

C. “Documents” means both ESI and non-ESI information, comprising books, papers, writings, drawings, graphs, charts, photographs, sound recordings, images, electronic documents, electronic mail, and other data or data compilations from which information can be obtained, either directly or, if necessary, after conversion by the responding party into a reasonably usable form.

D. “ESI” means electronically stored information.

1. Electronically stored information shall include, but is not limited to, all web-based communications, email and other electronic communications, electronically stored documents, records, images, graphics, recordings, calendars, contact management information, telephone logs, voice mails, drafts, reports, presentations, recordings, text messages, other digitized documents, and electronic files of any kind pertaining to the issues relevant to this case.

2. Electronically stored information shall not include information that is not reasonably accessible. If a party becomes aware of a Data Store that is not reasonably accessible and that is likely to contain unique, discoverable ESI, it shall notify the opposing party. Except as identified in subsection D(3) below, the parties are not currently aware of any information that is not reasonably accessible.

3. The following types of Data Stores are presumed to be inaccessible, therefore are not ESI, and therefore are not subject to discovery

absent a particularized need for the data as established by the facts and legal issues of the case:

- a. deleted, slack, fragmented, or other data only accessible by forensics;
- b. random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
- c. on-line access data such as temporary internet files, history, cache, cookies, and the like;
- d. back-up data that is substantially duplicative of data that are more accessible elsewhere;
- e. server, system or network logs;
- f. data remaining from systems no longer in use that is unintelligible on the systems in use; and
- g. program files.

E. “Load File” relates to a set of scanned images or other files, and indicates where individual pages or files belong together, where each document begins, and what documents are attached to the document. A Load File may also contain metadata or extracted text associated with the documents. For a definition of “Load File,” see The Sedona Conference Glossary, available at www.thesedonaconference.org/publications.

F. “Unstructured Data” includes, among other things, emails, word processing documents, and presentation slides. For a definition of “Unstructured

Data,” see The Sedona Conference Glossary, available at www.thesedonaconference.org/publications.

II. SCOPE OF THE DISCOVERY PLAN

A. This Discovery Plan shall govern: (1) the service of interrogatories and responses and objections thereto; (2) the service of requests for the production of Documents, and responses and objections thereto; and (3) the production of Documents in response to requests for production.

B. Nothing in this Discovery Plan shall supersede the Court of Chancery rules or any order of the court in the above-captioned action, including any subsequent stipulation and order governing the production and exchange of confidential information.

III. WRITTEN DISCOVERY REQUESTS AND RESPONSES

A. Written Discovery Deadline

1. Subject to any separate motion and order further expediting discovery, the parties shall complete all written discovery set forth in this section the Discovery Plan on or before February 5, 2018 (the “Written Discovery Deadline”).

2. All interrogatories and requests for production shall be served sufficiently early so that the responses can be provided before the Written Discovery Deadline.

B. Interrogatories

1. Absent leave of court for good cause shown, each party may ask up to 25 interrogatories, including subparts.

2. Absent leave of court for good cause shown, no interrogatories may be served after January 5, 2018.

3. Subject to any separate motion and order further expediting discovery, the parties shall provide written answers and objections to interrogatories in accordance with Court of Chancery Rule 33.

C. Requests for Production

1. Absent leave of court for good cause shown, each party may make up to 65 requests for production.

2. Absent leave of court for good cause shown, no requests for production may be served after January 5, 2018.

3. Subject to any separate motion and order further expediting discovery, the parties shall provide written responses and objections to requests for production in accordance with Court of Chancery Rule 34.

D. Objections And Responses

1. In responding to interrogatories and document requests, the parties shall use the definitions that have been agreed upon in this Discovery Plan.

2. In responding to interrogatories and document requests, the parties shall not raise objections that are inconsistent with this Discovery Plan.

3. A party that objects to providing discovery shall make a specific objection, explain why it applies on the facts of the case to the request being made, and, if the party provides information subject to the objection, shall articulate how it is applying the objection to limit the information it is providing.

