



A Litigator's Guide to Negotiating eDiscovery Requirements

The What, Why & How of Electronic Document & ESI Agreements, Orders & Protocols

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eDiscovery
Webinar Series

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Lexbe LC

eDiscovery Webinar Series

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We are an Austin, TX based eDiscovery software and services provider, specializing in serving small & medium-sized law firms and organizations. We provide:

- *Cloud-based DIY eDiscovery processing & document review software*
- *High-speed ESI document processing and data conversion services*
- *Experienced eDiscovery specialists and expert consultants*



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'Secure, easy-to-use and a great review tool for consideration'



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The Lexbe logo, featuring the word 'lexbe' in a blue, sans-serif font with a small 'SM' trademark symbol to the right.

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Gene Albert bio

- CEO of Lexbe LC, a provider of cloud-based litigation processing, review and document management software & eDiscovery services
- Frequent speaker/author on eDiscovery and legal technology issues
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Negotiating eDiscovery Requirements

Agenda

- What are ESI Agreements, etc.
- Why Increasingly Important
- Legal Requirements
- Particular Points for Inclusion
 - ESI collection activities
 - Review procedures: linear, search, TAR
 - Production Format
 - Privileged information
 - Miscellaneous items
- Reference Guide for Examples of Protocols, Requirements, etc.

Negotiating eDiscovery Requirements

What Are ESI Agreements

- Agreement between parties that governs the who, what, when and how of Electronic Discovery activities and electronic stored information (ESI)
- Sets out the expectations for both sides and is binding
- With or without Court/magistrate participation
- Called many things, including an agreement, ESI order, Rule 26 order, pretrial order, protocol, requirements, stipulations, etc.
- Can take many forms: e.g., signed agreement, part of your Rule 26(f) case management plan, stipulation filed with the court.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION	
IN RE: WRIGHT MEDICAL TECHNOLOGY, INC., CONSERVE HIP IMPLANT PRODUCTS LIABILITY LITIGATION	MDL DOCKET NO. 2329 1:12-MD-2329-WSD
This Document Relates To: ALL CASES	
STIPULATED ORDER RE: FORMAT OF PRODUCTION OF ELECTRONICALLY STORED INFORMATION	
I. SCOPE OF THE ORDER	
Pursuant to agreement of counsel in this Multidistrict Litigation ("MDL"), this Order shall apply to all actions currently pending in MDL NO. 2329, the Wright Conserve Hip Implant Products Liability Litigation, and all future actions transferred to MDL NO. 2329. This Order governs the Defendants' production of all electronic information in MDL NO. 2329 consistent with the Federal Rules of Civil Procedure and any local rules governing the production of electronically stored information and supersedes any order that may have been entered in any case that is or becomes part of this MDL.	

Negotiating eDiscovery Requirements

Why Increasingly Important

- Cases are getting bigger and electronic discovery and document management matters are becoming more important
- Natural outcome of a Rule 26 conference
- Required in many courts in standing orders, or court practices
- Judges and magistrates are increasingly knowledgeable and expect it
- Court unlikely to bail out a party who enters into a bad agreement or does not understand what was agreed to
- Doing poorly can impair one's ability to get needed evidence into the case.

Negotiating eDiscovery Requirements

Legal Requirements

- No specific legal requirement per se for having an e-Discovery order, agreement, protocol, etc. in FRCP and most state laws. But many have standing orders, form protocols, guidelines, etc.
- FRCP obligations come from 'Meet and Confer' requirements
 - Parties must meet & confer 21 days before the scheduling conference or when a scheduling order is due (FRCP 26(f))
 - Scheduling conference must occur within 90 days of filing (FRCP 16)
- FRCP 26 'Meet & Confer' Requirements:
 - Discuss ESI preservation, form of production
 - Develop a proposed discovery plan
 - Submitting to the court a written report outlining the plan
- Meet & Confer can lead to an ESI agreement, order, etc.

