

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA,**

Plaintiff,

v.

SMALL SMILES HOLDING CO., LLC,

Defendant.

v.

**AFFINITY INSURANCE SERVICES,
INC.,**

Third-Party Defendant

Civil Action No. 3:10-cv-00743

**Chief Judge Todd J. Campbell
Magistrate Judge Juliet Griffin**

DECLARATION OF STEPHEN P. ADAMS

STEPHEN P. ADAMS declares that the following is true and correct under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am Director, Hosting Services, for ZANTAZ, Inc., a member of the Autonomy group of companies ("Autonomy"), working primarily in Autonomy's Boston, Massachusetts offices. I have a Bachelor of Science degree, in Mathematics with Computer Science, from the Massachusetts Institute of Technology; and a Master's in Business Administration from Brigham Young University. This declaration is based upon my personal knowledge, including conversations that I have had with my co-workers.

2. Autonomy is a provider of e-discovery solutions and services and has been engaged on a number of the world's largest cases. Autonomy has offices in 9 major U.S. cities and in financial and business centers around the world on 4 continents. 77 of the top 100 Global

Law Firms and 87 of the Fortune 100 use Autonomy's legal solutions to empower their lawyers and respond in a timely and accurate manner in case of litigation. Autonomy e-discovery solutions support the entire legal lifecycle, from document creation through to disposition, including automatic policy application, legal hold, early case assessment, e-discovery and production. Autonomy also offers leading matter-management and collaboration tools, and maintains the world's largest secure, private archive, hosting over 14 petabytes of data.

3. I have received a copy of what I am informed by counsel for National Union is the transcript (the "Transcript") of a hearing before the Court held on July 7, 2001 (the "Hearing"). The Transcript indicates that, during the Hearing, Mr. Callen referred to a certain database application by the name of "Relatively". Upon review, I believe the reference to "Relatively" to be either a typographical error in the Transcript or a mistaken reference made by Mr. Callen. I am aware of a well-known database application in the industry that is marketed and sold under the name "Relativity". I am not aware of a database application marketed or distributed under the name "Relatively".

4. I have reviewed the Transcript, including the portion of the Transcript in which Mr. Callen expresses concern that removing from the ESI of 14 custodians documents that were previously produced, thereby allowing additional search terms to be run on this ESI without returning documents that have already been produced, may be either impossible or prohibitively expensive. Specifically, Mr. Callen stated: (1) that the ESI for these 14 custodians were collected by one vendor, DSI, and stored in the format of DSI's database application, "Relatively" (s.b. "Relativity"), while Small Smiles' current vendor, Fios, uses a different database application for storing ESI; (2) that DSI and Fios have not had the opportunity to confer; and (3) that Mr. Callen was informed by his vendors that removing previously produced documents from the ESI for the

14 custodians prior to running additional search terms “may” be possible, but would not be easy and may be costly, due to the fact that DSI and Fios employ different database applications for storing ESI.

5. On July 8, 2011, Small Smiles produced metadata associated with its production to various governmental entities to National Union, which I am informed initially had been provided to National Union without metadata. Autonomy (National Union’s e-discovery vendor for this matter) received this metadata and, upon review, has concluded that the metadata corresponds only to those document actually produced by Small Smiles, rather than to the entire universe of ESI collected by Small Smiles with respect to the governmental custodians. Metadata generally is collected when ESI is collected electronically for a custodian (i.e., prior to a review to determine relevance). I am not aware of any generally-used, industry production methodology through which Small Smiles could produce metadata for a subset of the ESI collected, except for Small Smiles to effectively use the information DSI collected to sort between produced and non-produced documents.

6. Based on my experience, Small Smiles could have produced the metadata from its government productions for only documents actually produced through one of only two means I am aware of: (1) with the direct assistance of DSI, which despite being generally replaced by Fios, may still maintain its Small Smiles database; or (2) by using the DSI data, which Fios previously uploaded. If DSI still maintains its Small Smiles database and was willing to assist Small Smiles previously, DSI could be willing and able to again assist Small Smiles, enabling Small Smiles to exclude previously produced documents from the ESI at issue prior to running new searches. On the other hand, if Fios assisted Small Smiles with its metadata production, Fios must have already uploaded the information from the DSI database and maintained that data

in a format which Fios was, itself, able to filter so as to identify which documents were previously produced. Other than (1) and (2) above, I am aware of no other means by which Small Smiles could have produced the metadata on July 8, 2011

7. Based on my experience in the industry, data stored in incompatible databases is a routine issue faced by almost every e-discovery vendor. It is common for one e-discovery vendor to take over a matter from another. As a provider of e-discovery services, Autonomy has been involved in numerous instances in which a database becomes transferred when a matter is transferred from one vendor to another. Autonomy has served as both the transferring vendor and the receiving vendor in these cases, and I and my colleagues are trained on, and knowledgeable regarding the processes by which converting database formats can be achieved. Moreover, in my experience most e-discovery vendors are also familiar with these processes. As DSI and Fios are both established members of the e-discovery industry, the transfer/conversion of the data from DSI to Fios should be both simple and routine, I have not been informed, nor am I aware, of any reasonable basis for concluding the two e-discovery vendors would be unable to achieve the transfer.

8. It is my experience and belief that transfer of data from one system to another, even if incompatible, should be easily accomplished. E-discovery vendors typically use a simple method to bypass two systems lack of compatibility: the transferring vendor (here DSI) exports the ESI at issue *in a system neutral format, which then becomes uploaded by the receiving vendor (here Fios) into its system.* This method of transferring data is routine, and absent any unusual complicating factors (and I saw no such factors mentioned in the Transcript), should be something any reputable e-discovery vendor can accomplish.

9. It is my experience that transferring data in system neutral formats does not generally involve any loss of metadata or any of the information that would be used to filter previously produced documents from any additional searches. When a transfer in system neutral format is accomplished, it is my experience that control numbers associated with the documents originally assigned by the transferring vendor, and as to produced documents, Bates numbers associated with the production, are routinely maintained when the transferring vendor exports the data in system neutral format. Maintaining Bates numbers and other similar fields is reasonably necessary to facilitate the new vendor's identification of previously produced documents or (as in this case) exclude them from the data for custodians at issue prior to conducting additional searches.

10. In my experience where Autonomy was the transferring vendor in such a data transfer, the act of exporting data in system neutral format involves only modest labor. Assuming computing power typical for a large e-Discovery vendor (using Autonomy's computing power as the baseline), the act of exporting one million pages of image files could reasonably be anticipated to involve 2 to 3 days to complete.

11. Similarly, in my experience where Autonomy was the receiving vendor in such a data transfer, the act of importing system neutral data by the receiving vendor also involves only modest labor. Assuming computing power typical for a large e-Discovery vendor (using Autonomy's computing power as the baseline), the act of importing one million pages of image files could reasonably be anticipated to involve one-half of one day's services to prepare, and an additional three days' services to import.

12. Based on my experience in the industry, once the system neutral data is uploaded into the receiving vendor's system, that receiving vendor generally would use the Bates number

field to exclude previously produced documents from the ESI of particular custodians prior to running new searches on the ESI. As described in paragraph 8 of my July 5, 2011 Declaration, once an electronic search is structured – which may be done while data loading is proceeding – the estimated system time necessary to run a search on the 225 gigabytes of data reported by Small Smiles (even if a large amount of search terms are used) should be comparatively modest (i.e., no longer than a single afternoon).

13. I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 19, 2011.



STEPHEN P. ADAMS