4. Objections lacking particularity make it impossible to determine what information a party has agreed to provide and whether the response is complete. Objections lacking particularity, boilerplate objections that fail to identify what is being objected to and what is not being objected to, and incomplete or evasive answers shall amount to a waiver of the objections that purportedly were reserved and shall be treated as a failure to answer or respond pursuant to Court of Chancery Rule 37(a)(3).

IV. LITIGATION HOLDS AND DOCUMENT RETENTION

A. The parties shall make reasonable and proportional efforts, including issuing litigation holds, to retain documents which are potentially discoverable in this case.

V. DISCOVERY LIAISONS AND VENDORS

A. Wells Fargo Insurance Services USA, Inc.

1. Wells Fargo Insurance Services USA, Inc. (WFIS) has retained the following firm as its Discovery Vendor: DTI Global, Two Ravinia Drive, Suite 850, Atlanta, GA 30346.

2. WFIS has identified the following individual as its Discovery Liaison: Jill Griset, McGuireWoods LLP, 201 North Tyron Street, Suite 3000, Charlotte, NC 28202, (704)343-2193, jgriset@mcguirewoods.com.

B. Alliant Insurance Services Inc.

1. Alliant Insurance Services Inc. (“Alliant”) has retained the following firm as its Discovery Vendor: No outside discovery vendor has been retained at this time. Alliant is hosting its data in the DISCO review platform via hosting provided by Sullivan Strickler, LLC.

2. Alliant has identified the following individual as its Discovery Liaison: Neal Weinrich, Berman Fink Van Horn, P.C., 3475 Piedmont Road, N.E., Suite 1100, Atlanta, Georgia 30305, 404.261.7588 or nweinrich@bfvlaw.com.

C. Representations Regarding Discovery Liaisons

1. Each Discovery Liaison is an attorney who is knowledgeable or will become knowledgeable about the discovery, e-discovery, ESI, and Document

and the ESI practices of the client, including the location, nature, accessibility, format, collection, search methodologies, and production of ESI.

2. Each Discovery Liaison is authorized to make representations and agreements regarding discovery, including e-discovery. An opposing party may rely on statements made by the Discovery Liaison regarding discovery, including e-discovery.

D. Responsibilities Of The Discovery Liaisons

1. Questions regarding discovery or discovery disputes shall be addressed to the Discovery Liaisons where their expertise is necessary to resolve ESI issues.

2. The Discovery Liaisons shall attend and lead all meet-and-confer sessions where their expertise is necessary to resolve ESI issues.

VI. SCOPE OF PRODUCTION

A. Discovery shall generally be limited to Documents in a party's custody, possession, or control created between May 1, 2015 and a cutoff date to be agreed upon, unless a specific request calls for a different time period. The parties will meet and confer as necessary to plan for the collection and production of documents created before or after the agreed upon date range, where such documents are relevant to the claims and defenses in the case. Nothing in this

paragraph will prevent either party from seeking to introduce into evidence Documents from a larger time period.

VII. CUSTODIAN AND SOURCE IDENTIFICATION

A. Custodians

1. Within 30 days following the receipt of a request for production of documents, or a later time if agreed to by the parties, the producing party shall identify custodians and/or sources likely to have responsive documents that can reasonably and proportionally be collected in response to the request for production of documents.

2. The parties acknowledge and agree that for any identified custodian, it may not be reasonable and proportional to collect all Documents belonging to a custodian. For each custodian identified, the producing party will identify how it plans to collect the documents (*e.g.* using search terms versus a targeted manual collection). A producing party may collect some documents without using search terms at all, but instead by doing “targeted” collections from custodians or sources based on documents selected by custodians or by collecting folders identified as containing responsive materials. No party has a duty to collect and process all data from certain sources and run search terms if such collection, processing and searching creates an undue burden or is not proportional to the needs of the case or where targeted collections are a more efficient way to gather

the materials. Further, if a party identifies a custodian or source from which it plans to collect or run search terms and later learns that the volume of data from that custodian or source creates an undue burden, the party may notify the opposing party. The producing party will not be deemed to waive its burden objections by its earlier identification of the custodian or source.