Negotiating eDiscovery Requirements

Preservation & Litigation Holds

- ESI Agreements may specify preservation activities. FRCP 26(f) includes requirement for discovery plan to address preservation of ESI.
- Narrowing the scope of preservation can significantly reduce time and cost. This can be achieved with a combination of subject matter limitations, specifying the relevant time frame, carving out identifying non-relevant or duplicative data sources, and excluding data sources that are not reasonably accessible.
- Hold Status - May address when a hold was issued, who received it, what subjects and data sources covered and auditing procedures.
- Other issues: preservation of time-sensitive sources, metadata, employee changes, software changes, automated archiving and deletions.

Negotiating eDiscovery Requirements

Collection Methodologies

- ESI agreements may specify acceptable collection methodologies.
- New FRCP amendments emphasize that eDiscovery in general should be 'proportional' to the case. 'Reasonably calculated to lead to discoverable information' language removed. FRCP 26(b)
- Directed vs. Imaged
 - Imaged collection is a bit-by-bit forensic copies of Custodian drives. Replicates all data, including deleted files and fragments and information in the slack or unallocated space of the drive. This is the safest approach, but can be over-kill.
 - A directed collection is more cost-effective and targets sources likely to result in discoverable ESI.
- Who collects? Company IT vs. outside vendor/eDiscovery expert vs. individual custodians

Negotiating eDiscovery Requirements

Collection - Custodians

- A 'Custodian' is a person who has possession or control of discoverable ESI or other evidence.
- ESI agreements/orders may tie down who are the Custodians in the case.
- Shared drives, databases and other data sources can be an issue of custodian identification.
- Major cost implications of custodians and data sources. Limiting the number of people whose data must be collected and reviewed can be the single biggest cost savings in e-discovery.

Custodian Record

Update Cancel	
Type	<input type="radio"/> Organization  <input checked="" type="radio"/> Person 
Name	Skilling, Jeffrey
Title	President, NA Operations
Memo	Former CEO (2000)
Role	Executive
Address	1400 Smith Street Houston, TX 77002
Phone	713-538-5000
Fax	713-538-5010
Cell	713-429-4170

Negotiating eDiscovery Requirements

Collection Scope - Culling & Deduplication

- Most important when a broad collection has been undertaken, e.g., imaging custodian drives
- Date Limitations - ESI agreements may specify dates that ESI was collected (e.g. 1/1/2012 - 6/30/2015)
- File types - May specify file types that are searched, particularly if unusual file types will be important.
- Dedupe methodology may be specified. Horizontal Deduplication: Identification and removal of duplicate emails across all of the custodians within a case. Vertical Deduplication: The identification and removal of duplicate emails within each custodian's collection. Vertical DeDupe maintains associations between emails and all relevant custodians.

Negotiating eDiscovery Requirements

Collection - Data Sources

- ESI Agreement or order may specify which data sources should must be searched for relevant ESI.

ESI Content Map

Repository Name: ID:

Repository Type: Location:

Content Description:

Governance Policies:

Backup Policy:

Business Owner:

IT Primary:

When Setup:

When Discontinued:

Size (GB):

Not Reasonably Accessible:

Record Last Updated:

Last Updated By:

Record: 23 of 57

- Data mapping of ESI sources by Custodian with an ESI Content Map may be needed or helpful to properly identify.
- Issues re handling of special data sources, e.g., accounting systems, databases, software/platforms unique to a litigant.

Negotiating eDiscovery Requirements

Collection - Not Reasonably Accessible Data

- ESI agreements may specify what data is reasonably accessible. Under FRCP 26 provides that parties are not obligated to produce ESI that is “not reasonably accessible.” E.g., Presumed non-proportional. Application to particular ESI depends on particular case circumstances.
- Most Accessible: Active online data, such as email accounts, computer hard drives in use, portable devices and cloud storage. Nearline data in storage systems and offline storage and archives may be reasonably accessible, depending on the circumstances.
- Less Accessible: Backup tapes, erased, fragmented or damaged data, system files that log user activity, temporary files, cache files.
- Agreement or court may provide for discovery of ESI not reasonably accessible with cost-shifting or cost-sharing.

