



In addition to defendants' theft of over 25,000 documents, Lewis has learned since the entry of the protocol Order of other misconduct by defendants:

- Both Harris and Cluff accessed confidential Lewis documents after they became employed by General Crane.
- Cluff had over a hundred telephone calls with Jim Robertson, the managing partner of General Crane, and other General Crane employees while he was still employed by Lewis. After Cluff joined General Crane and before Harris left Lewis, the two had nearly 150 telephone calls.
- On March 5, several weeks after first requesting it, undersigned counsel received an image of Jim Robertson's computer. A forensic analysis of that image revealed that on August 11, 2008, four days before the TI hearing, a new operating system was installed on Robertson's computer, *effectively wiping clean the computer's memory*. Moreover, the computer's log indicates that after August 11 someone other than Robertson has been using the computer.
- Despite the wiping of the computer's memory, Lewis' IT experts were able to recover some data from the computer's "unallocated space." Included in that data were emails from Cluff to Robertson and Jason Wagler, General Crane's director of business development, while Cluff was still at Lewis. In an apparent effort to conceal his emails should anyone go looking for them, Cluff used the address "skluff@lewis.com." The forensic analysis continues, and the information at present is fragmentary, but the following are several examples of what has been uncovered so far:

- *On October 8, 2007, almost three months before Cluff resigned from Lewis, Cluff emailed Wagler the bids Cluff planned to submit on behalf of Lewis for cranes, hoists, and rigging for Anslow-Bryant's Gaylord Garage project with this message: "Jason call me back so we can go over this. Tommy's e-mail as follows tommy.lunceford@abc-ltd.com."* (Email message, Ex. 3; Crane bid, Ex. 4; Hoist bid, Ex. 5; Rigging bid, Ex. 6.) Tommy Lunceford was Anslow-Bryant's superintendent on the Gaylord Garage project. *On October 12*, Wagler submitted General Crane's bids to Anslow-Bryant. *On October 19*, Cluff submitted Lewis' bids to Anslow-Bryant.
- In an email to Wagler on October 9, Cluff sent Lewis' crane and rigging bid worksheet for Flintco Construction's St. Edwards project with this message: "Jason this will be an operated crane. Call me when you have time and we can work out a quote for them." (Email, Ex. 7; Worksheet, Ex. 8.) Wagler forwarded the email to Robertson the same day. (Ex. 9.) Cluff also emailed the worksheet directly to Robertson with the message: "Jim call me you time to discuss this job." (Ex. 10.)
- In an email of unknown date to Robertson and Wagler, Cluff sent Lewis' hoist and rigging bid for Vaughn Construction's A&M Chemistry Building project with this message: "Do you want to contract this job know [sic] or let Lewis have it. Call me." (Email, Ex. 11; Bid, Ex. 12.)
- In an email of unknown date to Robertson, Cluff sent Lewis' crane bid worksheet for Burton Construction's City Centre project with this

message: "Here is one more if you want it or we can pass it to Lewis it is a 3 crane cheap job for crawler killer towers." (Email, Ex. 13; Worksheet, Ex. 14.)

- In an email of unknown date to Robertson, Cluff sent Lewis' crane and hoist bid worksheet for Lyda Swinerton's Four Seasons project with this message: "Jim look at this spread sheet and lets talk about this job Lyda will award it soon." (Email, Ex. 15, Worksheet, Ex. 16.)
- In an email of unknown date to Robertson, Cluff sent Lewis' price sheet/calculator for making bids on rigging projects: "*Jim please save this for me so I can put it on the new lap top.*" (Email, Ex. 17; Price Sheet/Calculator, Ex. 18.)

The Court may recall Robertson's testimony at the TI hearing regarding whether he had any Lewis information in his email box. He testified that he did not. (Transcript, Vol. 3 of 4, 237:5-238:15, Ex. 19.)

- On December 4, 2007, while still at Lewis, Cluff sent an email to Harris regarding bids on a job for Texas Children's Hospital with a carbon copy to "gingerc1127@att.net." (Ex. 20.) Lewis has learned that "gingercc1127" is Cluff's wife's email address. It is probable that Cluff was using his wife's email address to surreptitiously communicate with General Crane, much as he did with the "skluff@lewis.com" address.
- Despite repeated requests for an image of Jason Wagler's computer, it has not yet been produced.

- Despite repeated discussions between counsel regarding the imaging of General Crane's other computers, no agreement to do so has been reached.
- Despite repeated discussions between counsel about how the costs of the imaging and analysis are to be paid, no agreement has been reached.

For these reasons, it has become apparent that the Court's previous order relating to the computer forensic protocol should be clarified and/or modified.

**1. Payment of the computer forensic services**

In paragraph 5 of the Order of October 24, 2008, the Court stated: "Defendants shall bear all costs to image of the Target Drives." Lewis believes that the Court intended that all costs associated with the analysis of General Crane's computers should be borne by General Crane. General Crane's position is that it is responsible only for the cost of making the image of its computers and that Lewis is responsible for the remaining costs of analyzing the images. Lewis requests that the Court clarify its Order that General Crane is to bear all costs associated with the computer forensic work.

