

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CHRISTINE VARAD,	)	
	)	C.A. No. 06 CA 11370 MLW
Plaintiff,	)	
v.	)	
	)	
REED ELSEVIER INCORPORATED,	)	
d/b/a LexisNexis, Lexis Nexis Risk & Information	)	
Analytics Group, Inc.,	)	
	)	
Defendant.	)	

**DEFENDANT’S OPPOSITION TO PLAINTIFF’S MOTION  
TO COMPEL PRODUCTION OF DOCUMENTS**

Defendant Reed Elsevier Inc. (“Reed”) hereby opposes Christine Varad’s (“Varad” or “Plaintiff”) LR D. Mass. 37.1 Motion To Compel Production of Documents Pursuant To Fed. R. Civ. P. 34 and 37(a) (“Motion”). Plaintiff’s Motion must be denied because Reed has produced all responsive documents that are either relevant or might lead to the discovery of admissible evidence. Contrary to Plaintiff’s contention, Reed has not limited its production only to documents concerning Gall & Gall Company. In fact, Reed has produced documents from separate legal entities – even though it is not required to do so. Despite these facts, Plaintiff insists on pursuing a fishing expedition that would encompass, for example, contracts with uninvolved credit reporting agencies, and countless “agreements, releases, licenses, forms” that have nothing to do with this case. Furthermore, Plaintiff demands every piece of paper that concerns her with regard to Reed and any of its subsidiaries, affiliates or divisions. These unbounded requests would include, for example, copies of any decisions reported in Lexis in which Varad was a party and newspaper articles concerning Varad. Such documents are neither relevant nor likely to lead to the discovery of admissible evidence. The discovery rules do not

permit the open-ended discovery sought by Varad. Accordingly, Plaintiff's Motion is properly denied.

### **INTRODUCTION**

Plaintiff commenced this lawsuit in August 2006, claiming that Reed d/b/a LexisNexis Corporation, Lexis Nexis Accurint, had failed to provide her access to a "file" with regard to information that she alleges was provided about her to Gall & Gall Company, Inc. ("Gall & Gall"). Varad claims that the information provided by Reed was false and resulted in lost employment opportunities. Varad also alleges that Reed provided the same false information to others, including the Massachusetts and Maine Board of Bar Examiners, which she claims resulted in her inability to practice law.

Reed, however, has not provided *any* information to Gall & Gall concerning Varad. As Reed has consistently maintained throughout this litigation, its subsidiary, Seisint, Inc. ("Seisint"), a separate legal entity from Reed, provided the address information at issue to Gall & Gall. Further, all of the correspondence regarding Varad's request for a "file" was between Varad and Seisint – not Reed. Notwithstanding these facts, Varad continues to pursue Reed, making no distinction between separate legal entities. Most recently, Varad amended her complaint to change the name of the defendant to "Reed d/b/a/ LexisNexis, Lexis Nexis Risk & Information Analytics Group, Inc." ("LexisNexis Risk"). LexisNexis Risk, however, is also a separate legal entity from Reed.

Even in light of the separate legal existence of these entities, Reed, in good faith, has produced documents concerning Varad from both Seisint and LexisNexis Risk, including documents concerning the searches run on Varad in the databases of these entities from 2001

through present.<sup>1</sup> In fact, as those documents show, only three entities performed searches on Varad. Varad now moves to compel the search results from these entities (among other documents), even though she was informed during the discovery conference that search results are not kept, and therefore Reed does not have these documents to produce. In fact, the one “Flat Rate Comprehensive Report” that Varad refers to on page 2 of her Motion was not a report disseminated to any third parties, but rather was an internal report run by Seisint after receiving Varad’s correspondence concerning the address information at issue that was provided by Seisint’s Accurint database. Accordingly, there are no search results to produce. Any further documents sought by Varad are overbroad and not relevant to this lawsuit, and Reed should not be compelled to canvass literally millions of documents in every database of any Reed affiliated entity.