B. Non-Custodial Data Stores and Structured Data Sources

1. Within 30 days following the receipt of a request for production of documents, or a later time if agreed to by the parties, the producing party shall identify each non-custodial data store or Structured Data source likely to have responsive documents that can reasonably and proportionally be collected in response to the request for production of documents.

VIII. SEARCH PROTOCOL

A. Each party shall be responsible for generating a reasonable and proportional search methodology or collection method that it believes in good faith will return a reasonably high proportion of responsive Documents.

B. Identification of Search Methodology

1. Within 30 days following the receipt of a request for production of documents, or a later time if agreed to by the parties, the receiving party shall identify the search methodology (*e.g.* human review, search terms, technology assisted review) it intends to use as its search methodology for a response to the

request for production if it plans to use a search methodology (as opposed to targeted collections).

C. Search Terms

1. If search terms are used, within 30 days following the receipt of a request for production of documents, or a later time if agreed to by the parties, the producing party shall disclose the list of search terms to the receiving party.

2. A receiving party may promptly propose additional terms. No term will be added to the list if it generates an unreasonable number of nonresponsive documents or creates an undue burden. Focused terms and queries, rather than overbroad ones should be employed. If additional search terms are requested, the parties shall meet and confer to agree on search terms. If a producing party opposes using certain search terms proposed, such party will provide information to the receiving party regarding why the search terms are overbroad, create an undue burden, or should not be used sufficient to allow the receiving party to assess the reasonableness of the terms.

3. Upon request of a party, any party using search terms shall divulge hit reports or other reasonable available information needed to assist the parties in resolving any search term dispute.

D. Technology Assisted Review

1. If technology assisted review is used to limit the documents instead of search terms, within 30 days following the receipt of a request for production of documents, or a later time if agreed to by the parties, the parties shall exchange technology assisted review protocols that each producing party proposes to use to identify responsive ESI.

IX. COLLECTION

A. The parties shall not limit their searches to ESI, as relevant information may be included in non-ESI.

B. Upon completion of collection, a party may provide written notice to the other parties that it intends to release any litigation hold or other preservation device no sooner than thirty days from the date of the notice or the close of the then existing fact discovery deadline, whichever is later.

X. FORM OF PRODUCTION

A. Documents shall be produced using appropriate encrypted media, such as a CD, DVD, external hard drive, or via FTP.

B. ESI derived from e-mail and other electronically created files (*e.g.*, Microsoft Office files) shall be produced as Bates-labeled .tiff images, where reasonably feasible, with a corresponding load file containing OCR or extracted text, and metadata fields, as described below.

C. ESI shall be produced (1) in Single Page Group IV .tiff files, (2) with an image resolution that shall be at least 300 DPI, (3) with a file naming convention that shall match the Beg Bates number, (4) with a placeholder image for files produced in native form, and (5) retaining the original document orientation. ESI may be produced in black and white unless color is necessary to understand the meaning. Each party reserves the right to request color copies, and such requests will not be unreasonably denied

D. Unredacted Audio/visual Documents and Documents without standard pagination, such as Excel spreadsheets, Microsoft Access files and .CSV files, shall be produced as native files with full extracted text and with a file naming convention that matches the Beg Bates number where reasonably feasible. If a file needs to be redacted prior to production and is a native file that will not TIF in a readable manner, the party may apply redactions to the native file if a pristine copy of the native file is kept and the party identifies which files have been so redacted in its production letter.

