 75201
Phone: (214) 999-4334
Fax: (214) 999-4667
rslovak@gardere.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

TEGG CORPORATION,	:	No. 2:08-CV-00435
	:	
Plaintiff,	:	Judge Nora Barry Fischer
	:	
v.	:	
	:	
BECKSTROM ELECTRIC CO. and EXTENSIA TECHNOLOGIES, INC.	:	Filed Electronically
	:	
Defendants.	:	Jury Trial Demanded

Fed. R. Civ. P. 26(f) REPORT OF THE PARTIES

Counsel have conferred and jointly submit the following case information and proposed dates for case management:

I. Identification of counsel and unrepresented parties.

Counsel for TEGG Corporation	Counsel for Beckstrom Electric Co.	Counsel for Extensia Technologies, Inc.
Jay D. Marinstein Pa. ID No. 53163 Gerald A. Cook Pa. ID No. 29274 John R. Gotaskie, Jr. Pa. ID No. 81143 FOX ROTHSCHILD LLP 625 Liberty Avenue, 29 th Floor Pittsburgh, PA 15222 Telephone: (412) 391-1334 Facsimile: (412) 391-6984 jmarinstein@foxrothschild.com gcook@foxrothschild.com jgotaskie@foxrothschild.com	Joshua S. Bish Pa. ID No. 84208 REED SMITH LLP 435 Sixth Avenue Pittsburgh, PA 15219-1886 Telephone: (412) 288-3131 Facsimile: (412) 288-3063 jbish@reedsmith.com Mark W. Wasserman Richard D. Kelley REED SMITH LLP 3110 Fairview Park Drive, Suite 1400 Falls Church, VA 22042 Telephone: (703) 641-4200 Facsimile: (703) 641-4340 mwasserman@reedsmith.com rkelley@reedsmith.com	David A. Strassburger Pa. ID No. 76027 STRASSBURGER, MCKENNA, GUTNICK & GEFSKY Four Gateway Center, Suite 2200 444 Liberty Avenue Pittsburgh, PA 15222 Telephone: (412) 281-5243 Facsimile: (412) 281-8263 dstrassburger@smgglaw.com Robert J. Cunningham Maureen E. Carr REES BROOME, PC 8133 Leesburg Pike, 9 th Floor Vienna, VA 22182 Telephone: (703) 790-1911 Facsimile: (703) 848-2530 rcunningham@reesbroome.com mcarr@reesbroome.com

2. Set forth the general nature of the case (patent, civil rights, anti-trust, class action, etc):

TEGG Corporation (“TEGG”) has filed this action for, *inter alia*, copyright infringement, breach of contract, conversion, tortious interference, and declaratory and injunctive relief. As set forth in the Second Amended Complaint, TEGG alleges, *inter alia*, that Defendants Beckstrom Electric Co. (“Beckstrom”) and Extensia Technologies, Inc. (“Extensia”) have willfully and unlawfully infringed upon Plaintiff TEGG’s TEGGTask software application, including its copyrights in the TEGGTask program, the TEGGTask database, and the images on the screen generated by the TEGGTask software application, in the creation of a software program called Electrical Maintenance Express or EMX (the “EMX Software”).

Defendants Beckstrom and Extensia strenuously deny each of TEGG’s claims. Defendants assert that at no time did either Beckstrom or Extensia infringe upon any of TEGG’s alleged copyrights, nor are they liable for TEGG’s state law claims. Defendants have notified TEGG that they believe TEGG’s claims are without merit or justification.

Contrary to Defendants’ notice, TEGG is of the opinion that its claims are meritorious, and are supported by undisputed facts and application of controlling Third Circuit law.

3. Date Rule 26(f) Conference was held, the identification of those participating therein and the identification of any party who may not yet have been served or entered an appearance as of the date of said Conference.

The Rule 26(f) Conference was held on July 28, 2008 via teleconference. The following attorneys attended the conference: John Gotaskie for TEGG; Richard Kelley for Beckstrom, and Robert Cunningham and Maureen Carr for Extensia.

4. Date of Rule 16 Initial Scheduling Conference as scheduled by the Court:

September 17, 2008

5. Identify any party who has filed or anticipates filing a dispositive motion pursuant to Fed. R. Civ. P. 12 and the date(s) by which any such anticipated motion may be filed:

Defendants anticipate filing a motion to dismiss no later than August 18, 2008.

6. Designate the specific Alternative Dispute Resolution (ADR) process the parties have discussed and selected and specify the anticipated time frame for completion of the ADR process. Set forth any other information the parties wish to communicate to the court regarding the ADR designation.

The parties have decided to privately mediate this matter and anticipate completing the ADR process within 60 days of the Rule 16 Initial Scheduling Conference. The private mediator will be Manny D. Pokotilow of Caesar, Rivise, Bernstein, Cohen & Pokotilow in Philadelphia, Pennsylvania.

