

IN THE SUPERIOR COURT OF POLK COUNTY  
STATE OF GEORGIA

PLASTIKOS, INC.,

Plaintiff,

v.  
VARITECH EQUIPMENT, INC., AND BLUE-STREAM  
SERVICES, LLC,

Defendants,

v.

COBB INDUSTRIAL FABRICATORS, INC.  
Cross-claim Defendant,

BLUE-STREAM SERVICES, LLC

Counter-Claimant/Cross-Claimant Defendant,

v.

VARITECH EQUIPMENT, INC. and MARTIN JONES

Counter-Defendant/Cross-Defendant.

Civil Action File No.  
2008-CV-2140-S

FILED  
2009 SEP 22 PM 2:45  
JULIA WELLS, CLERK  
POLK COUNTY, GEORGIA

**ORDER ON ELECTRONIC DISCOVERY PROTOCOL RELATED TO  
DOCUMENTS TO BE PRODUCED BY VARITECH SUBJECT TO THE COURT'S  
SEPTEMBER 3, 2010 ORDER**

The above-captioned case is before the Court on Defendant Blue-Stream Services, LLC's Motion for Contempt and Accounting, the Order issued by this Court on September 3, 2010 and the issues raised to the Court by the parties on September 20, 2010. After considering the issues raised by all parties, and for other good cause shown, the Court HEREBY HOLDS THE FOLLOWING:

1. This Order relates to the Court's September 3, 2010 Order directing Varitech Equipment Company ("Varitech") to make available to Blue-Stream, to the accounting firm of Habib, Arogeti & Wynne ("HAW"), and The Norcross Group certain electronic information generally from the date October 1, 2007 through May 31, 2009.

2. The Court understands that in order to collect accounting back-up files (the "Peachtree Files") set forth in the September 3, 2010 Order, information from before and after the time period set forth in paragraph no. 1 will need to be extracted by The Norcross Group (the "Other Information.") With regard to the Peachtree Files, The Norcross Group will provide the full mirrored file of the Peachtree Files including the Other Information solely to HAW, who will have the right to review all information provided. Accept as noted in points 2.a, 2.b and 2.c. below, neither Blue-Stream's outside counsel, Baker Donelson nor Babineaux, Poche, Anthony & Slavich, or Blue-Stream employees will have access to the Peachtree Files that include the Other Information. Blue-Stream employees and its counsel will have the right to access of the following:

a. Blue-Stream's employees and its outside counsel will have access to all Peachtree Files during the time period October 1, 2007 through May 31, 2009.

b. Furthermore, Peachtree Files that relate to financial information including but not limited to accounts payable, debts and any other payments owed by Varitech as of October 2007, which necessarily includes such amounts owed prior to October 2007, and paid in October 2007 or after that time are to be accessible to Blue-Stream's employees and its counsel.

c. Moreover, Blue-Stream employees and its counsel will have the right to review Peachtree Files that are outside the October 1, 2007 through May 31, 2009 time period if already produced in hard-copy or electronic form by Varitech in this case prior to the entry of this Order.

3. The September 3, 2010 Order also requires Varitech to produce all other electronic information, including documents, and information in WORD, EXCEL or any other format, as well as emails, related to Varitech's business and financial matters (referred to herein as "Electronic Financial Information") from October 1, 2007 through May 31, 2009. Varitech is

also to provide the Electronic Financial Information for the time period before October 1, 2007 related to all documents and information set forth in section 2.b above. To accomplish this task, the Court orders the following:

a. The Norcross Group shall serve as a neutral, third-party assisting with the collection, analysis and production of electronically stored information ("ESI") in the above-referenced matter.