E. Where a responsive Document exists only as a paper Document or a flat electronic file (*i.e.*, a scanned .pdf), the producing party shall produce the Document as a .tiff image. In scanning paper Documents, distinct Documents should not be merged into a single record, and single Documents should not be split into multiple records (*i.e.*, paper Documents should be logically unitized),

unless separating the records would place an undue burden on the producing party. In the case of an organized compilation of separate Documents—for example, a binder containing several separate Documents behind numbered tabs—the Document behind each tab should be scanned separately, but the relationship among the Documents in the compilation should be reflected in the proper coding of the beginning and ending Document and attachment fields. The parties shall use their best efforts to unitize the Documents correctly unless doing so creates an undue burden, in which case the parties shall meet and confer about the production format.

F. ESI and other tangible or hard copy Documents that are not text-searchable shall be made text-searchable by the producing party, unless making the Documents text-searchable would place an undue burden on the producing party. If a party produces a Document that contains redactions, the Document shall only be text-searchable as to the un-redacted portions of the Document.

G. Each party reserves the right to request native files for Documents that are difficult to understand after they have been produced in the format specified herein or that contain potentially relevant embedded information, and such requests will not be unreasonably denied. Such a request shall be made according to the following protocol:

1. The requesting party shall make any such request as soon as reasonably practical after receiving a Document production.

2. The requesting party shall provide a list of Bates numbers of the Documents that it is requesting to be produced in native file format.
3. Within ten business days of receiving this request, the producing party will either (i) produce the requested native files to the extent reasonably practicable or (ii) respond in writing, setting forth its position on the production of the requested Documents. Thereafter, the parties shall confer in good faith regarding the production of the requested native files.

H. The parties agree to produce the following ESI metadata fields if reasonably available.

Metadata Field
BegBates: Beginning Bates Number
EndBates: Ending Bates Number
BegAttach: Beginning Bates number of the first Document in an attachment range
EndAttach: Ending Bates number of the last Document in attachment range
Custodian: Name of the Custodian of the File(s) Produced – Last Name, First Name format
All Custodians (or DupCustodian): Name of all Custodians that custody of a deduplicated Document
FileName: Filename of the original digital file name
NativeLink: Path and filename to produced Native file for Excel spreadsheets, Microsoft Access files and .CSV files only
EmailSubject: Subject line extracted from an email message

Metadata Field
Title: Title field extracted from the metadata of a non-email Document
Author: Author field extracted from the metadata of a non-email Document
From: From field extracted from an email message
To: To or Recipient field extracted from an email message
Cc: CC or Carbon Copy field extracted from an email message
BCC: BCC or Blind Carbon Copy field extracted from an email message
DateRcvd: Received date of an email message (mm/dd/yyyy format)
DateSent: Sent date of an email message (mm/dd/yyyy format)
DateCreated: Date that a file was created based on a creation date metadata field (mm/dd/yyyy format)
DateModified: The last modified date(s) of a non-email Document
Fingerprint: MD5 or SHA-1 has value generated by creating a binary stream of the file
ProdVolume: Identifies production media deliverable
ExtractedText: File path to Extracted Text/OCR File
Confidentiality: Identifies the confidentiality designation of the file
Redacted: “Yes,” for redacted Documents; otherwise, blank

I. The parties agree to generate the following metadata fields for paper Documents unless doing so would place an undue burden on the producing party:

Metadata Field
BegBates: Beginning Bates Number
EndBates: Ending Bates Number
BegAttach: Beginning Bates number of the first Document in an attachment range
EndAttach: Ending Bates number of the last Document in attachment range
Custodian: Name of the Custodian of the File(s) Produced – Last Name, First Name format
ProdVolume: Identifies production media deliverable

J. The parties agree on the following Load File specifications:

1. Images Load File - An image load file in a standard .opt load file format shall be included which provides: (i) the document number for each image; (ii) the full path name(s) of each image file; and (iii) the document boundaries for each document. The load file shall be in the order that appropriately corresponds with each image file.

2. Metadata Load File - A load file shall be provided in a standard “.dat” file format, compatible with Relativity or Condordance, that contains metadata fields in a delimited text load file.