Negotiating eDiscovery Requirements

Review Procedures - Approaches

- Review procedures that are other than linear may be specified.
- Review approaches:
 - Linear Review - Read, review, and code all emails, one at a time. Linear review, of course, is usually not cost-effective with larger document collections.
 - Keyword Search - Using search keywords to identify responsive and privileged email.
 - Technology Assisted Review (aka TAR aka Predictive coding) - Manually review a seed set of documents to train predictive coding algorithm that will automatically code the remaining documents. Generate and review control sets to evaluate the results.

Negotiating eDiscovery Requirements

Review Procedures - Keyword Search

- Keyword search is most commonly used protocol for reviewing larger document collections and preparing productions
- Approaches for ESI Agreements include no mention, agreed keywords and agreed keywords with testing procedures.
- Agreed Keywords - Parties may propose and agree to keyword terms to be used. Can be contentious and involve courts/magistrates.
- Testing Protocols - Keyword searches necessarily involve false positives (producing irrelevant documents) and false negatives (missing and not producing responsive documents). Keyword terms can be tested on small samples and keywords adjusted.

Negotiating eDiscovery Requirements

Review Procedures - Search Options

Concept Search: 'Trade' = 'Swap' = 'quid pro quo'

The screenshot displays a search interface with a search box containing the word 'trade' and a 'Search' button. Below the search box is an 'Options' section with a dropdown menu set to 'All of the words' and four checkboxes: 'Concept Search' (checked), 'Fuzzy Search', 'Stemming Search', and 'Phonic Search'. To the right, a results pane titled 'Documents found: 1,483' shows a list of search results. The results include email headers and snippets, with the phrase 'quid pro quo' highlighted in several entries. The results are as follows:

Title
2000-08-15 08:09:00AM - West reports ...PWR COB COB West WSCC ST CAL Swap 2000/08/01 2000 2000/08/14PWR C
2000-08-15 08:09:00AM - West reports ...PWR COB COB West WSCC ST CAL Swap 2000/08/01 2000 2000/08/14PWR C
book01192001 ...PWR COB COB West WSCC LT NW Swap 2001/01/01 2001 2001/01/19PWR C
2000-10-26 11:47:00AM - RE: Invitation for IAEE Keynote ...effort for us. remember my offer of quid pro quo! M -----Original Message----- F
2000-05-26 11:03:00AM - Attachments to e-mail letter of May 18, 2000 ...2000 11:03:00 AM To: jfierro@barter.comjfierro@barter.com Subject: Attachmen
2000-10-26 10:47:00AM - RE: Invitation for IAEE Keynote ...effort for us. remember my offer of quid pro quo! M -----Original Message----- F

Negotiating eDiscovery Requirements

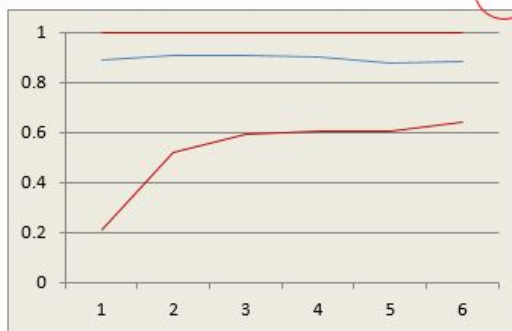
Review Procedures - Transparency in TAR



Assisted Review Report

1

Case Name:	Assisted Review +
Title:	Lexbe
Date Completed:	10/13/2014 4:19:15 PM
Run By:	assistedreview@lexbe.com
Comments:	



2

- ESI Protocol may address use of technology assisted review aka predictive coding

3

	Seed Set		Control Set		Predicted Set		Total	
	#	%	#	%	#	%	#	%
Responsive:	753	30%	1,242	50%	785,005	30%	787,000	30%
Non-responsive:	<u>1747</u>	<u>70%</u>	<u>1,258</u>	<u>50%</u>	<u>1,822,995</u>	<u>70%</u>	<u>1,826,000</u>	<u>70%</u>
Total:	2,500	100%	2,500	100%	2,608,000	100%	2,613,000	100%

Statistics	
Final F:	88%
Precision Percent	90%
Recall Percent	87%
Margin of Error (%):	+/- 24%

4

- Transparency could include:
 - TAR algorithm used
 - Seed set size & contents
 - How seed set chosen
 - Control set size
 - F score (precision & recall)



