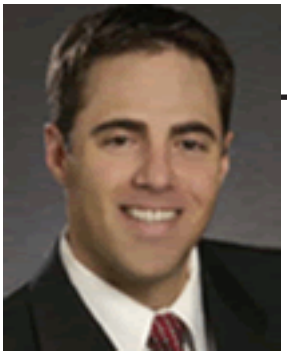

E-Discovery Lessons from the Battlefield

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Introduction

Over the past 15 years, litigants increasingly have played the "gotcha" discovery game to gain an advantage in trials, sometimes with eye-popping results.[1] Putting aside the rare cases in which a spoliation finding results in an enormous jury verdict, electronic discovery mishaps can lead to a wide variety of undesirable outcomes, including converting a relatively low-risk trial into a high-risk trial, inflating the settlement value of an otherwise defensible claim, and dramatically increasing your client's litigation costs.

As technology moves ahead ever faster, and as the volume of electronic data grows exponentially year-over-year, spoliation risks and corporate spending on e-discovery are likely to continue to grow from their already-substantial levels. At the same time, corporate law departments are focused on reducing legal expenses, perhaps more than ever before, which can create substantial tension with your goal of avoiding e-discovery violations and spoliation. This presentation focuses on practical lessons and best practices that we have learned in our roles as corporate counsel who have been responsible for managing many e-discovery projects. The proactive approach that we advocate below will help your clients minimize the distractions and costs of e-discovery over the long run—at a modest investment of time and financial resources at the front end—while enabling you to focus more of your time and efforts on the merits of your client's case.

Lesson 1: Assemble and empower a cross-functional e-discovery team now and ask them meet at least quarterly to stay ahead of changes in your client's information systems—long before you need to discuss them in a courtroom.

It is not uncommon for a large corporation to have literally dozens of enterprise data systems, each with its own retention schedule and backup processes (if any), and no single information technology or security officer who understands all that may need to be preserved, searched, collected, reviewed, and produced to opposing parties. It can be an overwhelming task to attempt to identify, define, and preserve all of the electronic information that may be subject to a discovery obligation, especially under the time pressures imposed by the state and federal rules of civil procedure after a lawsuit has been filed. By the time in-house and outside counsel have identified a data source that should be preserved, weeks or months may have elapsed during which time potentially responsive data may be irretrievably deleted or archived on media that are very expensive to restore to a readily accessible or searchable format.

To minimize the risk of spoliation and to maximize your ability to negotiate a reasonable, cost-effective discovery plan with your opponent and the court, a company should assemble and empower a standing, cross-functional e-discovery team with multiple responsibilities.

Members of the E-Discovery Team: We recommend that a company's standing e-discovery team include representatives from each of several key stakeholders. By not limiting the team's membership to litigation attorneys, the company's decisions and procedures for complying with discovery obligations will be better informed and more likely to lead to positive litigation outcomes. A typical e-discovery team comprises at least the following members:

(1) Corporate (in-house) litigation counsel. An in-house attorney who manages litigation, particularly complex

1 For example, commentators have attributed this year's $9 billion plaintiffs' verdict in the Actos MDL bellwether trial to the plaintiffs' allegations and evidence that some of the defendant drug companies destroyed relevant electronic information and evidence. Sindhu Sundar, "Doc Destruction Likely Fired Up Jury Behind $6B Actos Verdict," Law360, April 8, 2014; *see also In re Actos (Pioglitazone) Prods. Liab. Litig.*, No. 6:12-cv-00064-RFD-PJH, 2014 WL 355995 (W.D. La. Jan. 27, 2014).

litigation matters that are more likely to involve significant e-discovery, should lead the team. Some companies and legal departments are sufficiently large and sophisticated to justify hiring an in-house attorney who is an e-discovery expert and whose primary role is to lead the company's many e-discovery projects. For most companies, however, hiring a dedicated e-discovery attorney is unnecessary and impractical, and this role is more likely to be filled by an in-house lawyer who has many other responsibilities.

(2) Corporate e-discovery manager or paralegal. An in-house e-discovery manager or discovery paralegal who routinely manages discovery projects and internal document sweeps can serve as the "hub" that connects all the spokes in the e-discovery wheel.

