**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

W HOLDING COMPANY, INC., *et al.*,

      Plaintiffs,

      v.

CHARTIS INSURANCE COMPANY OF
PUERTO RICO,

      Defendant;

FEDERAL DEPOSIT INSURANCE
CORPORATION, *as receiver of Westernbank
Puerto Rico*,

      Plaintiff-Intervenor,

      v.

FRANK STIPES GARCIA, *et al.*,

      Cross-Claim Defendants,

CHARTIS INSURANCE COMPANY OF
PUERTO RICO,

      Previously-Joined Defendant, and

MARLENE CRUZ CABALLERO, *et al.*,

      Additional Defendants.

Civil No. 11-2271 (GAG/BJM)

**ORDER GOVERNING DISCOVERY OF ELECTRONICALLY STORED
INFORMATION FROM FDIC-R**

I.   Preamble and Definitions

For the reasons stated in the accompanying opinion, the parties to this action are hereby
ordered to comply with the following as a default protocol for obtaining certain electronically
stored information ("ESI") from the Federal Deposit Insurance Corporation in its capacity as
receiver of Westernbank Puerto Rico ("FDIC-R"). FDIC-R and any other party may privately

agree to alter these terms as permitted by Fed. R. Civ. P. 29(b). In the absence of agreement, however, this order will control until it is amended or vacated by the court.

The following terms are given special meanings:

Native File means ESI in the electronic format of the application in which such ESI is normally created, viewed, and/or modified. Native Files are a subset of ESI.

Metadata means (i) information embedded in a Native File that is not ordinarily viewable or printable from the application that generated, edited, or modified such Native File; and (ii) information generated automatically by the operation of a computer or other information technology system when a Native File is created, modified, transmitted, deleted, or otherwise manipulated by a user of such system. Metadata is a subset of ESI.

Static Image means a representation of ESI produced by converting a Native File into a standard image format capable of being viewed and printed on standard computer systems. In the absence of agreement of the Parties or order of Court, a Static Image should be provided in Tagged Image File Format (TIFF, or .TIF files). If a TIFF or .TIF file cannot be created, then the Static Image should be provided in Portable Document Format (PDF). If Load Files were created in the process of converting Native Files to Static Images, or if Load Files may be created without undue burden or cost, Load Files shall be provided as set forth in Part III.D.

Load File means the file necessary to load data into a reviewable database. A load file can, for example, specify what individual pages belong together as a document, what attachments are included with a document, where a document begins and ends, and what metadata is associated with a document.

DMS Data means ESI in the following "DMS iConnect" databases identified by FDIC-R:

WT ADP PC Payroll Employee Master 44
WT AFS ImageVision Additional Images (Checks/Returns/Lockbox) 55
WT AFS ImageVision Check Images 46_1
WT AFS ImageVision Check Images 46_2
WT AFS Return and Lockbox Check Images 54
WT Data Select CLCS Customer Master 15
WT Data Select CLCS Loan Master 16
WT Data Select CLCS Loan Participation Master 17

