

## HELPFUL PROPORTIONALITY CASES

*EDDEC Chair -Valerie C. David*

### **1. *Roque v Swezy*, Civil Action No. 3D23-1836, 2024 WL 1895141 (Fla. 3d DCA May 1, 2024).**

Roque initiated the lawsuit against her former romantic and business partner Lewis Swezy for breach of fiduciary duty, breach of contract, and tortious interference among other things. Swezy's counsel propounded discovery requests including a Request for Inspection seeking a forensic expert copy of the entire contents of Roque's cellphone. Roque's counsel objected to the forensic copy and review of her entire cellphone, specifically asserting violation of her right to privacy and lack of legitimate justification or need for such intrusive discovery requests.

The trial court issued an order for a forensic expert approved by both parties to make one copy of Roque's entire cellphone and have her attorney review its contents. Roque's attorney would then produce only non-privileged items that were within the scope of the order. This appeal to the 3<sup>rd</sup> DCA followed:

The 3<sup>rd</sup> DCA's analysis of proportionality centered on the need to balance the legitimate discovery interests of a party against the privacy rights of an individual.

The court recognized that there is a reasonable expectation of privacy in the contents of a cellphone. It emphasized that any intrusion into that privacy must be justified by a clear necessity for the information sought.

The court highlighted that for intrusive measures like the forensic examination of a cellphone, the requesting party must:

- Demonstrate a legitimate need for the information.
- Show evidence of actual or threatened destruction or alteration of relevant data. AND
- Establish that there are no less intrusive means available to obtain the information.

In this case, Swezy failed to provide adequate justification for the forensic review. He did not prove that Roque had deleted or threatened to delete any data, nor did he establish that less intrusive methods of discovery were unavailable.

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The 3<sup>rd</sup> DCA criticized the trial court's order, stating that simply requiring the entire contents of Roque's cellphone to be copied and reviewed by her attorney was insufficient to protect her privacy rights. The order lacked the necessary findings to justify such a broad intrusion into Roque's personal information.

The court further rejected Swezy's argument that the forensic review was a "quicker and more efficient" means of obtaining evidence. It asserted that efficiency alone cannot justify the invasion of privacy.

The 3<sup>rd</sup> DCA ultimately concluded that the trial court had departed from the essential requirements of law by granting Swezy's motion for a forensic examination without proper justification. This ruling reinforces that discovery practices must be both reasonable and justifiable, with a clear balance struck between the needs of litigation and individual privacy rights.

### **2. *Edwards v. McDermott Int'l, Inc.*, 4:18-CV-04330, 2022 WL 1568279, at \*3 (S.D. Tex. May 18, 2022)**

In this class action securities fraud case, the court addressed a discovery dispute involving the scope of documents to be reviewed. Plaintiffs requested broad discovery, proposing search terms that would yield around 1.3 million documents, while Defendants argued this was excessive and suggested narrower terms to reduce the document pool to 650,000. The court evaluated the request under Federal Rule of Civil Procedure 26(b)(1), which mandates that discovery must be both relevant and proportional to the case's needs.

The judge considered six proportionality factors:

1. Importance of Issues: The case involves significant securities law protections for investors, weighing in favor of extensive discovery.
2. Amount in Controversy: Plaintiffs' claims exceed \$1 billion, supporting broader discovery.
3. Access to Information: Defendants control the documents, so plaintiffs rely on discovery to obtain them, favoring broader access.
4. Resources of Parties: Lacking specific financial details, the court viewed this as neutral.

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5. Discovery's Role in Resolution: Plaintiffs' search terms seemed tailored to relevant issues, suggesting that the documents sought were likely to be informative.
6. Burden vs. Benefit: While costly, the high stakes and denial of motions to dismiss mean Plaintiffs should access comprehensive discovery.

Ultimately, the judge decided that Plaintiffs' broader search terms were appropriate and ordered Defendants to apply these terms, review for privilege and relevance, and produce documents progressively.

### **3. *Carlson v. Colorado Center for Reproductive Medicine LLC*, Civil Action No. 21-cv-01528-RM-NYW (U.S. Dist. Ct. Colo. April 29, 2022)**

The Federal Court ruled that defendants' request for plaintiff's pre-treatment medical records dating from January 1, 2014, to the beginning of her treatment with defendants on December 11, 2018, is proportional and relevant to the case.

In doing so, the Court reasoned that Although the sensitive nature of infertility was acknowledged, Plaintiff's infertility was central to her claims, making her prior medical history relevant and proportional to the requested discovery based on its relevance to the case, including the issues at stake, the amount in controversy, and the balance of burdens between parties.

### **4. *Aileron Inv. Mgmt., LLC v. Am. Lending Center, LLC*, 2022 U.S. Dist. LEXIS 5459, 2022 WL 107109 (M.D. Fla. Jan. 11, 2022)**

The court repeatedly addresses whether AIM's deposition topics meet the standard of proportionality under Federal Rule of Civil Procedure 26(b)(1). The court examined each deposition topic to determine if the requested discovery is relevant, reasonable in scope, and proportional to the needs of the case, balancing factors such as the importance of the issues, the amount in controversy, and the burden or expense relative to the benefit of the information sought. Should be noticing a pattern within the Court's here.