(3) Corporate IT professional. A relatively high-ranking employee in the company's information technology department should bring true IT expertise to the team and keep informed of any major developments in the company's information systems over time, such as server and software upgrades, and alert the rest of the team to those developments. In addition, by engaging a senior IT manager, the legal department can educate the IT department regarding the substantial risks and costs associated with the company's e-discovery obligations and ensure timely cooperation of IT department employees whose assistance frequently will be required after lawsuits have been filed. The company also may consider whether an information security officer should serve as a member of this team, especially with the advent of cloud computing and because it will be necessary to transfer sensitive proprietary information outside of the company to vendors for litigation purposes. The IS security officer can consult with vendors regarding the proper handling and protection of the company's proprietary business information.

(4) Corporate records manager. A records manager who is responsible for, or at least knowledgeable about, the company's information governance system, information mapping, and document retention schedules.

(5) Outside litigation counsel. At least one of the company's outside litigators who regularly represents the company in complex litigation matters should actively participate in the e-discovery team. If several different law firms tend to represent the company in different types of litigation in which e-discovery is common or expected, the company should ask each of those law firms to designate an e-discovery representative who should serve on the team.

Functions of the e-Discovery Team: We recommend that your company empower the cross-functional e-discovery team to handle the following tasks:

(1) Information mapping. After the core e-discovery team has been assembled, one of the first steps should be to map where data is stored within the organization. That is, the team, in coordination with the IT department, should identify and define enterprise servers and databases that likely store data that are responsive to litigation. It takes time to interview IT and other employees of the company to identify and define the various sources of potentially responsive ESI. The e-discovery team should conduct research and interviews to not only identify sources of ESI, but to understand their retention and recycling schedules, their IT and business custodians, and their contents and to prepare accurate descriptions of those data sources so that outside counsel can rely on the summaries for discovery planning and motion purposes. In addition, the team should determine the costs involved with suspending the recycling of particular disaster recovery systems and restoring archived media to a readily accessible or searchable format. This will enable outside counsel to engage in Rule 26(f) negotiations from an informed position regarding the costs associated with various preservation and collection activities that litigation opponents may request. Note that courts generally hold that information stored in cloud servers—including those stored in the company's vendors' cloud servers—falls within your control. This means that the company likely will be deemed to have an obligation to preserve data that technically is maintained or stored by a third party.

(2) Prepare a model format for the company's initial and reminder document preservation notices, which can be customized for use in specific cases, and determine how such notices will be disseminated and at what intervals. Drafting a document preservation notice that clearly communicates the company's goals and instructions to business, engineering, and other personnel takes time and effort. You also want to identify the person(s) who will be responsible for disseminating the initial document preservation notice, the deadline by which such an initial notice should be disseminated following notice of threatened or actual lawsuit, and the methods by which the notices will be disseminated and recorded. The person responsible for disseminating the notices also should maintain a list of those employees who received the initial and any reminder notices, as well

as the date on which such notices were disseminated. If the document preservation notices are disseminated by email, consider including an acknowledgement feature such that each recipient of the notice must click to confirm receipt and understanding of the notice. The notice should identify a person in the legal department, typically the same person responsible for disseminating the notice, whom the employees should contact with questions regarding the preservation obligations. Further, consider scheduling periodic employee training regarding document preservation obligations and reinforce the message that compliance with a legal hold is mandatory, not voluntary.

(3) Review and provide input regarding policies addressing employees' use of company-issued computers, privacy rights, internet usage generally, social media specifically, and bring-your-own-device-to-work ("BYOD") options. Typically, companies will have one or several policies that deal with employees' use of computer hardware and information systems for business purposes. Certain policies are so important as to require your employees to sign them. For example, if your company allows employees to bring their own computer devices to work, create a BYOD policy and require your employees to sign it. Inform them of the risk that their personal data on such devices may become collectible or discoverable as a result of their using the device for work purposes. Instruct them not to store any unique copies of business data or business records on their personal devices, such that all such data will reside on company-owned devices and servers.

