IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 4:05-CV-00329-TCK-SAJ**
	)	
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

STATE OF OKLAHOMA'S REPLY BRIEF IN FURTHER SUPPORT OF ITS MOTION FOR ORDER IMPLEMENTING AND ENFORCING RULES FOR DISCOVERY OF ELECTRONICALLY STORED INFORMATION

COMES NOW the Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA, (hereinafter "the State"), by and through counsel, and pursuant to LCvR 7.2 submits this reply brief in connection with its "Motion for Order Implementing and Enforcing Rules for Discovery of Electronically Stored Information." [DKT # 929]. The State states as follows:

1. As outlined in the State's motion, [DKT # 929], the Poultry Integrator Defendants previously resisted efforts to implement requirements found in the amendments to Rule 26 pertaining to electronically stored information prior to the amendment's December 1, 2006 effective date.

2. Now that the State's motion is before the Court, it appears, as evidenced by the Proposed Order attached to "Defendants['] Joint Response to State of Oklahoma's Motion for Order Implementing and Enforcing Rules for Discovery of Electronically Stored Information and Memorandum in Support Thereof" [DKT #953], that the Poultry Integrator Defendants are

willing to discuss issues pertaining to electronically stored information within the constructs set forth in the 2006 amendments to Rule 26.

3. With incorporation of the revisions set forth below, as well as revisions addressing items such as data preservation and e-discovery liaison (paragraphs I.(B)(2)); data destruction, retention, and duration (paragraphs I.(A), B(4) & (8)); email production (paragraph I.B(11); and technical vernacular changes (paragraph I.(B)(13), the Poultry Integrator Defendants' Proposed Order would be acceptable to the State:

a. Paragraph I(A) of the Defendants' Proposed Order requires each party to bring sufficient knowledge and information related to electronic data with respect to that which is discoverable under Fed. R. Civ. P. 26. The initial meeting described in this paragraph should be restricted to information which is discoverable in this action as provided by Fed. R. Civ. P. 26(a). As the parties cannot reasonably anticipate the universe of all discovery which may occur in this case, there will be follow-on meetings to address discovery issues beyond Fed. R. Civ. P. 26(a).

b. Paragraphs I(A)(1) and (2) of Defendants' Proposed Order attempt to define all of the respective parties' potential subdivisions about whose electronic data each party shall have knowledge of at the proposed conference. These paragraphs appear to broaden the State's requirements, while narrowing the Poultry Integrator Defendants' requirements. The State has deleted paragraphs I(A)(1) and (2), and instead, the State has proposed the approach set forth in subparagraph (a) above.

c. Paragraph I(B)(3) of Defendants' Proposed Order requires knowledge of "[t]he nature, scope, character, organization, and format of each electronic storage system that the party has employed during the time period relevant to this action." The State proposes that

the requirement include a provision allowing for and requiring an explanation for a party's lack of any such knowledge.

d. Paragraph I(B)(17) of Defendants' Proposed Order states "[a]s to each Defendant, whether any of the potentially relevant data is claimed to be proprietary or trade secret and any measures that Defendant wishes taken to protect that data, other than protections already afforded through other orders in this case." Data that is proprietary or a trade secret is already protected by the Confidentiality Order entered in this case. Accordingly, the paragraph should read: "[a]s to each Defendant, whether any of the potentially relevant data is claimed to be proprietary or trade secret and any measures that Defendant wishes taken to protect that data consistent with the Confidentiality Order entered in this case."

e. Paragraph III of Defendants' Proposed Order addresses the use of formal discovery devices relating to electronic discovery. The State believes this paragraph is vague and requires further discussion between the parties as to the use of such discovery devices, and therefore the State has deleted this paragraph from the Proposed Order and added this as a topic for discussion between the parties under paragraph I.B.

4. The State has attached as Exhibit A a copy of a proposed order incorporating the revisions discussed in Paragraph 3 above and other revisions.

5. In light of the Poultry Integrators Defendants' position in their filing, the State intends to attempt to meet and confer with the Poultry Integrator Defendants in the near future to see if agreement on these issues can be reached. If agreement is reached, the State will inform the Court.