WT Data Select CLCS Loan Transaction History 18
WT Email Database
WT Email Database 2
WT Fiserv Signature Customer Master 1
WT Fiserv Signature Deposit Master 6
WT Fiserv Signature Deposit Master Additional Details 7
WT Fiserv Signature Deposit Transaction History 8_1
WT Fiserv Signature Deposit Transaction History 8_2
WT Fiserv Signature GL Master 13
WT Fiserv Signature GL Transaction History 14
WT Fiserv Signature Loan Collateral 5
WT Fiserv Signature Loan Master 2
WT Fiserv Signature Loan Master Additional 52
WT Fiserv Signature Loan Part Tran History 53
WT Fiserv Signature Loan Participation 3
WT Fiserv Signature Loan Transaction History 4
WT Fiserv Signature Safety Deposit Box Master 11
WT Fiserv Signature Safety Deposit Box Transaction History 12
WT Fiserv Signature Time Deposit Master 9
WT Fiserv Signature Time Deposit Transaction History 10
WT Forensic Data 2
WT Forensic Data Email
WT Forensic File Inventories
WT GFI MailArchiver Email
WT GFI MailArchiver Email Part2
WT INQ MortgageWare Loan Applications 19
WT INQ MortgageWare Loan Applications Custom Fields 1 20
WT INQ MortgageWare Loan Applications Custom Fields 2 21
WT Investigations Master Inventory
WT Metavante Metaviewer Reports Deposit Loan Wires others 45
WT Microsoft Access AP Transaction History 38
WT Microsoft Access AP Vendor Master 37
WT Microsoft File Shares and Miscellaneous Documents 51
WT Scanned Documents
WT Scanned Documents 2
WT TPG Derivative Genius CUSIP Buckets 42
WT TPG Derivative Genius General Ledger 43
WT TPG Derivative Genius Investment Portfolio 39
WT TPG Derivative Genius Investment Positions 41
WT TPG Derivative Genius Investor Instruments 40
WT TSC Trust Account Management 31
WT TSC Trust Account Plan Amendments 35
WT TSC Trust Account Plan Master 30
WT TSC Trust Account Plan Status 33
WT TSC Trust Account Withdrawal Transactions 34
WT TSC Trust Financial Reports (AP others) 36
WT TSC Trustee Payouts 32

WT T-Sys DXR Reports Statements Charge-offs others 50
WT William Stuckey NT-ABL Asset Customer Credit Lines 23
WT William Stuckey NT-ABL Asset Customer Master 22
WT William Stuckey NT-ABL Asset Loan Daily Status 28
WT William Stuckey NT-ABL Asset Loan Interest Rates 25
WT William Stuckey NT-ABL Asset Loan Limits 26
WT William Stuckey NT-ABL Asset Loan Master 24
WT William Stuckey NT-ABL Asset Loan Reduction Schedule 27
WT William Stuckey NT-ABL Asset Loan Transaction History 29

(See Docket No. 391-1, p. 12-13).

Westernbank/Inyx Data means the Inyx bankruptcy ESI identified by FDIC-R from the

following sources and with the following Bates codes:

Bates Code	Description
AOL0000	Barry Woods' (counsel for Westernbank) AOL account emails
AUDIT	
BAW000000	Barry Woods, counsel for Westernbank
BERK00000000	Berkowitz & Lago CPA, Inyx's public auditor
Deloitte-	Deloitte & Touche, Westernbank's auditor
EFILE	4,537 Documents from dataroom used for Project Michael research
E&Y	Ernst & Young, Westernbank's auditor
GREEN_PR	
INYX_WB	Inyx hardcopy and electronic production
INYX_WB0000000	E&Y UK Supplemental Production 1/14/08 of Inyx Documents
JR	Joseph Rose, former corporate accountant for Inyx
KACH	Jack Kachkar, CEO and Chairman of Inyx
LAURUS-INYX	
W000	Weinberg & Company, Accountants for Jack Kachkar in Miami
WBEM00000000	Westernbank Electronic Production
WBPR00000000	Westernbank hard copy and electronic production
ZINN_00000	David Zinn, CFO for Westernbank located in Miami

(See Docket No. 391-1, p. 14).

II.   Initial Disclosures and Requests for Production

Absent contrary agreement, FDIC-R must produce the documents identified in its Rule

26 initial disclosures, as well as the Westernbank/Inyx Data, in the way specified in part III. To

the extent FDIC-R is obligated to supplement its initial disclosures, it is likewise obligated to

supplement production under this part.

To obtain production from searchable DMS Data, the requestor must propose initial parameters for a query, such as search terms, databases, and fields of metadata to be searched. FDIC-R and the requestor must reasonably cooperate to reach an agreement on a query that will satisfy the request. FDIC-R's cooperation must include, but is not limited to, offering hit reports and suggesting alternative queries that better meet the request. The requestor's cooperation must include, but is not limited to, identifying specific complaints about queries and suggesting alternatives. FDIC-R will then produce all non-privileged data resulting from the agreed-upon query, subject to the terms in the following sections.

Requests for production of any other data—including non-searchable DMS Data, physical documents, and other sources of ESI—are not governed by this part.