Moreover, as an additional reason why Plaintiff’s Motion must be denied, Reed, in good faith, requested that Plaintiff narrow certain of the requests that are overbroad on their face. Plaintiff refused to do so.

With regard to the specific requests, Reed states as follows:

**REQUEST NO. 1.**

All documents, including but not limited to the contents of any “file,” concerning Christine Varad in the possession, custody or control of defendant Reed Elsevier, Inc., d.b.a. LexisNexis, LexisNexis Risk and Information Analytics Group, and Seisint, Inc., including but not limited to, any other sub-entity of Reed Elsevier, Inc. known by any other fictitious business or trade name.

**RESPONSE NO. 1.**

Subject to and without waiver of the general objections set forth above, Reed will produce non-privileged, responsive documents of Seisint in its possession, custody or control.

---

<sup>1</sup> In doing so, Reed expressly reserved all rights and arguments with regard to its production of documents from these separate legal entities.

**ARGUMENT:**

Reed produced documents responsive to this request concerning Varad and the allegations in the Complaint, and produced such documents as kept in the ordinary course of its business. To the extent Plaintiff is seeking the specific documents responsive to this request, the following documents “concern” Varad and are therefore responsive: D00033-D00038, D00050-D00061, D00063-D00070, D00075-D000103.

Reed has not produced documents that do not concern the allegations in the Complaint. For example, documents in Reed’s research databases, such as case opinions from lawsuits that Varad was a party to, or newspaper articles, would be responsive to this request but are not related to the allegations in the complaint (other than, with regard to Varad’s lawsuit against the Chairman of the Massachusetts Board of Bar Examiners, to confirm the fact that Varad has never passed the Massachusetts bar exam and therefore her inability to practice law in this jurisdiction has nothing to do with Reed). Reed has not undertaken the task of searching through its research databases to find every piece of paper concerning Varad. Reed has, however, produced documents from Seisint and LexisNexis Risk concerning the searches that were requested on Varad beginning in 2001.<sup>2</sup> Nor is Reed withholding any documents in response to any of the requests on the grounds of privilege that pre-date the Complaint.

**REQUEST NO. 2.**

All documents concerning the policies and routine practices of Reed Elsevier, Inc., LexisNexis, LexisNexis Risk and Information Analytics Group and Seisint, Inc. taken to verify the integrity of data and information to be made available to others.

**RESPONSE NO. 2.**

Reed objects to this request on the grounds that it seeks information that is not relevant or reasonably likely to lead to the discovery of admissible evidence, as Reed was not the entity that

---

<sup>2</sup> Varad testified that she graduated from law school in 2001. Accordingly, documents were produced from 2001 through the present.

provided information concerning the Plaintiff. Reed further objects to this request as it is overbroad and unduly burdensome, in that it seeks all documents concerning policies of Reed and Seisint, and that it is vague in that it fails to define “routine practices” and seeks documents “to verify the integrity of data.”

### **ARGUMENT:**

In her Motion, Plaintiff claims that the policies of Reed are relevant to her defamation claim. Plaintiff’s defamation claim rests on her allegation that incorrect information was provided to Gall & Gall. See Second Amended Complaint ¶¶ 11 & 12. Plaintiff’s complaint contains no other specific allegations of defamatory information. See id. Since Reed did not provide any information to Gall & Gall concerning Varad, Reed’s policies are not relevant to Varad’s defamation claim. Seisint, however, did provide information in its Accurint database to Gall & Gall, and Reed has confirmed that Seisint does not have a policy regarding the verification of the accuracy of information in its Accurint database.

### **REQUEST NO. 3.**

All documents and communications concerning each and every database, person, or other source accessed and/or utilized by defendant Reed Elsevier, Inc., LexisNexis, LexisNexis Risk and Information Analytics Group, and Seisint, Inc. to generate information concerning Christine Varad, including but not limited to, a record of each and every inquiry relating to a credit transaction of any kind, the name and address of each and every data source accessed for such information and the names and addresses of information and data recipients concerning each and every inquiry request.