(4) Identify, evaluate, and retain e-discovery vendors to consult with the company. on information governance, preservation and collection options and protocols, and processing, review, and production of ESI. The company's e-discovery team should be primarily responsible for identification, evaluation, and retention of a panel of e-discovery vendors that will consult with the company on everything from information mapping and governance to review and production of relevant ESI. The identification, request for proposal, interview and evaluation, and contract negotiation process for a panel of e-discovery vendors takes months to complete, and there often is not sufficient time to complete such a process after a new major matter has been filed but before documents must be produced to your opponent. Thus, it is better to start that process sooner rather than later. The goal of the vendor selection process should be to retain one or more vendors with core competencies in each of the key areas of need, and most importantly in ESI collection, processing, review, and production.

(5) Assist in the company's preservation, collection, and other litigation efforts after notice of a significant lawsuit has been served or filed, especially in crafting the company's responses to motions to compel the production of ESI. Timing is of the essence when it comes to preservation of electronic evidence. The company should empower some core team members, particularly the IT representative and an in-house lawyer, to make immediate decisions regarding preservation steps. Further, the team can determine the collection methods that the company should use in all litigation matters so that the company is consistent in its collection approach. A company may or may not have the in-house resources to perform ESI collections itself, and it should make that determination before litigation is filed and decide how it will handle collections in future litigations. Further, the company should be aware that discovery rulings in any court can have a ripple effect throughout the company's litigation portfolio. Thus, the e-discovery team should set a consistent strategic direction regarding responses to motions to compel production of ESI and make the decisions as to what types of request to litigate, if necessary, and when to keep the company's powder dry to avoid a potentially adverse ruling in an unfavorable court that could then be used by other litigation opponents in future cases.

Lesson 2: Identify, evaluate, and retain a mandatory panel of discovery vendors to assist the company across its entire portfolio of litigation matters.

To maximize efficiency, reduce costs, and minimize the risk of spoliation and other problems, a company should initiate a vendor selection process with the goal of retaining a mandatory panel of discovery vendors that will assist the company across all of its litigation matters. If you continue to follow the traditional model, which was dominant 10 years ago, of allowing your different outside counsel firms to select their own preferred e-discovery vendors for various different litigation matters that each outside firm is handling, your e-discovery processes will be highly inefficient, unnecessarily expensive, and result in increased risk of spoliation and other e-discovery problems (e.g., the inadvertent production of privileged or work-product-immune documents). As noted above, the company's standing e-discovery team should be primarily responsible for this vendor selection process.

The company may need vendors to consult on everything from information mapping and information

governance to document review and production of relevant ESI. The identification, request for proposal, interview and evaluation, and contract negotiation process for a panel of e-discovery vendors takes months to complete, and there often is not sufficient time to complete such a process after a new major matter has been filed but before documents must be produced to your opponent. Thus, it is better to start that process sooner rather than later. The goal of the vendor selection process should be to retain one or more vendors with core competencies in each of the key areas of need, and most importantly (1) technical services focusing on the preservation, collection, ingestion, pre-processing, processing, hosting, and production of potentially responsive information and documents; and (2) document review services. A company typically will need at least two, and usually three or more, vendors to provide different services in these two broad categories. For example, the vendor that handles preservation and collections may be different than the vendor(s) that handles the culling of ESI or the application of analytics or technology-assisted review (i.e., before the attorney manual review process begins). Similarly, those vendors likely will be different than the vendor that supplies contract attorneys to staff document review projects. And none of these vendors is likely to be your outside counsel firm that serves as lead trial counsel, though some law firms have established affiliates or subsidiaries that are competitive in the document review and contract staffing space.

The days when corporate clients would pay outside law firms to staff large document review projects with partnership-track associates performing first-level review services at premium hourly rates are numbered, if not over. A discovery vendor that supplies contract labor at best-in-class value can handle all first-level document review, privilege review, and privilege log drafting, but that vendor's work will continue to be supervised, reviewed, and improved by your responsible outside counsel firm. Companies should insist that their contract staffing agencies bill them directly for contract attorney labor, or at least that outside firms simply pass these invoices on without a markup.

After the vendor selection process has been completed and the company's vendors have signed contracts, the in-house legal department should instruct all outside counsel firms—no matter what area of litigation the outside firms are handling—that they must use one of the vendors who has been selected for the company's panel. If any of your law firms wishes to provide any of the discovery services to your client that already is provided by one or more of the vendors on the mandatory discovery panel, require that law firm to request an exception to the mandatory panel and to articulate a persuasive basis for the exception in that particular case.