III.   Production Method

A.   Form of Production for Email

All electronic email from Windows-Based ESI ("WESI") shall be produced as Static Images complete with full text extracts and the following fields of metadata, to the extent the metadata is available:

1.   Custodian (Name of Custodian from which file is being produced);
2.   Other Custodians (Name(s) of custodian(s) who had exact copy of message before de-duplication);
3.   Author (FROM field);
4.   CC;
5.   BCC;
6.   Recipient (TO field);
7.   MD5 Hash Value or Equivalent;
8.   Date Sent (Date the email was sent);
9.   Date Received (Date the file was received);
10.   Time Sent (Time the email was received);
11.   Time Received (Time the email was received);
12.   File Type (Application used to create the file);
13.   Page Count;
14.   File Ext (Extension for the file);
15.   PST Name;
16.   Body Text (Extracted text);
17.   Bates Begin (Beginning Production Number);
18.   Bates End (Ending Production Number);
19.   Attach Begin (Beginning Attachment Range Number);

20.   Attach End (Ending Attachment Range Number).

Electronic mail shall be produced along with attachments to the extent the message and/or any attachment is responsive, relevant and not privileged. As a general matter, subject to specific review, a message and its attachments(s) shall not be withheld from production based on the fact that one or more attachments are privileged, irrelevant or non-responsive. To the extent the message and/or one or more attachments is privileged or non-responsive, the responsive, non-privileged documents shall be produced along with placeholders indicating whether the individual record was withheld as non-responsive or privileged.

B.   Form of Production for Other WESI

All other WESI (including attachments to electronic mail) shall be produced as Static Images complete with full text extracts and the following fields of metadata, to the extent the metadata is available:

1.   Custodian (Name of Custodian from which file is being produced);
2.   Other Custodians (Name(s) of custodian(s) who had exact copy of file before de-duplication);
3.   Author;
4.   Doc Title (Title of file from properties);
5.   Doc Subject (Subject of file from properties);
6.   Created Date (Date the file was created);
7.   Created Time (Time the file was created);
8.   Last Modified Date (Date the file was last modified);
9.   Last Modified Time (Time the file was last modified);
10.   Last Saved By (Name of user who last saved the file);
11.   File Type (Application used to create the file);
12.   Doc Type;
13.   Page Count;
14.   File Ext (Extension for the file);
15.   Path (Full path of the original location where the file was located);
16.   MD5 Hash (MD5 hash value of the original native file);
17.   Body Text (OCR for paper data or Extracted text for all ESI);
18.   Bates Begin (Beginning Production Number);
19.   Bates End (Ending Production Number);
20.   Attach Begin (Beginning Attachment Range Number);
21.   Attach End (Ending Attachment Range Number).

C.   Form of Production for Spreadsheets

ESI in the form of spreadsheets shall be produced in native format. There will be a static image placeholder within the final Bates-numbered set, stating that the document will be produced natively. The file name of the placeholder will be changed to reflect the static image's Bates number for cross-reference purposes. These documents will be accompanied with the appropriate load files indicating a cross reference to the Bates numbered Static Image.

D.   Load Files

All WESI shall be produced along with an IPRO, Opticon, or Summation DII load file indicating Bates numbers and document breaks. Metadata shall be produced in Concordance DAT file format, DII format and summary text file for Summation, or XML format and extracted full text shall be provided in TXT file format at the document level. Non-Windows-Based Applications and Data shall be subject to the same production requirements to the extent technically and legally feasible.