### **RESPONSE NO. 3.**

Reed objects to this request on the grounds that it seeks information that is not relevant or reasonably likely to lead to the discovery of admissible evidence, as Reed was not the entity that provided information concerning the Plaintiff. Reed further objects to this request on the grounds that it is overbroad and unduly burdensome, and that it is vague and ambiguous, in that it seeks documents used to “generate information.”

### **ARGUMENT:**

Although Reed objected to this request and despite the fact that the request is patently overbroad, Reed has produced documents responsive to this request. Reed produced documents

concerning searches run on Varad from the Seisint and LexisNexis Risk databases from 2001 through present, which documents include information identifying the entities that performed the searches on Varad [bates numbered D00100-D00103]. Reed further produced a “company information” screen shot for each entity that performed a search on Varad [D00104-D00106]. Further, Reed produced a report indicating the source of address information it has on Varad [D00050-D00059]. No credit inquiries were performed on Varad during this timeframe, and thus no documents concerning credit transactions exist. The production of any further source information is improper, as such information is neither relevant nor likely to lead to the discovery of admissible evidence. In addition, production of that irrelevant information would be unduly burdensome, as the source information for these databases comes from a myriad of public and private sources, and it would be a monumental task to determine each and every source that has ever provided information concerning Varad. Reed produced documents indicating the source of the allegedly incorrect address information [D00050-D00059], which is the basis for Plaintiff’s Complaint.

#### **REQUEST NO. 4.**

All data and communications concerning Varad obtained by Reed Elsevier, Inc., LexisNexis, LexisNexis Risk and Information Analytics Group and Seisint, Inc. from web site advertised “sub second access” point information and data sources concerning Varad’s historical addresses, associates, relatives, business affiliates and assets, including but not limited to, a record of each and every inquiry relating to a credit transaction of any kind, the name and address of each and every data source accessed for such information and the names and addresses of the recipients of each and every inquiry request.

#### **RESPONSE NO. 4.**

Reed objects to this request on the grounds that it is vague and ambiguous, as it is unclear what Plaintiff means by documents allegedly obtained by Reed from “web site advertised ‘sub second access.’”

**ARGUMENT:**

Reed objected to this request because it is ambiguous. Although Plaintiff claims that the terms she utilized in the request are “published by Reed on the Internet,” nowhere in the request (or in her Motion) does she identify the websites to which she refers. Despite this fact and as stated in response to Request No. 3, Reed produced documents concerning searches run on Varad from the Seisint and LexisNexis Risk databases from 2001 through present, which documents include information identifying the entities that performed the searches on Varad [bates numbered D00100-D00103]. Reed further produced a “company information” screen shot for each entity that performed a search on Varad {D00104-D00106}. Further, Reed produced a report indicating the source of address information it has on Varad [D00050-D00059]. No credit inquiries were performed on Varad during this timeframe, and thus no documents concerning credit transactions exist. The production of any further source information is improper, as such information is neither relevant nor likely to lead to the discovery of admissible evidence. In addition, production of that irrelevant information would be unduly burdensome, as the source information for these databases comes from a myriad of public and private sources, and it would be a monumental task to determine each and every source that has ever provided information concerning Varad. Reed produced documents indicating the source of the allegedly incorrect address information [D00050-D00059], which is the basis for Plaintiff’s Complaint.

**REQUEST NO. 5 & 6**

All documents and communications, including, but not limited to any contracts, between defendant Reed Elsevier, Inc., LexisNexis, LexisNexis Risk and Information Analytics Group, and Seisint, Inc. and the State of Massachusetts.

All documents and communications, including but not limited to any contracts, between defendant Reed Elsevier, Inc., LexisNexis, LexisNexis Risk and Information Analytics Group, and Seisint, Inc. and the State of Maine.



**RESPONSES NOS. 5 & 6.**

Reed objects to this request on the grounds that it seeks information that is not relevant or reasonably likely to lead to the discovery of admissible evidence. Reed further objects to his request on the grounds that it is overbroad, in that it is not limited to the allegations in the Complaint.