3. Extracted Text Load File - An OCR or extracted text file that corresponds to each produced document shall be provided as follows: (i) Document level OCR text for redacted documents or extracted text for ESI not containing redaction are to be located in the same directory as its image file; (ii) The text file name shall be the same name of the first image page for the document set, followed by .txt; (iii) An OCR or Extracted text file containing the produced document's content will be provided for all documents whether it is produced as an image file or natively unless the document was originally maintained in image, nonsearchable format and the producing party has chosen not to OCR the document because the expense is not justified, given the types of documents and utility of the OCR. In that situation, the producing party will produce the document as it was kept in the ordinary course of business, without OCR, and will identify for the receiving party in the production cover letter the Bates numbers of the documents that have not had OCR applied. If documents are redacted, OCR will be taken of the redacted document and provided.

K. Structured Data

1. The parties shall make reasonable efforts to agree upon the production of data from structured data stores in existing report formats, or report formats that can be developed without undue burden.

2. If the issues in the case make an exchange of data in a report format insufficient, the parties shall identify the databases or systems incorporating databases that will require raw data production.

L. De-Duplication

1. A party is only required to produce a single copy of a responsive Document.

2. The parties may de-duplicate Document families globally using MD5 Hash value matching. The Parties shall de-duplicate to produce one copy of each Document family across all custodians, where possible. The parties understand it may not be possible to de-duplicate across prior productions when subsequent productions are made on a rolling basis.

3. The parties may use email threading for emails and eliminate non-inclusive threads from the production if a more inclusive responsive thread is being produced.

4. Common system files defined by the NIST library (<http://www.nsrl.nist.gov/>) need not be produced.

5. Parent-child relationships (the association between an attachment and its parent Document or between embedded Documents and their parent) shall be preserved. Non-responsive or privileged attachments may be removed, however, and need not be produced as long as the documents are Bates

numbered in families first so that the receiving party can see the pages removed. Nonprivileged cover e-mails to responsive documents will be produced.

6. Paper Documents shall not be eliminated as duplicates of responsive ESI.

7. The parties shall make reasonable efforts to ensure that Documents produced in native form are decrypted (or that passwords are supplied), but the parties have no duty to identify encrypted Documents prior to production.

XI. NON-PARTY DISCOVERY

A. A party that issues a non-party subpoena (the “issuing party”) shall include a copy of this Discovery Plan with the subpoena and state that the parties to the litigation have requested that non-parties produce Documents in accordance with the specifications set forth herein.

B. The issuing party is responsible for producing any Documents obtained under a subpoena to all other parties.

C. Any Documents the issuing party does not intend to process for its own use may be disseminated to all other parties in the format in which such Documents are received by the issuing party. If either party subsequently chooses to process any of those Documents, the parties shall meet and confer about cost-sharing and producing the processed Documents to other parties.

XII. PRIVILEGE LOGS AND REDACTION LOGS

A. The parties shall serve their privilege logs and redaction logs on a rolling basis on or before 30 days after their first production and then 30 days after each additional production.

B. For redacted Documents, the parties may withhold the entirety of a Document if any part of the Document is subject to a bona fide claim of privilege so long as the non-privileged part of the Document is separately produced in the form of another Document. In the event the parties produce partially redacted Documents, they may dispense with logging such Documents where the face of the Document provides the factual information that otherwise would appear on a log. If the basis for redacting any particular document is unclear, the opposing party may request a privilege log or redaction log for that particular document.

C. Parties are not required to log in a privilege or redaction log privileged post-litigation communications.

D. In logging email chains, the parties are only required to log the most recent email (*i.e.*, the “top” email) in the chain. Attachments shall be logged separately from the emails enclosing the attachments.

E. The parties shall identify the names of any attorneys in the privilege log who are named as the source of the legal advice or from whom legal advice is

sought by including an asterisk (“*”) next to the attorney’s name in the privilege log entry.