A large corporation that frequently deals with e-discovery in commercial, pattern, class action, intellectual property, and other complex litigations should consider retaining at least two vendors to supply contract attorneys (e.g., one offshore vendor to handle the most massive matters cost-effectively and one U.S.-based vendor to handle the routine matters) and at least two vendors to host documents in an online repository for review by the lawyers and for production of non-privileged, responsive documents to litigation opponents.

Further, a company should negotiate with two or three staffing agencies to provide contract attorney services for first-level document review services (i.e., initial review of documents for privilege, work product, confidentiality, and responsiveness) at a discounted hourly rate in exchange for the exclusive or semi-exclusive right to staff your client's document projects. Some vendors offer second-level or quality-control review services as well, which are performed by more highly-experienced or skilled (usually, both) attorneys, leaving only the substantive review of potential deposition, trial, or motions exhibits to core members of the trial team. The first-level reviewers can be managed by either in-house or outside counsel.

Due consideration should be given to the geographic location of the contract attorneys and staffing agency because a company frequently can negotiate superior (i.e., lower) hourly rates for contract attorneys located in Denver, Nashville, or other mid-market cities compared to the major metropolitan areas on either coast, and without sacrificing the quality of the services delivered. Finally, we recommend that the company negotiate vendor contracts with at least two-year terms to afford the vendor sufficient time to learn your client's business, information systems, and document types and to minimize the administrative burden and cost of engaging in the vendor selection process every year.

Lesson 3: Take a strategic, well-informed, cost-based approach to Rule 26(f) negotiations with opposing counsel to obtain a reasonable discovery plan that avoids undue burdens and costs.

Our experience has been that the overwhelming majority of discovery disputes can be avoided entirely if outside counsel does their homework—with the assistance of the company's e-discovery team—and negotiates from a well-informed, reasonable, and forthcoming position. The focus always should be on (i) relevance, (ii) reasonableness, and (iii) cost. Never draw lines in the sand regarding the production of data or information based on whether the subject information helps or hurts your case. Outside counsel should approach the Rule 26(f) conference (and subsequent negotiations regarding the scope of discovery) empowered by the in-house client to negotiate a discovery plan that is proportionate to the scope and claimed value of the case and that enables your opponent to discover truly relevant information that is not unduly burdensome or expensive for your client to search for, collect, review, and produce. If you approach the Rule 26(f) conference and discovery generally with a strategy of trying to avoid the discovery of information that is potentially harmful to your case, that is the quickest path to an enormously expensive e-discovery morass, because your opponent will not trust you and will be less likely (or even entirely unwilling) to agree to reasonable limitations on discovery. Assuming that the information sought by your opponent is arguably relevant to their claims or defenses, and assuming it would not be unduly burdensome or expensive for your client to collect, review, and produce the requested information, there should be a strong presumption in favor of producing that information. "

As a practical matter, the best ways to reduce the costs of e-discovery in a particular case are:

(1) Negotiate an agreement with your opponent at the Rule 26(f) conference to limit to a small number the individual custodians from whom you will collect paper and electronic documents in the first instance. For a significant case with seven or eight figures at stake, the default number of custodians should be five current or former employees whom you have identified as the key fact witnesses for your client. For smaller, six-figure cases, the default should be two or three custodians. For the largest of cases with nine- or ten-figure amounts in controversy, the default still should be five individual custodians, but you should remain flexible in the Rule 26(f) negotiations and be willing to include up to 10 or more custodians in the initial collection to avoid a dispute in front of the court on that question. Inform your opponent that each side expressly reserves its right to request in good faith that the opposing party collect documents from one or more additional custodians whom are identified in the initial document productions as important witnesses and whom were not included in the initial document collection. This reservation of rights will assure your opponent that you are not trying to hide relevant information and that you truly are motivated to reduce costs and reach a discovery plan within reasonable bounds. Further, with the volume of electronic data increasing year after year, it is not uncommon for each individual custodian to possess tens of gigabytes of potentially responsive data that must be filtered, processed, and reviewed. Because each gigabyte can cost hundreds of dollars to process by the technical vendors (depending on the culling and analytical methods applied), and because each gigabyte that must be reviewed costs thousands of dollars in attorney time, the limitation on the number of custodians is critical to your client's achieving a substantial reduction in e-discovery costs. Less recognized, but importantly, an agreement to limit the number of custodians from whom each party will collect documents also minimizes the risk that an particular employee's inadvertent or negligent failure to preserve potentially responsive information will ever become known to your opponent, much less the subject of spoliation dispute. In most cases, if your client produces the information that you promised to produce in a timely manner, and if your document productions confirm that you not only correctly identified the key custodians but that you are producing the information your opponent seeks, your opponent will not ask you to collect documents from additional custodians and is likely to be satisfied with your reasonable efforts. A corollary, of course, is that you should not select your five custodians to avoid discovery of the key custodians' files, because that tactic is likely to be counter-productive.

