



CLIFFORD LAW OFFICES®

Tracy A. Brammeier

120 North LaSalle Street
36th Floor
Chicago, Illinois 60602

Telephone 312-899-9090
Fax 312-251-1160
TAB@CliffordLaw.com
www.CliffordLaw.com

February 17, 2025

VIA FEDEX & US MAIL

Sikorsky Aircraft Corporation
6900 Main St,
Stratford, CT 06615

Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808
as Registered Agent

NOTICE TO RETAIN AND PRESERVE EVIDENCE

To whom it may concern:

My office represents the family of Casey Crafton in the investigation of a claim for wrongful death as a result of the crash of American Eagle Flight 5342 on January 29, 2025. **This letter demands that Sikorsky Aircraft Corporation preserve any and all evidence which is potentially relevant to the issues in the litigation, and issue appropriate company-wide directives to suspend all document retention procedures that could lead to the destruction of relevant or pertinent evidence. Please consider this correspondence to constitute a formal Notice to Retain and Preserve Evidence.**

This letter is directed to Sikorsky Aircraft Corporation, any prospective defendant(s) in the anticipated litigation, attorneys, outside and in-house counsel, directors, officers, clients, and any and all employees, agents, third-party contractors (and all those directly or indirectly under the control thereof), and each of them, who now have a legal duty to preserve, retain, and to not alter (which may require removing from service), all equipment, software, information, documents, data, and materials concerning the anticipated, imminent or current litigation of which we have



made you aware. This letter places you on notice of your obligation to suspend routine destruction of these items.

Please take notice that a failure to preserve and retain all information and data as aforementioned may result in sanctions being imposed against you. *See, e.g., Zubulake v UBS Warburg, LLC*, 220 F.R.D. 212, 217 (S.D.N.Y. 2003) (UBS Warburg sanctioned for the destruction of e-mail communications and e-mail back-up tapes after the company learned that a former employee “might” sue. “The duty to preserve attached at the time that litigation was reasonably anticipated.”)

Furthermore, please note that the courts have imposed significant responsibilities on attorneys, both outside and in-house counsel, to continually and actively ensure document retention compliance. *See e.g., Zubulake v. UBS Warburg, LLC*, 229 F.R.D. 422 (S.D.N.Y., July 20, 2004). Therefore, upon receipt of this correspondence, counsel must issue a litigation hold to ensure all relevant materials are retained. *Id.* at 8. In addition, counsel must communicate with “key players” to the litigation the importance of retaining all electronic documents. *Id.* Lastly, “counsel should instruct all employees to produce electronic copies of their relevant active files.” *Id.* at 10. This includes making sure that all back-up media is identified and stored in a safe place. *Id.*

Available separate sanctions against counsel include monetary fines, public or private reprimand by the court, or possible disbarment. *See, e.g., Metro. Opera Ass’n, Inc. v. Local 100*, 212 F.R.D. 178, 222-223 (S.D.N.Y. 2003). Please also note that a party may be sanctioned for destroying any of these document types or any aspect with regard to their storage locations. *See, e.g., Kleiner v. Burns*, No. 00-2160-JWL, 2000 WL 1909470, at 4 (D. Kan., Dec. 22, 2000). Furthermore, with respect to e-mails, negligent or intentional destruction of relevant e-mail communications has resulted in severe sanctions being imposed against the offending party. *See, e.g., United States v. Philip Morris USA, Inc.*, 327 F. Supp. 2d 21, 26 (D.D.C. 2004) (imposing monetary sanction of \$2,750,000 for reckless destruction of relevant e-mail communication).

Please also take notice that courts have both held that not just the data itself, but that metadata may contain relevant, discoverable material, and have also imposed sanctions for not only the destruction of electronic documents, but also for metadata. *See, e.g., In re Telxon Corp. Securities Litig.*, 2004 WL 3192729, at 35-36 (N.D. Ohio, July 16, 2004) (imposing sanction for destruction of documents, including metadata that described changes made to relevant documents).

In addition to preserving tangible items and hard copy documents, you should also take all steps necessary to prevent the destruction, loss, or alteration of any files, documents, e-mails, electronically stored information (“ESI”), and other data or information generated by and/or stored on its computers, mobile devices, and storage media (e.g., hard drives, flash



drives, etc.). “Documents” and “ESI” should be afforded the broadest possible definition and includes, by way of example and not as an exclusive list, potentially relevant information stored electronically, optically, or magnetically as:

- Digital communications, including but not limited to electronic mail, voicemail, audio files, and instant messaging (such as, but not limited to, Gchat/Google messenger, Facebook messenger, WhatsApp, LinkedIn messenger, Slack, Snapchat, Signal, etc.);
- Word processing documents, whether stored on shared drives, individual custodians’ computers or network drives;
- Spreadsheets and tables (e.g., Excel, Google Sheets);
- Accounting Application Data (e.g., QuickBooks, Money, Peachtree data files);
- Image and Facsimile Files (e.g., PDF, TIFF, JPG, GIF images);
- Sound Recordings (e.g., WAV and MP3 files);
- Video and Animation (e.g., AVI and MOV files), including surveillance/security and mobile video;
- Databases (e.g., Access, Oracle, SQL Server data, SAP, JIRA);
- Contact and Relationship Management Data;
- Calendar and Diary Application Data;
- Online Access Data (e.g., Temporary Internet Files, History, Cookies);
- Presentations (e.g., PowerPoint, Corel Presentations)
- Network Access and Server Activity Logs;
- Project Management Application Data;
- Computer Aided Design/Drawing Files; and,
- Back Up and Archival Files (e.g., DB, Zip, GHO, DMG)

More specifically, you are on notice to preserve the following ESI and related software and hardware, as follows:

- Online Data Storage on Mainframes and Minicomputers: With regard to online storage and/or direct access storage devices attached to your mainframe computers and/or minicomputers and/or mobile phones: You is not to modify or delete any electronic data files, “deleted” files and file fragments existing at the time of this letter’s delivery, which meet the definitions set forth in this letter, unless a true and correct copy of each such electronic data file has been made and steps have been taken to assure that such a copy will be preserved and accessible for purposes of this litigation.
- Offline Data Storage, Backups and Archives, Tapes and Other Removable Electronic Media: With regard to all electronic media used for offline storage, including magnetic



tapes and cartridges and other media that, at the time of this letter's delivery, contained any electronic data meeting the criteria listed above: You is to stop any activity that may result in the loss of such electronic data, including rotation, destruction, overwriting and/or erasure of such media in whole or in part. This request is intended to cover all removable electronic media used for data storage in connection with their computer systems and all other media, whether used with personal computers, mobile phones minicomputers or mainframes or other computers, and whether containing backup and/or archive data sets and other electronic data, for all of their computer systems.

- Replacement of Data Storage Devices: You are not to dispose of any electronic data storage devices and/or media that may be replaced due to failure and/or upgrade and/or other reasons that may contain electronic data meeting the criteria listed herein.
- Fixed Drives on Stand-Alone Personal Computers and Network Workstations: With regard to electronic data meeting the criteria listed above, which existed on fixed drives attached to stand-alone microcomputers and/or network workstations at the time of this letter's delivery: You are not to alter or erase such electronic data, and not to perform other procedures (such as data compression and disk de-fragmentation or optimization routines) that may impact such data, unless a true and correct copy has been made of such active files and of completely restored versions of such deleted electronic files and file fragments, copies have been made of all directory listings (including hidden files) for all directories and subdirectories containing such files, and arrangements have been made to preserve copies during the pendency of this litigation.
- Programs and Utilities: You are to preserve copies of all application programs and utilities, which may be used to process electronic data covered by this letter.
- Log of System Modifications: You are to maintain an activity log to document modifications made to any electronic data processing system that may affect the system's capability to process any electronic data meeting the criteria listed herein, regardless of whether such modifications were made by employees, contractors, vendors and/or any other third parties.
- Personal Computers and mobile phones: You should immediately take the following steps: (i) a true and correct copy is to be made of all electronic data on such fixed drives relating to this matter, including all active files and completely restored versions of all deleted electronic files and file fragments; (ii) full directory listings (including hidden files) for all directories and subdirectories (including hidden directories) on such fixed



drives should be written; and (iii) such copies and listings are to be preserved until this matter reaches its final resolution.

- All media storage used in connection with such computers prior to the date of delivery of this letter containing any electronic data relating to this matter are to be collected and put into storage.

As set forth above, adequate preservation of ESI requires more than simply refraining from efforts to destroy or dispose of such evidence. You must also intervene to prevent loss due to routine operations and must employ proper techniques to safeguard all such evidence. You should act immediately to initiate a litigation hold for potentially relevant ESI, documents and tangible things, and to act diligently and in good faith to secure and audit compliance with such a litigation hold. You are required to immediately identify and modify or suspend features of its information systems and devices that, in routine operation, cause the loss of potentially relevant ESI. Examples of such features and operations include but are not limited to: purging the contents of e-mail repositories by age, capacity, or other criteria, electronic data shredding, disk defragmentation, backup tape rotation, and maintenance routines. Moreover, this retention obligation must also be effectively communicated to all of those individuals with hands-on access to any of these systems. You are obliged to take affirmative steps to prevent anyone with access to its data, systems, and archives from seeking to modify, destroy or hide electronic evidence on network or local hard drives (such as deleting or overwriting files, using data shredding and overwriting applications, re-imaging or replacing drives, encryption, compression, steganography or the like).

With regard to electronic data created subsequent to the date of delivery of this letter, relevant evidence is not to be destroyed and you are to take whatever steps are appropriate to avoid destruction of evidence.

In order to avoid spoliation, you will need to provide the data requested on the original media. Do not reuse any media to provide this data.

Although we reserve the right to seek a court order for you to preserve documents and tangible items from destruction or alteration, your obligations to preserve documents and tangible items for discovery in this case arises in law and equity, independently from any order on such motion, and you are hereby given written notice thereof.

Also, to assure that your obligation to preserve documents and tangible items will be met, and in order to avoid spoliation, advise your attorneys, clients, agents, employees, contractors, persons and entities with custodial responsibility for items referred to herein, and forward this same correspondence to them and ensure they act in accordance with their legal duties and obligations to you, as well as their own separate duties, as set forth herein.



This may not be an all-inclusive list of materials to be preserved, as we are not privy to all the materials that You have that are relevant to this matter. You may become aware of additional individuals with potentially relevant information after you conduct a reasonably diligent internal investigation regarding these matters. Those custodians' ESI, documents, and tangible things should also be preserved.

If you fail to properly secure and preserve these important pieces of evidence, it will give rise to the legal presumption that the evidence would have been harmful to your position in the case and/or result in appropriate sanctions. The destruction, alteration, or loss of any of this evidence may also constitute spoliation of evidence.

Please contact us within five (5) business days of the date of this letter to inform us whether you agree to protect potential evidence and avoid spoliation as detailed in this letter. Absent such an agreement, we will be forced to seek a protective order and/or injunction to protect this vital evidence.

In order to assure your obligation to preserve documents and things will be met, please forward a copy of this letter to all persons and entities with custodial responsibilities for the items referred to in this letter. Please forward this **Notice to Retain and Preserve Evidence** to your legal liability insurance carrier(s).

Very truly yours,

Tracy A. Brammeier

