

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Robert Rockwood and
Roxana Marchosky

v.

Civil No. 08-cv-168-PB

SKF USA Inc.

ORDER

Defendant moves to compel production of documents. (Document no. 53).

Discussion

Defendant seeks to compel documents responsive to its First Set of Document

Requests which:

- a. may be on the hard drive of the laptop computers in plaintiffs' possession which were purchased by Environamics; and
- b. if they still exist are in the possession of a third party, Dickow Pumps, Inc.

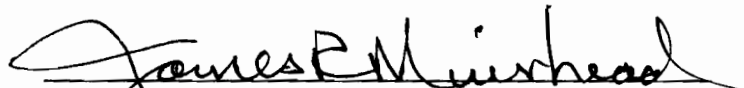
Plaintiffs say they are broke.

At this point it is unnecessary to decide whether plaintiffs breached a duty to preserve documents. If defendant wants the documents sought by its document request, and which are in the hands of Dickow, it is ordered to subpoena them from Dickow. I will not order plaintiffs to produce that over which they have no custody or control. The motion is denied as to those documents, but without prejudice to later seeking costs attributable to any failure to preserve or any spoliation claims provided the subpoena is issued.

The motion is granted as to the laptops. They are to be physically produced so that the hard drive may be mirror-imaged within seven (7) days.

The motion (document no. 53) is granted in part and denied in part.

SO ORDERED.



James R. Muirhead
United States Magistrate Judge

Dated: November 5, 2009

cc: James W. Donchess, Esq.
Roxana Marchosky, Esq.
Deborah Ann Notinger, Esq.
Steven M. Notinger, Esq.
David Richman, Esq.
Gregory A. Moffett, Esq.
Matthew R. Williams, Esq.
Peter G. Callaghan, Esq.