

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL



October 5, 2010

Mr. Kevin Upchurch
Executive Director, Mississippi Department of Finance and Administration
Post Office Box 267
Jackson, MS 39205

Re: Deepwater Horizon Disaster Litigation

Dear Mr. Upchurch:

As Attorney General of the State of Mississippi, my office is investigating and evaluating all potential claims the State may have arising out of the Deepwater Horizon ("DWH") disaster, including, but not limited to claims arising under the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 *et seq.*, the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. § 49-17-1 *et seq.*, our Coastal Wetlands Protection Act, Miss. Code Ann. § 49-27-1 *et seq.*, general maritime law, common law causes of action such as public nuisance, strict liability, negligence, trespass, and product liability, or any other law governing the fire and explosion, as well as the discharge of oil and related substances from the floating DWH rig.

One of the many potential outcomes of the ongoing response and investigation could be civil lawsuits, criminal investigations, or enforcement actions arising under state or federal laws. Moreover, it is anticipated that one or more of our agencies could receive public records requests and/or subpoenas arising out of the more than 250 lawsuits already filed by private parties in this matter, or in related DWH litigation (such as shareholder and insurance coverage suits). The State also has its own claims, and we need to preserve the evidence necessary to safeguard those claims. As an example, the State is entitled to recover, among other things, for a loss of taxes, royalties and fees, for increased costs of providing public services, for damage to the state's natural resources, and for damage to state property, including public lands.

State agencies and employees have a duty to preserve potentially relevant information that may be used as evidence in pending or reasonably foreseeable litigation. The duty to preserve potentially relevant information does not extend to "every shred of paper, every e-mail or electronic document, and every backup tape." *Zubulake v. UBS Warburg, LLC*, 220 F.R.D. 212, 218 (S.D.N.Y. 2003). Rather, once a party reasonably anticipates litigation, it must suspend its routine document retention/destruction policy and put in place a "litigation hold" to ensure the preservation of relevant documents. *Id.*

Accordingly, we caution all staff who are working or have worked on any aspect of the responses to or investigations of the DWH matter to be diligent and mindful of the need to preserve any potentially relevant information pertaining to this incident. This may include any tangible thing that relates to the explosion and its aftermath, including its causes and any resulting damages, costs, or effects suffered by the State, its agencies, and its employees. Both electronically and traditionally stored information may be an important and irreplaceable source of evidence. Examples of such information are equipment or materials salvaged during response actions, samples, and other physical items, documents such as inspection materials, field notes, analytical data for samples, internal communications, and electronic information. Document requests may seek information found in computers, including any network systems used in the relevant time period, removable electronic media, laptop computers, home computers, and other electronic information storage locations. Such requests very likely will seek information found in e-mail, text messaging and other electronic communications, word processing documents, spreadsheets, databases, calendars, telephone logs, internet usage files, and network access information. Work associated with the ongoing Natural Resource Damage Assessment process or other damages investigations would also be covered, including any studies, communications and contracts.

The laws and rules prohibiting destruction of evidence apply to electronically stored information in the same manner that they apply to other evidence. Unlike paper documents, for example, electronic information is easily deleted, modified or corrupted, and this sometimes happens automatically through the normal operations of your computer system. Accordingly, you must take reasonable steps to stop any alteration of, and to preserve, relevant information until the final resolution of this matter. This includes, but is not limited to, an obligation to discontinue any activities that could corrupt the data on computers which may contain information relating to this incident (such as data destruction, modifying files, and backup tape recycling policies). You may need to create "mirror image" copies of the hard drives on several computers. In addition, you should take steps to ensure that electronically stored information is maintained so as to preserve embedded "metadata" (internal computer data). With the above laws and rules in mind, the following specific

actions should be taken:

- a) Maintain relevant information as described above. Do not delete, throw out, shred, or otherwise destroy potentially relevant information, or allow deletion to happen by automatic deletion operations.
- b) Take affirmative steps to prevent the destruction of any potentially relevant information that has been transferred to a state records center or any other location according to your agency's document retention schedule.
- c) Preserve all data storage backup files that might contain relevant information. If you store backup information remotely, please notify the appropriate person(s) of this litigation hold notice.
- d) Preserve data from servers and networking equipment that log network access activity and system authentication.
- e) Take necessary security measures to restrict physical and electronic access to all electronically stored data directly or indirectly related to this incident.
- f) Preserve and retain all electronic data generated or received by employees who may have personal knowledge of the relevant facts. Steps should be taken to ensure that this electronic data is not altered, deleted (whether purposefully or inadvertently), modified or otherwise destroyed.
- g) Ensure that your agency retains access to potentially relevant information that may otherwise be lost due to computer or electronic system upgrading, retirement, or reimaging.
- h) If potentially relevant electronically stored information has not been preserved, immediately contact your IT staff to see if it might be recoverable.
- i) Maintain confidential and/or privileged information separate from publicly releasable information.
- j) Please maintain information subject to the litigation hold in an orderly, readily retrievable manner, and be prepared to cooperate with our office at a future time in collecting the information being preserved.