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For topics like those involving American Lending’s corporate structure and the basis of its answers and defenses, the court did limit certain requests but allowed discovery on relevant facts.

The Middle District also found that some phrases, like “affiliation,” did not exceed proportionality in scope.

For deposition topics such as discovery preparation, third-party communications, compensation, and distribution details, the court found these topics proportional and relevant to proving AIM’s claims, including potential bias, making the scope and potential burden reasonable.

Conversely, the court granted the protective order where AIM’s discovery requests sought American Lending’s financial information beyond what was previously allowed or covered material that would impose an undue burden given limited relevance.

Overall, the court underscored proportionality as essential in limiting discovery to nonprivileged information directly relevant to the case, permitting only reasonably specific and necessary inquiries while barring overly broad or burdensome requests.

### **5. *Rogers v. Minn. Life Ins. Co.*, 2021 U.S. Dist. LEXIS 240246, 2021 WL 5961299, at \*4-5 (M.D. Fla. Dec. 16, 2021).**

Plaintiff, Diane Rogers has moved to overrule Defendants’ objections and to compel Defendants to produce responsive documents in response to her first set of requests for production. Defendants, in turn, have filed a joint response asserting that they have already produced responsive relevant documents, and that they have objected to many of Plaintiff’s requests because Plaintiff’s discovery efforts amount to a “fishing expedition.”

The Middle District found that the Plaintiff’s discovery requests were overly broad and not sufficiently tailored to the specific needs of the case, lacked appropriate context and reasonable limitations by time or relevance that in turn lead to a complete failure to meet the proportionality requirements.

Specifically, the Court held that there were two main flaws with Plaintiff’s request to overrule the discovery objections and compel production of documents. First, most of the requests appear overbroad to the extent that they are disproportional to

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the needs of the case. Second, while there may be particular requests that are appropriate in scope, relevant, and proportional to the needs of the case, Plaintiff has generally failed to sufficiently demonstrate that. It is Plaintiff's burden to demonstrate how the requested information bears on the issues as she understands them.

**Also, notable, the court reminded both parties of their duty of professionalism to work together to resolve discovery disputes stating “the interests of justice are best served by counsel making every effort to meaningfully confer in good faith to resolve any disputes regarding discovery. . . and the Court expects the parties to fulfil both the letter and the spirit of the rule. When disputes arise regarding discovery requests, particularly when those requests are voluminous, a good faith conference will typically require the parties to confer either in person or via telephone and meaningfully discuss each and every individual request that remains in dispute.”**

Accordingly, the motion to compel was denied without prejudice, allowing Plaintiff the option to reformulate and resubmit more specific requests in the future if proportional to the case.

### **6. *Bishop v. Baldwin*, 2020 U.S. Dist. LEXIS 232111, 2020 WL 7320932 (S.D. Fla. Dec. 10, 2020).**

The case centers on a Ponzi scheme allegedly run by Baldwin and others through companies like NCB, involving the sale of silver to elderly victims, which was subsequently misappropriated to fund the scheme.

The Defendants, Baldwin and NCB, sought to quash subpoenas and secure protective orders in response to Plaintiff's various notices of non-party subpoenas to obtain financial and business records.

Ultimately, the Southern District Court balanced the protective scope of Rule 26 against the broad discovery entitlements in Rule 26(b)(1), narrowing some requests to cover relevant timeframes and key individuals involved in the case's claims. The subpoenas were upheld as necessary to ensure a fair examination of alleged financial misconduct central to Plaintiffs' claims, denying Defendants' Motion for Protective Order on nearly all counts.

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The Southern District's ruling in this case illustrates a careful balancing act in the discovery process, where the court seeks to uphold the principle of proportionality. By narrowing the requests and considering various factors, the court aimed to ensure that the discovery process is efficient, relevant, and fair, allowing both parties to prepare their cases adequately without imposing undue burden on any party.

Additional Cases worthy of mention:

- *Motorola Sols., Inc. v. Hytera Communs. Corp.*, 365 F. Supp. 3d 916 (E.D. Ill. Mar. 15, 2019).
- *Culliver v. Ctr. for Toxicology & Env't Health LLC*, No. 3:21-CV-4942-MCR-GRJ, WL 475185 (N.D. Fla. Feb. 16, 2022).
- *United States v. Academy Mortgage Corp.*, 2023 WL 8851618 (N.D. Cal. Dec. 21, 2024).
- *U.S. Securities and Exchange Commission v. Collector's Coffee Inc.*, 338 F.R.D. 309 (S.D.N.Y., 2021).
- *Noble Roman's, Inc. v. Hattenhauer Distrib. Co.*, 314 F.R.D. 304, (S.D. Ind. Mar. 24, 2016).