XIII. SECURITY

A. Any media on which Documents are produced may be encrypted by the producing party. In such cases, the producing party shall transmit the encryption key or password to the requesting party under separate cover upon service of the encrypted media. All electronic documents mailed shall be shipped in encrypted form.

B. To the extent a party has concerns regarding the abilities of other parties to protect the confidential nature Documents produced by the party in this action, the party shall promptly identify for the parties what security measures it would deem appropriate. The failure to address security concerns within ten days of the filing of the Discovery Plan shall preclude a party from withholding Documents requested in discovery on the basis of security concerns.

XIV. STATUS REPORTS

A. The parties shall file monthly joint status reports beginning on October 1, 2017 and continuing until the completion of discovery pursuant to this Discovery Plan.

B. Each status report shall take the form of a joint letter, double-spaced, in Times New Roman 14-point typeface, and shall address: (1) each party and non-

party's compliance with any discovery requests that another party has served; (2) any issues that may impede compliance with the Written Discovery Deadline.

C. In the status reports, the parties also may submit issues relating to discovery deficiency that they would like the court to resolve. Before submitting any discovery deficiency issues to the court, the parties shall comply with the following protocol:

1. Each party shall designate either its Discovery Liaison or a partner-level Delaware lawyer who will be responsible for receiving and addressing Document production deficiency issues (the "Deficiency Designee").
2. The party identifying any deficiency shall raise it in writing, sent by email to the Deficiency Designee(s) of the responsible parties, and copying the other Deficiency Designee(s).
3. The Deficiency Designee(s) of the responsible parties shall acknowledge receipt in writing within 3 business days and either (1) cure the identified deficiency or (2) explain any reason for why the production was not deficient. If a response cannot be provided within 3 business days, then the Deficiency Designee(s) of the responsible parties shall explain why and provide an estimate as to when a full response will be provided.
4. If the issues are not resolved within 5 business days or before the submission of the parties' next status report, whichever is later, then at the election of the party identifying the deficiencies, the parties shall enclose within the status report a description of the issue and the parties' respective positions. The written exchanges preceding the submission shall be attached as exhibits.
5. For each issue, each party shall be allotted five pages, double spaced, in 14 pt. font.

D. A party's decision not to submit a Document production deficiency issue to the court in the parties' status report shall not prohibit the party from filing a discovery motion under Section XVII of this Discovery Plan.

XV. DISCOVERY MOTIONS

A. No party may file a discovery motion unless the party attempted in good faith, but without success, to resolve the dispute. At a minimum, a good faith effort includes an oral meet-and-confer among counsel, including at least one Delaware attorney for each party.

B. All discovery motions shall be accompanied by a separate certification of Delaware counsel identifying the manner in which Section XVI(A) of the Discovery Plan was satisfied, including the identification of all counsel who participated in any oral meet and confer, the dates of any meet and confer, and how the meet and confer was conducted (*e.g.*, in-person, telephonic, video conferencing, etc.).

XVI. EXPENSES

A. With the exceptions enumerated herein, the parties shall generally bear their respective expenses of preservation and production in accordance with the Discovery Plan. The Discovery Plan shall have no effect, however, on any producing party's right to seek reimbursement for costs associated with collection, review, or production of Documents.

B. If any party requests Documents to be retrieved from a category of inaccessible data, the costs of collection and production shall be borne by the requesting party, except upon good cause shown by the requesting party that such costs should be otherwise allocated.

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SO ORDERED this ____ day of _____

Vice Chancellor J. Travis Laster

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: J Travis Laster

File & Serve

Transaction ID: 61067395

Current Date: Sep 05, 2017

Case Number: 2017-0540-JTL

Case Name: Pro Ord/ Wells Fargo Insurance Services USA, Inc. vs Alliant Insurance Services, Inc.

Court Authorizer: Laster, J Travis

/s/ **Judge Laster, J Travis**