Alternatively, if Lewis is mistaken about the Court's intent on this issue, Lewis requests that the Court modify its Order. It is now clear that Harris, Cluff, Robertson, Wagler and probably others at General Crane were involved in a scheme not only to steal Lewis' confidential documents and trade secrets, *but also to steal jobs from Lewis even before Harris and Cluff had left Lewis*. It is also now clear that *the general manager of General Crane purposely destroyed evidence in this case and lied on the witness stand* in an attempt to hide his misdeeds and those of Cluff and Harris.

Given the misconduct that has been uncovered to date, it is probable that further computer forensic analysis will reveal even more misconduct. Lewis should not be required to

pay to uncover General Crane's misdeeds, including the destruction of evidence.

**2. Jason Wagler's computer**

It takes one to two hours to image a computer. There is no good reason why General Crane cannot produce the image of Wagler's computer within the next three days, and Lewis requests that the Court so order.

**3. Jim Robertson's real computer**

General Crane provided to Lewis what it said was the image of "Jim Robertson's computer." Clearly it was not. Lewis requests that images of Robertson's current computer, any computer he has used since August 11, and any backup of his computer made before or at the time of the installation of the new operating system be produced within three days.

**4. General Crane's other computers**

Despite repeated discussions with opposing counsel, undersigned counsel still does not have a clear understanding of how many other computers General Crane has. Lewis' IT experts can image at least 30 computers in one evening. Lewis proposes that the Court order that General Crane produce images of all of its computers including servers within a reasonable time period, for instance, by May 11; or alternatively, order that General Crane make its computers available to Lewis' IT experts beginning the close of business Friday, May 8, with imaging to proceed during non-office hours until the imaging of all computers is complete.

**5. Image information**

The image of the "Robertson computer" arrived with no documentation about how it was made, leaving Lewis' IT experts in the dark about whether it was done correctly or completely. Lewis requests that the Court order that all images received from General Crane in the future be accompanied by documentation that states: the identity of the person who created the image; his

or her qualifications and experience in imaging; the tools used to image the computers, including software and hardware; details regarding the verification process; and details of the computer acquisition process.

Also, given the suspicious circumstances of the missing Robertson computer, Lewis requests that General Crane produce its general redeployment procedures for computers, and specifically, all logs, work orders, or similar documents or computer files showing exactly what occurred on August 11, 2008, with respect to the Robertson computer.

#### **6. Emails**

It is now clear that Cluff was secretly communicating via email with Robertson and Wagler and possibly others at General Crane while he was still employed at Lewis and that the purpose of those communications was to alert General Crane to jobs that General Crane could steal from Lewis. While the present protocol does not explicitly address emails, Lewis requests that the Court order that the protocol include an imaging of all email stores on servers at General Crane and of all emails on individual computers, and provide for an analysis of those emails to find any from the following addresses: any "lewis.com" address, including "skluff@lewis.com;" Cluff's wife's email address, "gingerc1127@att.net;" and any other email addresses used by Cluff or Harris in the six months before they left Lewis.

For these reasons, Lewis requests that the Court clarify and/or modify the order of October 24, 2008, as described above and grant it any other relief to which it may be entitled.

Respectfully submitted,

STEELE STURM, PLLC



HOWARD L. STEELE, JR.  
Texas Bar No. 24002999

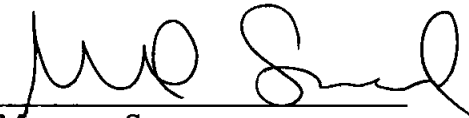
CHARLES STURM  
Texas Bar No. 24003020  
MICHAEL SAMFORD  
Texas Bar No. 17555650  
Wells Fargo Plaza  
1000 Louisiana, Suite 3780  
Houston, Texas 77002  
Telephone: (713) 659-2600  
Facsimile: (713) 659-2601

ATTORNEYS FOR PLAINTIFFS  
LWL MANAGEMENT, INC.,  
LEWIS EQUIPMENT COMPANY, LLC,  
LEWIS CRANE & HOIST, LLC, AND  
ROCK ISLAND RIGGING, LLC.

**CERTIFICATE OF SERVICE**

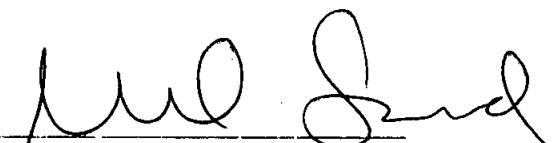
I hereby certify that a true and correct copy of the foregoing instrument has been served on this the 23d of April, 2009, upon the following counsel of record by hand delivery, facsimile, e-mail delivery, first class mail, and/or certified mail, return receipt requested, as follows:

Stewart Hoffer  
MUNSCH HARDT KOPF & HARR, PC  
700 Louisiana Street, Suite 4600  
Houston, Texas 77002-2732

  
MICHAEL SAMFORD

**CERTIFICATE OF CONFERENCE**

A draft of the foregoing instrument was sent via email to opposing counsel on April 21, 2009. No agreement could be reached regarding the relief requested by the Plaintiffs.

  
MICHAEL SAMFORD



I, Loren Jackson, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date  
Witness my official hand and seal of office  
this

Certified Document Number:

LOREN JACKSON, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

**In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail [support@hcdistrictclerk.com](mailto:support@hcdistrictclerk.com)**