7. **Set forth any change that any party proposes to be made in the timing, form or requirements of Fed. R. Civ. P. Rule 26(a) disclosures, whether such change is opposed by any other party, whether any party has filed a motion seeking such change and whether any such motion has been ruled on by the Court:**

The parties have not proposed any changes to the timing, form or requirements of Federal Rule of Civil Procedure 26(a) disclosures. Rule 26(a) disclosures will be exchanged by the parties on August 13, 2008.

8. **Subjects on which fact discovery may be needed.** (By executing this report, no party shall be deemed to (1) have waived the right to conduct discovery on subjects not listed herein, or (2) be required to first seek the permission of the Court to conduct discovery with regard to subjects not listed herein):

Plaintiff intends to take fact discovery on the following subjects:

- a) Copies of each and every version of the EMX Software and Database issued by Extensia and/or used by Beckstrom;
- b) the creation and development of the EMX Software and database, including any Application Requirement document, general product design specification document, and/or detailed design specifications for the EMX Software;
- c) any timelines established for the development of the EMX Software, including any user requirements analysis performed;
- d) the software configuration management or SCM files associated with the EMX Software and its development;
- e) all database, software and/or other programs that are not owned or authored by Beckstrom and/or Extensia but which are utilized by them in conjunction and/or association with the EMX Software;
- f) any business and/or competitive research performed in advance of initiating development of the EMX Software, including any analysis of the potential market for such software;
- g) the rollout of the EMX Software, including without limitation any rollout plan, training manual, or training plan;
- h) the relationship between Beckstrom, Extensia, and/or XpertTool Software, including any and all agreements and/or communications regarding EMX Software development and marketing;
- i) any marketing, solicitations, and/or sales of the EMX Software;
- j) Beckstrom's violations of its confidentiality obligations;
- k) all allegations and/or assertions contained within any of Beckstrom and Extensia's motions and affidavits filed in this matter, including but not limited to Beckstrom's admission that it provided Extensia with a copy of the copyrighted and confidential TEGGTask database; and
- l) allegations and claims asserted in TEGG's Second Amended Complaint.

Defendants Beckstrom and Extensia intend to take fact discovery on the following subjects:

- a) The authorship and development of all TEGG software, including any and all manuals and/or other documentary or supplementary materials associated therewith;
- b) all TEGG filings with the United States Copyright Office, including but not limited to the applications and registration referenced in the Second Amended Complaint;
- c) all database, software and/or other programs that are not owned or authored by TEGG but which are utilized by TEGG in conjunction and/or association with the TEGG software;
- d) the relationship of TEGG to each of its franchisees;
- e) the relationship of TEGG to any and all of TEGG's franchisees' customers;
- f) all allegations and/or assertions contained within any of TEGG's complaints filed in this matter, including TEGG's Second Amended Complaint;
- g) all allegations and/or assertions contained within any of TEGG's motions filed in this matter, including but not limited to TEGG's several motions for preliminary injunction and expedited discovery;
- h) TEGG's investigation undertaken before filing the initial Complaint and associated motions; and
- i) TEGG's investigation undertaken since the filing of the initial papers in this matter, up to and including the filing of its Second Amended Complaint.

9. Set forth dates for the following:

- a. **Date(s) on which disclosures required by Fed. R. Civ. P. 26(a) have been or will be made:**

August 13, 2008

- b. **Date by which any additional parties shall be joined:**

November 3, 2008

- c. **Date by which the pleadings shall be amended:**

November 3, 2008

- d. **Date by which fact discovery should be completed:**

December 31, 2008

- e. **If the parties agree that discovery should be conducted in phases or limited to or focused on particular issues, identify the proposed phases or issues and the dates by which discovery as to each phase should be completed:**

Not applicable

f. Date by which plaintiff's expert reports should be filed:

January 30, 2009

g. Date by which depositions of plaintiff's expert(s) should be completed:

April 3, 2009

h. Date by which defendants' expert reports should be filed:

March 2, 2009

i. Date by which depositions of defendants' experts should be completed:

April 3, 2009

j. Date by which third party's expert reports should be filed:

Not applicable

k. Date by which depositions of third party's expert(s) should be completed:

Not applicable

10. If the parties agree that changes should be made to the limitations on discovery imposed by the Federal Rules of Civil Procedure or Local Rule or that any other limitations should be imposed on discovery, set forth such changes or limitations.

No changes, except that there is one disagreement, as set forth in the parties reply to question number 15.

11. Set forth whether the parties have considered the need for special deadlines, procedures, or orders of court dealing with discovery of electronically-stored information (electronic discovery), including the need for the preservation of discoverable information and the protection of the right to assert privilege(s) after the production of privileged information and if so, set forth the results of such consideration:

All Parties have agreed to preserve all electronically-stored information, including but not limited to company e-mails and all prior versions of the TEGGTask Software and EMX Software.

The parties discussed and have agreed to enter into a Stipulated Protective Order and Confidentiality Agreement concerning the handling of confidential information and the protection of privileged information. Once the parties have agreed upon the terms of the proposed Order, it will be submitted to the Court for approval.