Negotiating eDiscovery Requirements

Form of Production - Requirements - FRCP 34(b)

- If No Agreement - Requires that ESI be provided in a form in which it is ordinarily maintained or a form that is reasonably usable. (*E.g., native format*)
- If Specific Request, No Objection - If the requesting party specifies a different form, and the receiving party does not object, the receiving party may be bound to the requested form of production.
- If Specific Request, With Objection - If the requesting party specifies a different form, the producing party can object and propose its own form.
- Specifics of ESI delivery of delivery formats is the meat of many ESI Agreements or orders. *Note: No right under FRCP to have the common TIFF/loadfile delivery, absent an agreement or an unobjected request.*

Negotiating eDiscovery Requirements

Form of Production - Practical Considerations

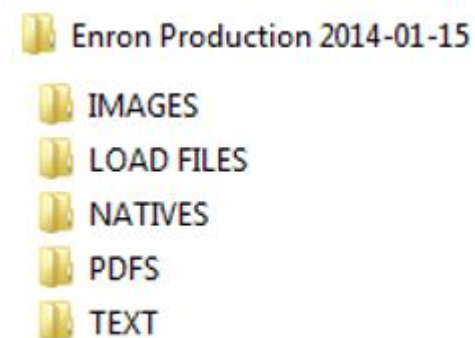
- Review Software Used. It's important to know what document review technology/software will each party be using? This will drive what the form of production will be for that party.
- Litigation eDiscovery Document Review Applications - Designed to organize, search, code & produce large data sets. Some work best or only with some data types (e.g., TIFF with load files); some with several or many types (natives, PDFs, TIFFs). Some can load and work with native files and some require pre-processing and conversion. Applications can be workstation, firm server or internet/cloud-based.
- Options for Small Document Sets - Some review small email data sets directly in Outlook. Other natives files may simply be reviewed on a local computer. Some convert everything to PDF and review on computer without a Litigation Review Application.

Negotiating eDiscovery Requirements

Form of Production - Production Types

Blended Productions

What is it?	Delivery in multiple formats as needed: Native, PDF & TIFF/text, with multiple load file formats
Advantages	<ul style="list-style-type: none">● Lessens format discussions/delays● Flexible for multiple platforms● PDFs available for easy transfer; Natives for backup and review; TIFFs for review systems that require it (if needed)● Versions linked for easy comparison
Disadvantages	<ul style="list-style-type: none">● If TIFFs produced, larger hosting space required
Notes	<ul style="list-style-type: none">● Multiple version of load files provided for system flexibility



Negotiating eDiscovery Requirements

Form of Production - Loadfiles

What are they?

Structured text or database type file that references document files and associates metadata and other information, for use in Litigation review software

May Be Included

- Document and email metadata
- Document breaks (for single page TIFFs)
- Email family associations
- Map to multiple versions of files (e.g., TIFF, Text, PDF, Native)

Formats in Use

- DAT (Concordance, Ringtail, Relativity)
- DII (Summation)
- LFP (iPro)
- Excel XLSX (Lexbe can import all loadfile types)

Notes

- Production may include multiple load files formats
- Can be used in TIFF, PDF and Native productions
- Some systems can load multiple formats

Negotiating eDiscovery Requirements

Form of Production - Lexbe Excel loadfile

Load File in Excel (Lexbe) Format

```

From: John J Lavorato
Sent: Friday, May 26, 2000 10:19:00 AM
To: John Zufferli; John Zufferli
Subject: Molson ad
Attachments: molson-canadian-i-am.mov.1

----- Forwarded by John J Lavorato/Corp/Enron on
05/26/2000
09:16 AM -----

ENRON 0000001
    
```

	A	B	C	D	E	F
1	BEGDOC	ENDDOC	BEGATT	ENDATT	PARENTID	RECORDTYPE
2	ENRON 0000001	ENRON 0000001				eEmail
3	ENRON 0000002	ENRON 0000002	ENRON 0000001	ENRON 0000002	ENRON 0000001	Attachment
4	ENRON 0000003	ENRON 0000003				eEmail
5	ENRON 0000004	ENRON 0000004	ENRON 0000003	ENRON 0000030	ENRON 0000003	Attachment
6	ENRON 0000005	ENRON 0000030	ENRON 0000003	ENRON 0000030	ENRON 0000003	Attachment