(2) Quickly identify those centralized databases and server files that store responsive information that is readily accessible, voluntarily identify those sources, and voluntarily agree to search those databases and produce the responsive information. Your approach to centralized databases and enterprise servers that store responsive information should be similar to your approach to the individual custodian files. That is, make a good-faith effort to identify the readily accessible, responsive data, identify those data sets for your opponent, and agree that you will produce them. This strategy will show that your client has a reasonable approach to discovery and that you do not seek to unreasonably interfere with the information your opponent needs to prepare his or her case for

trial. On the other hand, you also should be prepared to identify those backup or disaster recovery systems and archived databases that are not readily accessible or searchable and that your client will not voluntarily search or produce due to the burdens and costs of doing so. Your preferred negotiating position for those information systems that are not readily accessible or searchable should be that your client will agree to search and produce data from those systems so long as the opposing party agrees to pay for the costs of that effort, including reasonable attorneys' fees and vendor costs. If your opponent perceives that you are drawing a reasonable line based on burdens and costs, your opponent is not likely to dispute your proposal and also unlikely to accept your alternative proposal to conduct a collection and review paid for by your opponent. If your client pursues our recommended strategy, however, it is important that the e-discovery team have researched and quantified the burdens and costs associated with discovery of the non-readily-accessible or archived data sources so that trial counsel is armed with that information during the Rule 26(f) negotiations.

(3) When you face opposing counsel who may be unreasonable, overly aggressive, or untrustworthy, write them a letter setting forth in detail what the company will and will not do and negotiate a list of reasonable search terms to be used to identify the potentially responsive emails and other electronic documents in your collection that must be reviewed. First, send a detailed letter to your opponents explaining in detail the steps your client will and will not take with respect to preservation, collection, and production of ESI to put the ball squarely in your opponent's court. You will be surprised how often an aggressive and persuasive Rule 26(f) letter will cause your opponent to back down from unreasonable discovery demands. Second, propose a reasonable list of search terms to your e-discovery vendor that handles the pre-processing and processing of data for review and ask your vendor to send you an efficiency report showing how many files match each of the search terms. The efficiency report will tell you whether one or more of your proposed search terms is generating too many false positives and either needs to be deleted from the list of search terms or qualified in some way (e.g., by searching for that term only when it appears alongside a particular date or other search term). After you are comfortable that you have developed a reasonable list of search terms that will not return too many nonresponsive documents for review, share that list with opposing counsel and ask them to approve it or propose additional or different search terms. If your opponent proposes additional search terms, ask your vendor to run a new efficiency report to determine whether your opponent's proposed search terms will yield too many false positives. If you cannot agree to your opponent's proposed additional search terms, you can make a counter-proposal that excludes or qualifies those additional terms or that shifts the costs associated with the unreasonable terms to your opponent. That is, you can inform your client that you are willing to add their search terms to your list, but only if your opponent will agree to pay the costs associated with processing, hosting, reviewing, and producing documents that are responsive to those additional search terms that you deem to be of little relevance to the action.

Lesson No. 4: Don't rely on the rules of civil procedure or the courts to properly define the reasonable scope and limitations on e-discovery; it is up to you to shape the prospective disputes before they occur.