E.   Data Culling

The following file types shall be processed for production:

Extension	File Type Description
cab	Windows cabinet (data will be extracted and container file discarded)
csv	Comma Separated Values file
dat	Data file
dbx	Outlook Express E-mail Folder
doc	Microsoft Word
docx	Microsoft Word 2007
doom	Microsoft Word Template
dxl	Lotus Notes Message File
efax	Electronic fax documents
email	Outlook Express E-mail Message
eml	Outlook Express Saved Mail Messages files
emlx	Apple Mail email message
htm	Web based Hypertext Markup Language File
html	Web based Hypertext Markup Language File
ics	Calendar items in Apple, Mozilla and Google
key	Apple Keynote presentation
maildb	MSN Mail file
mbox	Unix MAC file mailbox
mdb	Microsoft Access Database

mht	Multipurpose Internet Mail Extension
mim	Multipurpose Internet Mail Extension
mlm	Novell GroupWise saved email message file
mpp	Microsoft Project
msg	Outlook Mail Message
nsf	Lotus Notes (data will be extracted and container file discarded)
ost	Microsoft Outlook Offline folder file (data will be converted, extracted, and container file discarded)
pbx	Outlook Express message folder file
pdf	Portable Document Format File
pop	PopMail messages file
pps	Microsoft PowerPoint Show file
ppt	Microsoft PowerPoint file
pptx	Microsoft PowerPoint 2007
pst	Microsoft Outlook personal folder file (data will be extracted and container file discarded)
rar	WinRAR compressed archive (data will be extracted and container file discarded)
rtf	Rich Text Format
tif	Tagged Image Format

F.   Duplicates

To avoid the production of more than one copy of a particular unique item, the Parties shall use industry standard MD5 or SHA-1 hash values within (1) all emails identified for production, and (2) all loose files identified for production. The Parties will not de-duplicate attachments to emails against loose files.

G.   Other Methods to Streamline Discovery

The Parties shall meet and confer in good faith about any other technology or process that a producing party proposes to use to streamline the culling, review and production of ESI (e.g., email threading, near de-duplication, technology assisted review). The Parties shall make reasonable good faith efforts to resolve any objections to the use of such technology or process before seeking relief from the court.

H.   Production Media

Documents shall be produced on external hard drives or readily accessible computer or electronic media, e.g., CDs or DVDs, or by FTP upload ("Production Media"). All Production Media should have the following four directories: (1) IMAGES for the images; (2) DATA for the

.dat and .opt files; (3) TEXT for the extracted text/OCR files; and (4) NATIVES for the native Excel files. The Production Media shall identify: (a) the producing party's name; (b) the production date; and (c) the Bates Number range of the materials contained on the Production Media.

I.   Color

Where the original of a produced document is in color, and color is material to the interpretation of the document, the receiving party may request that the document be produced in color (whether electronic or paper).

J.   Physical Documents

Documents that exist solely in physical hard-copy format shall be converted and produced following the same protocols outlined above. The metadata shall indicate document breaks and identify the custodian from whom the document was collected. The ".tiff" files shall be subject to an Optical Character Recognition ("OCR") process.

K.   Inaccessible Data

The Parties need not collect documents stored on disaster recovery backup tapes unless a showing of specific need is made.

IV.   Labeling

To the extent that the production reasonably preserves the organization by which Westernbank's documents were "kept in the usual course of business," FDIC-R may furnish production without further review or labeling. Otherwise, FDIC-R must organize and label its production to correspond to the categories in the request. See Fed. R. Civ. P. 34(b)(2)(E)(i).

V.   Claw-Back

Producing any ESI or documents for inspection shall be without prejudice to any claim that said ESI or documents are protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or basis for withholding production. Upon demand, the receiving party shall return any such inadvertently produced ESI or documents subject to a privilege claim, including all copies thereof, to the producing party. To the extent that the parties

disagree over the application of these principles to any such production or challenge the privileged nature of such material, the receiving party shall not make use of the material in question until the matter is resolved by the Court.

This order does not reduce the claw-back protections afforded by any other rule, such as Fed. R. Evid. 502 or Fed R. Civ. P. 26(b)(5)(B).

VI. Conclusion

This order does not alter the obligation under Local Rule 26(b) to make a "reasonable and good faith effort to reach an agreement" before bringing discovery disputes to the court. Moreover, the parties and their attorneys can expect stiff monetary and other sanctions to be imposed against the losing party in any discovery-related motions. See Fed. R. Civ. P. 37.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 3rd day of April, 2013.

S/Bruce J. McGiverin
BRUCE J. McGIVERIN
United States Magistrate Judge