

2004 WL 764895 (S.D.N.Y.)
(Cite as: 2004 WL 764895 (S.D.N.Y.))

United States District Court,
S.D. New York.

Beverly ZAKRE, Plaintiff,
v.
NORDDEUTSCHE LANDESBANK GIROZENTRALE,
Defendant.

No. 03 Civ. 0257(RWS).

April 9, 2004.

MEMORANDUM OPINION

SWEET, J.

*1 By letter dated January 29, 2004, plaintiff Beverly Zakre ("Zakre") has requested an order compelling defendant Norddeutsche Landesbank Girozentrale ("Nord/LB") to review two compact discs for responsive documents. One disc contains over 200,000 Bloomberg emails and the other contains over 4,000 offline emails. Nord/LB has conducted a review of the emails for privileged documents, but has not conducted a review for responsiveness to Zakre's specific document requests.

The offline and Bloomberg emails have been provided to Zakre in a text-searchable format. In other words, Zakre may search either disc for single words or phrases, or combinations of words or phrases. Nord/LB argues that the provision of the emails in this format constitutes a sufficient response to Zakre's document requests because the text search function will allow Zakre to locate those emails responsive to her requests. Nord/LB cites the findings of The Sedona Conference Working Group Series entitled *The Sedona Principles: Best Practices, Recommendations & Principles for Addressing Document Discovery* (Sedona Conference Working Group Series 2004). Principle 11 states that:

A responding party may satisfy its good faith obligation to preserve and produce potentially responsive electronic data and documents by using electronic tools and processes, such as data sampling, searching, or the use of selection criteria, to identify data most likely to contain responsive information.

Nord/LB also cites to an opinion in the District of Columbia in which the defendant produced a CD-ROM and paper documents that the court referred to as a "mountain of information." *In re Lorazepam and Clorazepate Antitrust Litig.*, 300 F.Supp.2d 43, 46 (D.D.C.2004). While the plaintiffs argued that defendant owed them a "meaningful and detailed document index," the court held, in referring to the CD-ROMs, that if the information "can be made readable, and, more importantly, searchable, there is no need

for an index of them. To the contrary, the [plaintiffs] can then search the documents on their own, regardless of any index produced by [defendant]." *Id.* at 46-47.

Zakre argues that the text search function may not be sufficient to determine whether it has found all email responsive to her requests. In light of the Sedona Principles and *In re Lorazepam*, and in particular of the Federal Rules of Civil Procedure, Nord/LB is not obligated to provide more than a searchable CD-ROM. Rule 34(b) provides that:

A party who produces documents shall produce them as they are kept in the usual course of business or shall organize them and label them to correspond with the categories in the request.

Nord/LB has produced the documents in as close a form as possible as they are kept in the usual course of business. Because the emails are also text-searchable, Nord/LB is not further obligated to organize and label them to correspond with Zakre's requests.

Zakre's motion for an order to compel discovery is denied.

***2** It is so ordered.

2004 WL 764895 (S.D.N.Y.)

Motions, Pleadings and Filings

. 1:03CV00257 (Docket) (Jan. 13, 2003)

END OF DOCUMENT