Respectfully Submitted,

W.A. Drew Edmondson OBA # 2628
Attorney General
Kelly H. Burch OBA #17067

J. Trevor Hammons OBA #20234
Robert D. Singletary OBA #19220
Assistant Attorneys General
State of Oklahoma
2300 North Lincoln Boulevard, Suite 112
Oklahoma City, OK 73105
(405) 521-3921

/s/ Richard T. Garren
M. David Riggs OBA #7583
Joseph P. Lennart OBA #5371
Richard T. Garren OBA #3253
Douglas A. Wilson OBA #13128
Sharon K. Weaver OBA #19010
Robert A. Nance OBA #6581
D. Sharon Gentry OBA #15641
Riggs, Abney, Neal, Turpen,
Orbison & Lewis
502 West Sixth Street
Tulsa, OK 74119
(918) 587-3161

James Randall Miller, OBA #6214
David P. Page, OBA #6852
Louis Werner Bullock, OBA #1305
Miller Keffer & Bullock
222 S. Kenosha
Tulsa, Ok 74120-2421
(918) 743-4460

Frederick C. Baker
(admitted *pro hac vice*)
Elizabeth C. Ward
(admitted *pro hac vice*)
Motley Rice, LLC
28 Bridgeside Boulevard
Mount Pleasant, SC 29465
(843) 216-9280

William H. Narwold
(admitted *pro hac vice*)
Motley Rice, LLC
20 Church Street, 17th Floor
Hartford, CT 06103
(860) 882-1676

Attorneys for the State of Oklahoma

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of November, 2006, I electronically transmitted the attached document to the following:

Jo Nan Allen jonanallen@yahoo.com, bacaviola@yahoo.com

Robert Earl Applegate hm@holdenokla.com, rapplegate@holdenokla.com

Frederick C Baker fbaker@motleyrice.com, mcarr@motleyrice.com; fhmorgan@motleyrice.com

Tim Keith Baker tbakerlaw@sbcglobal.net

Sherry P Bartley sbartley@mwsgw.com, jdavis@mwsgw.com

Michael R. Bond Michael.Bond@kutakrock.com

Douglas L Boyd dboyd31244@aol.com

Vicki Bronson vbronson@cwlaw.com, lphillips@cwlaw.com

Paula M Buchwald ! pbuchwald@ryanwhaley.com

Louis Werner Bullock LBULLOCK@MKBLAW.NET, NHODGE@MKBLAW.NET; BDEJONG@MKBLAW.NET

Michael Lee Carr hm@holdenokla.com, mcarr@holdenokla.com

Bobby Jay Coffman bcoffman@loganlowry.com

Lloyd E Cole , Jr colelaw@alltel.net, gloriaeubanks@alltel.net; amy_colelaw@alltel.net

Angela Diane Cotner AngelaCotnerEsq@yahoo.com

Reuben Davis rdavis@boonesmith.com

John Brian DesBarres mrjbdb@msn.com, JohnD@wcalaw.com

W A Drew Edmondson f! c_docket@oag.state.ok.us, drew_edmondson@oag.state.ok.us; suzy! _thrash@ oag.state.ok.us.

Delmar R Ehrich dehrich@faegre.com, etriplett@faegre.com; ; qsperrazza@faegre.com

John R Elrod jelrod@cwlaw.com, vmorgan@cwlaw.com

William Bernard Federman wfederman@aol.com, law@federmanlaw.com; ngb@federmanlaw.com

Bruce Wayne Freeman bfreeman@cwlaw.com, lclark@cwlaw.com

Ronnie Jack Freeman jfreeman@grahamfreeman.com

Richard T Garren rgarren@riggsabney.com, dellis@riggsabney.com

Dorothy Sharon Gentry sgentry@riggsabney.com, jzielinski@riggsabney.com

Robert W George &nbs! p robert.george@kutakrock.com, sue.arens@kutakrock.com; amy.smith@kutakrock.com

Tony Michael Graham tgraham@grahamfreeman.com,

James Martin Graves jgraves@bassettlawfirm.com

Michael D Graves mgraves@hallestill.com, jspring@hallestill.com; smurphy@hallestill.com

Jennifer Stockton Griffin jgriffin@lathropgage.com

Carrie Griffith griffithlawoffice@yahoo.com

John Trevor Hammons thammons@oag.state.ok.us, Trevor_Hammons@oag.state.ok.us; Jean_Burnett@oag.state.ok.us

Michael Todd Hembree hembreelaw1@aol.com, traesmom_mdl@yahoo.com

T! heresa Noble Hill ! thillcourts@rhodesokla.com, mnave@rhodesokla.com

Philip D Hixon Phixon@jpm-law.com,

Mark D Hopson mhopson@sidley.com, joraker@sidley.com

Kelly S Hunter Burch fc.docket@oag.state.ok.us, kelly_burch@oag.state.ok.us; jean_burnett@oag.state.ok.us