	G	H	I	J	K	L	M	N	O
1	DATESENT	TIMESENT	DATERECEIVED	TIMERECEIVED	FROM	TO	CC	B	SUBJECT
2	05/26/2000	10:19:00 AM	05/26/2000	10:19:00 AM	John J Lavorato	John Zufferli{John Zufferli}			Molson ad
3									
4	09/20/2000	08:33:00 AM	09/20/2000	08:33:00 AM	John J Lavorato	Beverly Stephens{Beverly Stepher			trading day 9/19
5									

	W	X	Y	Z	AA
1	PAGES	VOLUME	ORIGINALSPATH	TEXTPATH	PDFPATH
2	1	VOL01	\\ORIGINALS\0001\ENRON 0000001.msg	\\TEXT\0001\ENRON 0000001.txt	\\PDF\0001\ENRON 0000001.pdf
3	1	VOL01	\\ORIGINALS\0001\ENRON 0000002.mov	\\TEXT\0001\ENRON 0000002.txt	\\PDF\0001\ENRON 0000002.pdf
4	1	VOL01	\\ORIGINALS\0001\ENRON 0000003.msg	\\TEXT\0001\ENRON 0000003.txt	\\PDF\0001\ENRON 0000003.pdf
5	1	VOL01	\\ORIGINALS\0001\ENRON 0000004.xls	\\TEXT\0001\ENRON 0000004.txt	\\PDF\0001\ENRON 0000004.pdf
6	26	VOL01	\\ORIGINALS\0001\ENRON 0000005.xls	\\TEXT\0001\ENRON 0000005.txt	\\PDF\0001\ENRON 0000005.pdf

Negotiating eDiscovery Requirements

Form of Production - DII loadfile details

Load File in DII (Summation) Format

```
From: John J Lavorato  
Sent: Friday, May 26, 2000 10:19:00 AM  
To: John ZufferliJohn Zufferli  
Subject: Molson ad  
Attachments: molson-canadian-i-am.mov.1
```

```
----- Forwarded by John J Lavorato/Corp/Enron on  
05/26/2000  
09:16 AM -----
```

ENRON 0000001

Field Token

```
;Record 1  
@T ENRON 0000001  
@MEDIA eEmail  
@C ENDDOC# ENRON 0000001  
@C PGCOUNT 1  
@D @\IMAGES\0001\  
ENRON 0000001.tiff
```

Record Token

```
;Record 2  
@T ENRON 1000 0000002  
@PARENTID ENRON 0000001  
@MEDIA Attachment  
@C ENDDOC# ENRON 0000002  
@C PGCOUNT 1  
@D @\IMAGES\0001\  
ENRON 0000002.tiff
```

```
;Record 5  
@T ENRON 0000005  
@PARENTID ENRON 0000003  
@MEDIA Attachment  
@C ENDDOC# ENRON 0000030  
@C PGCOUNT 26  
@D @\IMAGES\0001\  
ENRON 0000005.tiff  
ENRON 0000006.tiff  
ENRON 0000007.tiff  
ENRON 0000008.tiff  
ENRON 0000009.tiff  
ENRON 0000010.tiff  
ENRON 0000011.tiff  
ENRON 0000012.tiff
```