**ARGUMENT:**

Reed objected to these request because they are overbroad, in that they seek all documents concerning every contract that Reed, Seisint and LexisNexis Risk has with the states of Massachusetts and Maine. This would include all documents concerning contract negotiations, correspondence etc. with Massachusetts and Maine. Such documents are simply not relevant to this lawsuit nor would their production lead to the discovery of admissible evidence. The utter lack of relevance is buttressed by the fact that Reed did not provide the information at issue.

In her Motion, Plaintiff argues that contracts with the Massachusetts and Maine Board of Bar Examiners are relevant to her defamation claim. Reed has therefore produced Seisint's contract with the Maine Board of Bar Examiners [bates numbered D00107-D00120].<sup>3</sup> Reed produced the contract between Seisint and the Maine Board of Bar Examiners notwithstanding the fact that Varad has taken the position that she has no obligation to produce publicly available documents.<sup>4</sup>

**REQUEST NO. 7.**

All documents and communications concerning Part B of "Defendant's Initial Disclosures, Documents that Reed May Use to Support Its Claim or Defenses."

---

<sup>3</sup> Reed is not aware of any contract between Seisint and the Massachusetts Board of Bar Examiners.

<sup>4</sup> Varad has refused to produce any documents concerning her applications and correspondence with the Massachusetts and Maine Board of Bar Examiners, or her bar results, claiming that such documents are available publicly. Varad testified at her deposition that she has never passed the bar exam in Maine or Massachusetts, and has not sat for the bar exam in any other jurisdiction.



**RESPONSE NO. 7.**

Subject to and without waiver of the general objections, Reed will produce non-privileged, responsive documents of Seisint in its possession, custody or control.

**ARGUMENT:**

Plaintiff argues that Reed has not identified which documents are responsive to this request. Reed complied with Fed. R. Civ. P. 34 by producing its documents as kept in the ordinary course of its business. In any event, Reed states that all documents produced by Reed may be used to support its claims or defenses. Further, as stated above, Reed is not claiming privilege with regard to any documents that pre-date the Complaint.

**REQUEST NO. 8.**

All documents and communications concerning Gall & Gall, including but not limited to any contracts, between Reed Elsevier, Inc., LexisNexis, LexisNexis Risk and Information Analytics Group, and Seisint, Inc. and Gall & Gall and any “audits” of Gall & Gall.

**RESPONSE NO. 8.**

Reed objects to this request to the extent that it is overbroad and that it seeks information that is not relevant or reasonably likely to lead to the discovery of admissible evidence, in that it seeks documents that pertain to individuals not relevant to this litigation. Subject to and without waiver of the foregoing or general objections, Reed will produce non-privileged, responsive documents of Seisint concerning Gall & Gall and Ms. Varad and/or the allegations in the Complaint that are in its possession, custody or control.

**ARGUMENT:**

Reed produced documents responsive to this request that pertain to Varad. Although Reed produced documents as kept in the ordinary course of its business, in response to Varad’s request, the following documents concern Gall & Gall: D00038-D00049, D00060-D00103, D00106-D00121.

**REQUEST NO. 9.**

All documents and communications, including but not limited to contracts between defendant Reed Elsevier, Inc., LexisNexis, LexisNexis Risk and Information Analytics Group, and Seisint, Inc. and Trans Union, Equifax, Experian and/or ChoicePoint.

**RESPONSE NO. 9.**

Reed objects to this request on the grounds that it is overbroad and that it seeks documents that are not relevant or reasonably likely to lead to the discovery of admissible evidence.

**ARGUMENT**

Plaintiff's request seeks every piece of paper between Reed, Seisint and LexisNexis Risk and any of the four major credit reporting agencies (Trans Union, Equifax, Experian and ChoicePoint). The request is patently overbroad, as it is not limited in any way – to either documents concerning the allegations in the Complaint, Varad or in some other fashion. During the discovery conference, counsel for Reed requested that Plaintiff narrow her request, but she refused to do so. Reed's objection is proper. Furthermore, as noted above, Reed has produced documents that indicate the source of the allegedly incorrect address information – the only specific claim in Varad's Amended Complaint.