Thomas Janer SCMJ@sbcglobal.net, tjaner@cableone.net; lanaphillips@sbcglobal.net

Stephen L Jantzen sjantzen@ryanwhaley.com, mantene@ryanwhaley.com; loelke@ryanwhaley.com

Mackenzie Lea Hamilton Jessie maci.tbakerlaw@sbcglobal.net, tbakerlaw@sbcglobal.net;

macijessie@yahoo.com

Bruce Jones bjones@! faegre.com, dybarra@faegre.com; jintermill@faegre.com; cdolan@faegre.com

Jay Thomas Jorgensen jjorgensen@sidley.com

Krisann C. Kleibacker Lee kklee@faegre.com, mlokken@faegre.com

Derek Stewart Allan Lawrence hm@holdenokla.com, dlawrence@holdenokla.com

Raymond Thomas Lay rtl@kiralaw.com, dianna@kiralaw.com; niccilay@cox.net

Nicole Marie Longwell Nlongwell@jpm-law.com, lwaddel@jpm-law.com

Dara D Mann dmann@faegre.com, kolmscheid@faegre.com

Teresa Brown Marks teresa.marks@arkansasag.gov, dennis.hansen@arkansasag.gov

Linda C Martin ! lmartin@dsda.! com, msc hooling@dsda.com

Archer Scott McDaniel Smcdaniel@jpm-law.com, jwaller@jpm-law.com

Robert Park Medearis , Jr medearislawfirm@sbcglobal.net

James Randall Miller rmiller@mkblaw.net, smilata@mkblaw.net; clagrone@mkblaw.net

Charles Livingston Moulton Charles.Moulton@arkansasag.gov, Kendra.Jones@arkansasag.gov

Robert Allen Nance rnance@riggsabney.com, jzielinski@riggsabney.com

William H Narwold bnarwold@motleyrice.com

John Stephen Neas steve_neas@yahoo.com

George W Owens gwo@owensl! awfirmpc.com, ka@owenslawfirmpc.com

David Phillip Page dpage@mkblaw.net, smilata@mkblaw.net

Michael Andrew Pollard mpollard@boonesmith.com, kmiller@boonesmith.com

Marcus N Ratcliff mratcliff@lswsl.com, sshanks@lswsl.com

Robert Paul Redemann rredemann@pmrlaw.net, scouch@pmrlaw.net

Melvin David Riggs driggs@riggsabney.com, pmurta@riggsabney.com

Randall Eugene Rose rer@owenslawfirmpc.com, ka@owenslawfirmpc.com

Patrick Michael Ryan pryan@ryanwhaley.com, jmickle@ryanwhaley.com; amcpherson@ryanwhaley.com

Laura E Samuelson ! lsamuelson@lswsl.! com, lsa muelson@gmail.com

Robert E Sanders rsanders@youngwilliams.com,

David Charles Senger dsenger@pmrlaw.net, scouch@pmrlaw.net

Jennifer Faith Sherrill jfs@federmanlaw.com, law@federmanlaw.com; ngb@federmanlaw.com

Robert David Singletary fc_docket@oag.state.ok.us, robert_singletary@oag.state.ok.us; jean_burnett@oag.state.ok.us

Michelle B Skeens hm@holdenokla.com, mskeens@holdenokla.com

William Francis Smith bsmith@grahamfreeman.com,

Monte W Strout strout@xtremeinet.net

Colin Hampton Tucker &nbs! p chtucker@rhodesokla.com, scottom@rhodesokla.com

John H Tucker jtuckercourts@rhodesokla.com, mbryce@rhodesokla.com

Kenneth Edward Wagner kwagner@lswsl.com, sshanks@lswsl.com

David Alden Walls wallsd@wwhwlaw.com, burnettt@wwhwlaw.com

Elizabeth C Ward lward@motleyrice.com

Sharon K Weaver sweaver@riggsabney.com, lpearson@riggsabney.com

Timothy K Webster twebster@sidley.com, jwedeking@sidley.com; ahorner@sidley.com

Gary V Weeks ,

Terry Wayen West terry@thewestlaw! firm.com,

Dale Kenyon Williams ! , Jr kwilliams@hallestill.com, jspring@hallestill.com; smurphy@hallestill.com