Negotiating eDiscovery Requirements

Production - Sample DOJ Metadata Requirements

COMPANIES	Company submitting data
PHYSICALMEDIA	The unique identifier on the physical piece of media (e.g., ABC001)
VOLUMENAME	Production volume number (e.g., ABC001-001)
CUSTODIAN	Custodian(s) / source(s) -- format: <i>Last, First</i> or <i>ABC Dept</i>
TIMEZONE	The TimeZone from which the native file was collected.
SPEC#	Subpoena/request paragraph number to which the document is responsive
HASHMD5	Document MD5 hash value (used for deduplication or other processing)
HASHSHA	Document SHA1 hash value (used for deduplication or other processing)
SEARCHVALUES	List of search terms used to identify record as responsive (if used)
BEGDOC#	Start Bates (including prefix) -- No spaces or special characters
ENDDOC#	End Bates (including prefix) -- No spaces or special characters
DOCID	Must equal the value appearing in the BEGDOC# field and be UNIQUE
NUMPAGES	Page count
PARENTID	Parent record's BEGDOC#, including prefix (populated ONLY in child records)
ATTACHMENTIDS	Child document list: BEGDOC# of each child (populated ONLY in parent records)
FAMILYRANGE	Range of the BEGDOC# value of the parent record to the ENDDOC# value (including prefix) of the last child record (for example, ABC-JD-00001201 - ABC-JD-00001220); populated for all documents in the group. Empty if the record is NOT in family grouping
EPROPERTIES	Indicate all that apply : Record Type: E-Doc, E-Doc Attachment, Email, Email Attachment, Hard Copy, Calendar Appt Other Notations: Translation of [DOCID of original], Translated as [DOCID of Translation] Privilege Notations: Redacted, Privileged, Family Member of Priv Doc
FOLDERLABEL	Email folder path (sample: Inbox/Active); or Hard Copy folder/binder title/label
FROM	Author of the Email or Calendar item (as formatted on the original)
TO	Recipients of the Email (as formatted on the original)
CC	Names of the individuals who were copied on the Email (as formatted on the original)
BCC	Names of the individuals who were blind-copied on the Email (as formatted on the original)
SUBJECT	Email or calendar subject
DATE_HC	Date of hard copy documents, if coded. Format: YYYYMMDD.
DOCDATE	This is a multipurpose date field. Populate with: DATESAVED for E-Docs; DATESENT for Emails; DATEAPPTSTART for calendar appointments; DATE_HC for hard copy documents, if available. Format: YYYYMMDD.
DATECREATED	Date electronic file was created. Format: YYYYMMDD.

DATESENT	Date the Email was sent. Format: YYYYMMDD.
TIMESENT	Time Email was sent -- Format: HH:MM:SS (use 24 hour times, e.g., 13:32 for 1:32 pm; timezone indicators cannot be included)
DATERECEIVED	Date Email was received. Format: YYYYMMDD.
TIMERECEIVED	Time Email was received. Format: HH:MM:SS (use 24 hour times, e.g., 13:32 for 1:32 pm; timezone indicators cannot be included)
HEADER	The internet header information for Email sent through the internet;
INTERNETMSGID	Globally unique identifier for a message which typically includes messageid and a domain name. Example: <0E6648D558F338179524D555@m1p.innovy.net
MESSAGEID	Proprietary email database/mailstore/post office file associated with centrally managed enterprise email servers. Microsoft Outlook PST EntryID, the UniqueID (UNID) for Lotus Notes, equivalent value for other proprietary mailstore formats.
INREPLYTOD	Internet message ID of the Email replied to
CONVERSATIONINDEX	Email Thread Identification
IMPORTANCE	Email flag indicating priority level set for message
DELIVRECEIPT	Delivery receipt request notification for Email messages
READRECEIPT	Read Receipt request notification for Email messages
SENSITIVITY	Sensitivity field from Email messages
REVISION	Revision number extracted from metadata of native file
DATESAVED	Date native file was last modified. Format: YYYYMMDD.
DATEPRINTED	Date native file was printed (metadata derived from Word documents, etc.)
EORGANIZATION	Company field extracted from the metadata of a native file
EAUTHOR	Author field value extracted from the metadata of a native file
LAST_AUTHOR	Last Saved By field value extracted from metadata of a native file
ESUBJECT	Subject field value extracted from metadata of a native file
FILESIZE	File size in Bytes (integer value only - do not include unit of measure or decimal places - e.g., 568)
FILENAME	File name of native file (E-Docs or attachments to Email)
APPLICATION	Application used to create native file (e.g., Excel, Outlook, Word)
FILEEXTENSION	File extension of native file
FILEPATH	File path to native file as it existed in original environment
DOCLINK	File path location to the current native file location on the delivery medium
DATEAPPTSTART	Start date of calendar appointment. Format: YYYYMMDD.
TIMEAPPTSTART	Start time of calendar appointment. Format: HH:MM:SS (use 24 hour times, e.g., 13:32 for 1:32 pm; timezone indicators cannot be included)
DATEAPPTEND	End date of calendar appointment. Format: YYYYMMDD.
TIMEAPPTEND	End time of calendar appointment. Format: HH:MM:SS (use 24 hour times, e.g., 13:32 for 1:32 pm; timezone indicators cannot be included)