b. The Norcross Group will collect ESI from Varitech's computers and any other data recording media including back-up tapes or other backup media, networks, email accounts (company server-based or web-based), hardware, software, and all other repositories of ESI required to be produced by Varitech pursuant to the Court's September 3, 2010 Order. Upon occurrence of one of the following, The Norcross Group shall return all ESI and related property of Varitech to its owner within thirty (30) business days of: (i) final judgment; (ii) other order of the Court dismissing this action in its entirety or requiring Norcross to return the property of Varitech; or (iii) written agreement of the parties resulting in the dismissal with prejudice of this action. The Court recognizes that related litigation is on-going, in particular *JL Adams Construction Limited Liability Company v. Blue-Stream Services, LLC and Varitech Equipment Company, Inc.*, Civil Action No. 2009-CV-1439M (the "JL Adams Matter"). The Court will consider requests by any party to this action to allow The Norcross Group retain ESI discussed above until conclusion of the JL Adams Matter as well or another related matter brought to the attention of the Court.

c. Within five (5) days of the collection of the ESI discussed above, The Norcross Group will provide a set of all documents, information and communications collected solely to Varitech for the sole purposes of allowing Varitech and its counsel to review and exclude

documents, information and communication for two purposes only: (1) Electronic Financial Information that falls outside of the time period of October 1, 2007 through May 31, 2009, except for documents and information referred to in 2.b and 2.c. above; (2) to exclude personal and/or privileged documents, information and communication between October 1, 2007 and May 31, 2009. Varitech or its counsel is expected to communicate to The Norcross Group within the five day window referenced above the format it wants the documents for review. If Varitech or its counsel fails to do so, The Norcross Group will select the format to provide all documents, information and communication to Varitech. The Norcross Group will inform Blue-Stream of this production to Varitech on the date of production.

d. Varitech and its attorneys will then have ten (10) days to select the documents, information and communications for exclusions as noted in section 3.c above. Varitech will report the documents to be excluded to The Norcross Group by the tenth day. The Norcross Group will then create a set of the documents, information and communications excluding those selected for exclusion by Varitech and provide the same to Blue-Stream's attorney's in a format reviewable on Summation and on CD in PDF format and/or another method discussed with Blue-Stream, within five (5) days. Blue-Stream will also be provided all network maps, file and document counts, MD5 hash values, file names, recording media device attachment and use, indications of spoliation through erasure, wiping, substitution, or removal of recording media, user profiles, and similar non-privileged information for the Electronic Financial Information provided to it by The Norcross Group.


e. Within five (5) days from the completion of Varitech's review for exclusion, Varitech will provide a report to Blue-Stream's attorneys, which details each document, information or communications excluded and the basis for exclusion. For all documents and

information, the following information will be included in the report: Title of document, type of document, format of document, summary of information included on document, author of document, recipient(s) of document, date of creation of document and basis for not producing document. For all emails, the following information will be included in the report: subject of email, whether any attachments were included and a summary of the attachment(s), summary of information discussed in the email, author of document, cc and bcc's on the email, recipient of email, date of creation of email and basis for not producing document.

f. Within ten (10) days of receiving this report, Blue-Stream will prepare a response (1) identifying to Varitech the documents it believes have been improperly withheld; and (2) any documents it cannot assess and either needs to review the documents or receive additional information from Varitech. Varitech will have five (5) days to respond to this letter and either agree to allow The Norcross Group to produce the documents, and/or provide the additional information requested by Blue-Stream. Blue-Stream thereafter has the right to request Court intervention and have the documents, information and communications presented *in camera* for Court review that have been withheld by Varitech for the Court to rule whether the documents, information or communications should be produced.

4. Blue-Stream, its counsel and representatives and any and all experts, including but not limited to the forensic accountant(s) from Habif, Arogeti & Wynne, will have the right to use all such documents provided to it for any and all use in this case and can request use of this information in any related case such as the JL Adams Matter referenced above. Other parties to this litigation can also request a copy of the documents provided to Blue-Stream at their expense.

It is so **ORDERED**, this 22 day of September, 2010.

  
Honorable Richard C. Sutton  
Superior Court of Polk County

**PREPARED BY:**

Edmund J. Novotny  
Georgia Bar No. 547338  
Scott N. Sherman  
Georgia Bar No. 642090  
Jonathan Green  
Georgia Bar No. 307053  
*Attorneys for Blue-Stream Services, LLC*

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