Edwin Stephen Williams steve.williams@youngwilliams.com

Douglas Allen Wilson Doug_Wilson@riggsabney.com, pmurta@riggsabney.com

J Ron Wright ron@wsfw-ok.com, susan@wsfw-ok.com

Lawrence W Zeringue lzeringue@pmrlaw.net, scouch@pmrlaw.net

I hereby certify that on this 3rd day of November, 2006, I served the foregoing document by U.S. Postal Service on the following:

Jim Bagby
RR 2, Box 1711
Westville, OK 74965

Gordon W. and Susann Clinton
23605 S GOODNIGHT LN
WELLING, OK 74471

Eugene Dill
P O BOX 46
COOKSON, OK 74424

Marjorie Garman
5116 Highway 10
Tahlequah, OK 74464

James C Geiger
address unknown

Thomas C Green
Sidley Austin Brown & Wood LLP
1501 K ST NW
WASHINGTON, DC 20005

G Craig Heffington
20144 W SIXSHOOTER RD
COOKSON, OK 74427

Cherrie House and William House
P O BOX 1097
STILWELL, OK 74960

John E. and Virginia W. Adair Family Trust

RT 2 BOX 1160
STILWELL, OK 74960

Dorothy Gene Lamb and James Lamb
Route 1, Box 253
Gore, OK 74435

Jerry M Maddux
Selby Connor Maddux Janer
P O BOX Z
BARTLESVILLE, OK 74005-5025

Doris Mares
P O BOX 46
COOKSON, OK 74424

Donna S Parker and Richard E. Parker
34996 S 502 RD
PARK HILL, OK 74451

C Miles Tolbert
Secretary of the Environment
State of Oklahoma
3800 NORTH CLASSEN
OKLAHOMA CITY, OK 73118

Robin L. Wofford
Rt 2, Box 370
Watts, OK 74964

/s/ Richard T. Garren

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

1. STATE OF OKLAHOMA, ex rel. W. A. DREW EDMONDSON, in his capacity as ATTORNEY GENERAL OF THE STATE OF OKLAHOMA and OKLAHOMA SECRETARY OF THE ENVIRONMENT C. MILES TOLBERT, in his capacity as the TRUSTEE FOR NATURAL RESOURCES FOR THE STATE OF OKLAHOMA,	)	
Plaintiffs,	)	
vs.	)	No. 05-CV-0329 TCK-SAJ
1. TYSON FOODS, INC. 2. TYSON POULTRY, INC. 3. TYSON CHICKEN, INC. 4. COBB-VANTRESS, INC. 5. AVIAGEN, INC. 6. CAL-MAINE FOODS, INC. 7. CAL-MAINE FARMS, INC. 8. CARGILL, INC. 9. CARGILL TURKEY PRODUCTION, LLC. 10. GEORGE'S, INC. 11. GEORGE'S FARMS, INC. 12. PETERSON FARMS, INC. 13. SIMMONS FOODS, INC. and 14. WILLOW BROOK FOODS, INC.	)	STATE'S PROPOSED ORDER
Defendants.	)	

ORDER IMPLEMENTING RULES FOR DISCOVERY OF ELECTRONICALLY STORED INFORMATION ("ESI")

The above-captioned case came on for hearing on the _____ day of _____, 2006 on the State of Oklahoma's motion concerning procedures for the discovery of electronic stored information.

EXHIBIT
A
ALL-STATE® INTERNATIONAL

Now, based upon the files, records, and pleadings herein,

IT IS HEREBY ORDERED:

I. That on or before December 15, 2006, representatives of Plaintiff and each Defendant shall meet and confer, either collectively or separately as the parties may deem appropriate, concerning the issues set forth below.

A. That each party shall bring to the initial conference sufficient knowledge and information concerning that party's methods of storing, archiving, routine destruction, retention, searching, and retrieving of electronic data to allow meaningful discussion of the issues described below with respect to the party and each subdivision of the party likely to have information which is discoverable in this action as provided by Fed. R. Civ. P. 26(a). The parties shall have additional meetings as necessary to address discovery issues beyond Fed. R. Civ. P. 26(a), and shall bring to such meetings sufficient knowledge and information pertaining to the issues to be discussed.