Negotiating eDiscovery Requirements

Form of Production - Other Issues to Address

- Production of email/attachments with parent-child relationships maintained
- If documents are imaged (to TIFF) will native versions also be produced. If so, automatically or on special request?
- Production of Proprietary Files; Hard Copy Documents; If TIFF, how will color documents be handled?
- How deduplication is handled; how exceptions (placeholders) are handled
- Staged (rolling) or one-time production
- Exact specifics and formats of files and load files
- Protective orders for confidentiality, AEO documents (usually separate agreement)

Negotiating eDiscovery Requirements


Privileged and Work Product Documents

- FRCP 26(b) requires privilege log preparation and case law traditionally has required specific logging requirements that can be burdensome in complex cases.
- An ESI agreement or order can define and narrow the privilege logging requirements, including:
 - Schedule of log delivery
 - Limiting dates of logging (e.g., once litigation commences) or with particular counsel (e.g., litigation counsel)
 - Automate creation with document management software from metadata
 - Logging email by thread group
 - Categorical logs that describe withheld categories instead of listing withheld records

Negotiating eDiscovery Requirements

Privileged Log from Metadata Using Software

From: Johnson Adam
Sent: Thursday, May 31, 2001 4:59:19 PM
To: Bridges Michael{Michael.Bridges@ENRON.com}; Denny Jennifer{Jennifer.DeBoisblanc.Denny@ENRON.com}
Subject: Dynegy-ICE VOL May30
Attachments: #1.dat; DYNEGY-ICE VOL May30.xls

General Coding 

Date: 2001-05-31 04:59:19PM
Date Sent: 2001-05-31 04:59:19PM
Date Received: 2001-05-31 04:59:19PM
Doc Source: 2013-06-13
From: Johnson Adam
To: Michael Bridges, Jennifer Denny
Cc:
Bcc:
Subject: Dynegy-ICE VOL May30

Privilege Log Auto-Creation

- Metadata extracted from natives
- Email date/time, sender, receiver, subject
- Privilege and Work Product coding used
- Privilege log automatically generated for review

Discovery | Privilege Log

Doc	Bates	Doc Date	From	To	Subject Matter
Link	ENR 0000001	2001-05-31 04:59:19PM	Johnson Adam	Bridges Michael{Michael.Bridges@ENRON.com}; Denny Jennifer{Jennifer.DeBoisblanc.Denny@ENRON.com}	Dynegy-ICE VOL May30

Negotiating eDiscovery Requirements

Privileged - Clawback

- 'Clawback agreements' are commonly included in ESI Agreements and Agreed orders in cases involving any substantial volume of ESI. Clawback agreements are authorized by FRCP 26(b)(5)(B) and FRE 502 (2007 explanatory note).
- A clawback agreement provides that inadvertent disclosure of privileged information does not operate as a waiver of the attorney-client privilege if the holder of the privilege takes reasonable steps to prevent disclosure and rectify the error.
- Not a panacea as the disclosed information possibly may be independently developed elsewhere once known.

Negotiating eDiscovery Requirements

eDiscovery Liaison

- Some ESI Agreements will appoint an e-Discovery Liaison for the parties.
- Some courts encourage encourage parties to designate e-Discovery liaisons.
- A eDiscovery liaison is an electronic discovery expert or technical consultant and serves as point person for communications between parties over eDiscovery matters.
- An e-Discovery Liaison can attend Rule 26 Meet and Confers' as a technical expert, as well as assist in collaborative communications throughout the discovery process.

A Lawyer's Guide to eDiscovery Processing

Thank you for Attending

We'll be making the following available to webinar attendees:

- ESI Protocol Resource List with sample protocols and agreements
- A recorded streaming version
- MP3 podcast
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