**REQUEST NO. 10.**

All documents and communications concerning claims contained in the affidavits of John M. Byrne concerning plaintiff's complaint, including but not limited to, all documents and communications concerning his employment, employment title and employment related responsibilities with defendant Reed Elsevier, Inc., LexisNexis, LexisNexis Risk and Information Analytics Group, and Seisint, Inc.

**RESPONSE NO. 10.**

Reed objects to this request on the grounds that it is overbroad and that it seeks documents not relevant or reasonably likely to lead to the discovery of admissible evidence. Subject to and without waiver of the foregoing objections, Reed states that it will produce documents sufficient to show Mr. Byrne's job responsibilities with Seisint. Mr. Byrne is not an employee of Reed.

**ARGUMENT**

Plaintiff's request is overbroad, as it seeks all documents concerning Mr. Byrne's employment. Mr. Byrne is an employee of Seisint, and accordingly, Reed produced a document summarizing his job responsibilities with Seisint [bates-labeled D00121]. With regard to all documents concerning the claims in Mr. Byrne's affidavits, the request is overbroad and unduly burdensome. For example, Mr. Byrne attests that Reed is a separate legal entity from Seisint. All documents that indicate Reed's corporate existence, however, are voluminous and overbroad. During the discovery conference, Plaintiff was asked if she would narrow the request, but she refused to do so. Reed's objection is proper. Moreover, Reed has already produced documents that were referred to in Mr. Byrne's Second Affidavit [bates-labeled D00066-D00077].

**REQUEST NO. 11.**

All documents and communications concerning Reed Elsevier, Inc., LexisNexis, LexisNexis Risk and Information Analytics Group and Seisint, Inc. and customer service agreements, releases, licenses, forms to be utilized concerning customer requests for data and information contained in the databases of Reed Elsevier, Inc., LexisNexis, LexisNexis Risk and Information Analytics Group and Seisint, Inc.

**RESPONSE NO. 11.**

Reed objects to this request on the grounds that it is overbroad, unduly burdensome, and that it seeks documents not relevant or reasonably likely to lead to the discovery of admissible evidence.

**ARGUMENT**

Plaintiff's request is overbroad in that it seeks every document or communication between Reed, Seisint and LexisNexis Risk and its customers. The request is in no way limited to the allegations in the Complaint, Varad or in any other respect. During the discovery conference, Plaintiff was asked if she would narrow the request, but she refused to do so. Reed's

objection is proper. Moreover, Reed has already produced “screen shots” of the customers that sought information regarding Varad [bates-labeled D00104-D00106].

### **CONCLUSION**

In good faith and without obligation to do so, Reed has produced documents in the possession of separate legal entities in response to Plaintiff’s requests. Reed’s production encompasses not just the allegations in the Complaint, but all searches run on Varad in the Seisint and LexisNexis Risk databases from 2001 through present. Despite Reed’s good faith efforts, Plaintiff continues to press for documents wholly unrelated to this litigation, which would result in substantial burden to Reed. For all the reasons herein, Plaintiff’s Motion must be denied.

Respectfully submitted,

REED ELSEVIER INC.  
By its attorneys,

/s/ Kristin M. Cataldo  
T. Christopher Donnelly (BBO #129930)  
Kristin M. Cataldo (BBO #654033)  
Donnelly, Conroy & Gelhaar, LLP  
One Beacon Street, 33<sup>rd</sup> Floor  
Boston, Massachusetts 02108  
(617) 720-2880

Dated: June 4, 2007

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 4<sup>th</sup> day of June, 2007, I caused a copy of the foregoing to be served on the following by regular mail to Christine M. Varad, P.O. Box 583, Milton, MA 02186.

/s/ Kristin M. Cataldo  
Kristin M. Cataldo