B. Each party shall be prepared at these conferences to discuss, as to its own storage, archiving, searching, and retrieval of electronic data, the following subjects:

1. The identities, titles, and responsibilities of its custodians of electronic materials;

2. The primary person who will represent that party in communications with other parties concerning ESI. To the extent possible, that person should be familiar with electronic systems, technical aspects of e-discovery, organizational format issues, document preservation of ESI and methods of dispute resolution for e-discovery and designate a person to act as e-discovery liaison for each party;

3. The nature, scope, character, organization, and format of each electronic storage system that the party has employed during the time period relevant to this action. Any party claiming a lack of knowledge concerning the relevant information shall provide a basis for such claim;

4. The document retention and destruction policies for each of these systems;

5. The types and subject matter of potentially discoverable data that may exist in the systems, as well the present locations of such data (including databases, networks, systems, servers, archives, back-up or disaster-recovery systems, tapes, disks, drives, cartridges, laptops, personal computers, internet data, and other storage media);

6. The identity of the systems and/or media which are readily accessible;

7. The identify of the systems and/or media which are not readily accessible, as well as the basis for asserting the lack of reasonable accessibility;

8. The extent to which any such data may have been destroyed or lost, including duration of such loss;

9. Methods that that party can employ to ensure the integrity and preservation of such data;

10. Whether any potentially discoverable data may have been deleted, whether restoration of the data is possible, and what would be necessary to accomplish that restoration;

11. Method(s) and scope by which that party's e-mail may be searched and ESI produced;

12. The identification of systems or formats which may contain discoverable information, which a party does not intend to search;

13. Any potential problems that party presently anticipates in responding to electronic discovery;

14. For the general types of information, the formats that the parties will employ for the production of discoverable information, *i.e.*, hard copy, electronic image files (*i.e.*, .pdf or .tiff formats), or native file formats;

15. Any specific software necessary to search, identify, retrieve, or read any electronic data that may be produced;

16. Methods by which information produced in electronic forms may be authenticated or, if possible, may be self-authenticating;

17. As to each Defendant, whether any of the potentially relevant data is claimed to be proprietary or trade secret and any measures that Defendant wishes taken to protect that data consistent with the Confidentiality Order entered in this case;

18. As to the State of Oklahoma, whether any potentially relevant data that is already public data under Oklahoma state law and how that public information may presently be accessed;

19. As to all parties, the method by which that party intends to identify and segregate from any information produced in an electronic format that is claimed to be protected by the attorney-client or other privilege, by the work-product doctrine, or other protection recognized by any other Order of the Court;

20. For information to be produced in an electronic format, the methods and costs for retrieving each particular type of data from each particular electronic system;

21. A proposed date for the parties to serve Supplemental Initial Disclosures to incorporate the identification of electronically stored information;

22. Parameters for addressing the inadvertent production of privileged or confidential information, and potential procedures to minimize the waiver of same; and

23. Parameters for addressing the scope and number of interrogatories, requests for admissions and depositions relating to items listed in paragraph I(B).

II. Not later than January 15, 2007, the parties shall submit to the Court a proposed stipulated order embodying their agreements concerning electronic discovery. The Court will consider entering an order to memorialize the agreements of the parties to whatever level of detail the parties deem appropriate; however, the proposed stipulated order should address at a minimum:

A. The primary electronic discovery contact for each party;

B. The method(s) the parties intend to employ to assure the retention and integrity of potentially discoverable information;

C. The format(s) in which information will be produced;

D. Any data or types of data that the parties can agree now are self-authenticating;

E. To the extent data or electronic materials are not self-authenticating, the method by which a party may authenticate for purposes of admissibility data or electronic material produced by another party;

F. The methods for segregating and identifying information subject to claims of privilege or other protections, and procedures for addressing information inadvertently disclosed;

G. The method(s) for allocating the costs of the production of various types of information from various systems; and

H. A proposed date by which the parties will exchange Supplemental Initial Disclosures to address electronically stored information.

III. The parties may agree to defer any of the issues listed in paragraph II for further discussion at a later date.

IV. To the extent the parties cannot agree on or agree to defer one or more of the issues described above, the parties shall include in the proposed stipulated order proposed alternative provisions (bracketed and identified by proposing party) addressing each specific subject in dispute. Any party may submit with the proposed stipulated order a memorandum arguing in support of its particular proposed provision(s).

V. Nothing in this order is intended to address or resolve any specific request for electronic data or to express any opinion as to whether any particular piece or group of data is properly discoverable under Rule 26 or Rule 34. The Court will consider such matters, if necessary, in the context of specific discovery requests and responses.

Dated: _____, 2006

_____
United States Magistrate Judge