While it is impossible to search every possible location for potentially relevant information, our experience allows us to provide a general list of places from which relevant information is often requested. In conducting your own litigation hold policy and preliminary search, you should ensure steps are taken to preserve potentially relevant information located or stored on:

- a) blackberries or other PDA's
- b) shared drives
- c) electronic credit files or shared folders
- d) personal network drives
- e) intranet sites
- f) vendor databases or web based applications
- g) laptops and desktops (potentially personal laptops and home computers)
- h) electronic facsimiles
- i) floppy disks, CD-ROMs, ZIP disks or other electronic storage media
- j) voicemail
- k) e-mail servers/folders
- l) videotapes
- m) text messages or instant messenger clients
- n) databases
- o) other electronic or magnetic media storage locations.

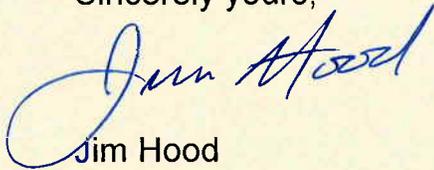
Employees must take every reasonable step to preserve this information until further notice. *Failure to do so could result in significant prejudice to your offices and agencies, such as imposition of sanctions or exclusion of evidence at trial.*

This letter should also be directed to your IT staff. It is imperative that you understand that there is no "one-size-fits-all" document retention policy. Just as

every client or agency is unique, so too are their data storage systems and procedures. Therefore, discussion should be had with your IT department to ensure that the IT personnel understand the goal of this litigation hold.

Thank you for your attention to this matter, and if you have any questions, please contact me as soon as possible. I would be happy to work with you in establishing informal procedures to preserve the relevant information, while at the same time proceeding in a way that is the least disruptive to your offices and agencies.

Sincerely yours,

A handwritten signature in blue ink that reads "Jim Hood". The signature is written in a cursive style with a large, looping initial "J".

Jim Hood

cc: Ms. Romaine Richards



- Cille
Romaine
Flip
Leila

STATE OF MISSISSIPPI
HALEY BARBOUR, GOVERNOR

DEPARTMENT OF FINANCE AND ADMINISTRATION
KEVIN J. UPCHURCH
EXECUTIVE DIRECTOR

October 14, 2010

Attorney General Jim Hood
Post Office Box 220
Jackson, MS 39205-0220

Dear General Hood:

In response to your letter dated October 5, 2010, the Department of Finance and Administration is outlining the procedures for maintaining the electronic copies of information within the Statewide Automated Accounting System (SAAS) and the Statewide Payroll and Human Resource System (SPAHRs) to ensure access over time to revenues and expenditures, including payroll details, as recorded by agencies in relationship to the Deepwater Horizon (DWH) disaster.

Copies of the SAAS general ledgers, which are required for all SAAS and MERLIN reporting, as well as copies of the SPAHRs payment detail files, are stored in offsite secure storage with no scheduled expiration date. Copies of SAAS transaction approval data are stored separately in offsite secure storage with no expiration date. We currently maintain copies of these files from the inception of SAAS and SPAHRs. We will implement a policy to ensure that these files will not be destroyed due to claims surrounding the DWH disaster, until release by the Office of the Attorney General is received.

SAAS supporting paper documents are presently maintained on microfilm by DFA's Office of Fiscal Management (OFM) indefinitely and would also be available. It is not presently DFA's practice to maintain the paper documents once they are filmed. It is a long-standing practice and copies produced from microfilm have been accepted in a number of other matters. Please advise if this practice should be revised.

Please be advised that while the processes outlined in this letter address all State of Mississippi agencies that use SAAS and SPAHRs, it does not address local governments, the waterway districts and port authorities, the Community and Junior Colleges, or the Institutions of Higher Learning. Those entities maintain their own financial systems.

If you need any additional information, please contact Cille Litchfield, DFA Deputy Executive Director, at 601-359-1433 or litchc@dfa.state.ms.us.

Sincerely,

Kevin J. Upchurch

From: "MARY JO WOODS" <MWOOD@ago.state.ms.us>
To: <RicharR@dfa.state.ms.us>
Date: 10/15/2010 11:39 AM
Subject: Re: Fwd: Deepwater Horizon Disaster Litigation

Romaine,

The Attorney General asked me to respond to your e-mail inquiry. The litigation hold letter was sent to several state agencies, including IHL, that we identified as having potentially relevant information. Regarding the issue of maintaining original documents, even if DFA's normal course of business or document retention policy calls for scanning documents and destroying or discarding originals, that practice must stop once the litigation hold is in place. The originals must be maintained, and in the case of electronic documents, they cannot be converted to a different electronic format.

Please feel free to contact us again if you have any further questions.

Thanks!
Mary Jo

Mary Jo Woods
Special Assistant Attorney General
Mississippi Attorney General's Office
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>>> "Romaine Richards" <RicharR@dfa.state.ms.us > 10/11/2010 5:40 PM

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Jim,

Kevin met with Cille Lichfield, Deputy Director, Mississippi Management and Reporting System (MMRS), Arthur Bridges (DFA's IT Director), Flip Phillips, Deputy Director over Fiscal Management, and myself to be sure DFA complied with your letter of October 5, 2010. While discussing your letter, 2 issues came up. 1) Whether you were aware that DFA would not have any of IHL's information and, 2) whether DFA could scan documents and destroy the originals or do you want the original records maintained. I told them you may want DFA to keep the originals but that we would need to verify this. Kevin is preparing a response to your

letter that will include these matters.

He asked me if I knew whether you had sent the letter to all agency heads or just DFA. I told him I did not know. He was concerned about IHL being on notice to retain their records. I told him I would let you know.

Just giving you a heads up.

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