The fact is that neither the members of the federal and state rules advisory committees nor most judges have practical experience representing companies with respect to e-discovery matters. It is likely that your judge or juror audience will not understand the unreasonable burdens and costs that companies face in attempting to comply with their vague and unpredictable discovery obligations. To defend against the threat of disputes regarding alleged spoliation and the possibility adverse inference instructions, you should take reasonable discovery steps as recommended here, and document them thoroughly to shape the future debates. Here are some practical tips to follow:

(1) Carefully tailor what you say in document preservation notices to the allegations in the lawsuit or the particular series of pattern lawsuits. The adverse discovery ruling in the Actos MDL bellwether litigation turned, in large part, on the fact that Takeda had issued a document preservation notice—long before bladder cancer allegations were first made—in which the company instructed its employees "to preserve any and all documents and electronic data which discuss, mention, or relate to Actos." In re Actos (Pioglitazone) Prods. Liab. Litig., MDL No. 6:11-md-2299, 2014 WL 355995, at *8 (Jan. 30, 2014). The district court then evaluated Takeda's preservation efforts, in part, against this extremely broad litigation hold language. Of course, it would be literally impossible to comply with such an overbroad preservation request for the dozens, if not hundreds, of employees who worked with that product in some capacity on a past or ongoing basis.

Although a document preservation notice typically is not discoverable, it may become discoverable if your opponent makes a preliminary or prima facie showing of spoliation, and the court may judge your preservation conduct by your own preservation language, as the court did in Actos. The keys, then, are to avoid disclosing otherwise privileged or work product information (e.g., substantive legal analysis) in the hold notice and to carefully tailor the description of the documents and information to be preserved to the specific allegations in the litigation (i.e., the time frame, the specific nature of the allegations or alleged injuries, the types of information or documents that must be preserved), rather than stating that literally all information or documents referring or relating to a specific product, service, or business activity must be preserved.

(2) In significant litigation matters, conduct the document sweep within 60 days after a complaint has been filed, or even sooner if your client is the plaintiff. An early document sweep can serve as a preservation tool, and you should consider using it as such in significant litigation matters. There is no better way to minimize the risk of spoliation than to meet face-to-face with the key fact witnesses in their offices and to interview them to understand how they work, the types of documents they create and access, and the locations where they store their files. The custodians frequently will have a narrower concept of their preservation obligations than you have, and you likely will have to sit in front of their computers with them to explore in detail what must be preserved and collected from their network servers, local hard drives, and portable or removable memory devices. The same is true of the paper documents stored in desk drawers and behind cabinet doors.

(3) Be careful what you say in response to requests for production of documents. For similar reasons, your responses to requests for production of documents should never simply state that the company "will produce all responsive documents." In fact, for many requests for production served on a mid-sized to large company, it would be literally impossible for the company to verify that it has searched for, collected, or produced "all" responsive documents. You should specifically disclaim any obligation to do so. The rules of civil procedure require a reasonable and duly-diligent search for the requested information, subject to whatever reasonable limitations you and your opponent agree to when you negotiate the discovery plan. Point out to your opponent, expressly in your responses, that your client has hundreds, if not thousands or tens of thousands, of employees who work in different offices in different locations, and that every year your client has created millions of documents that have been kept in numerous different locations. Accordingly, your client does not, and could not, represent that its responses provide all information that might possibly exist and is responsive to your opponent's requests. Further, state that your search has extended to the agreed-upon individual custodians and to those centralized storage locations where you reasonably expected responsive information would be found. Next, in response to individual requests for documents, state that your client will produce "non-privileged, non-work product, responsive documents in its possession custody, or control" and the describe with some specificity what you will produce, rather than stating your client will produce "all" documents responsive to the request.

(4) Never voluntarily agree to produce your document preservation notices or a witness to give deposition testimony regarding your document preservation, collection, processing, or review procedures. By following taking and documenting reasonable steps to preserve, search for, collect, and produce responsive information, you will put yourself in a position of strength to resist unreasonable discovery demands, such as Rule 30(b)(6) notices to take the deposition of your IT department representatives regarding all possible electronic sources of relevant information. You may agree to designate an IT employee on limited subject matters regarding non-litigation conduct when your opponent makes a reasonable request aimed at gaining a better understanding of one or more key information systems. But you should never voluntarily agree to produce "discovery about discovery," which includes responding to written discovery requests and deposition notices seeking disclosure of your client's document preservation notices and steps taken to preserve and search for responsive information in response to a lawsuit. If you are compelled by a court to produce "discovery about discovery," you already are in a no-win, damage-control situation. All of the foregoing recommendations are aimed at helping your client to avoid "discovery about discovery" entirely.

Conclusion

Early e-discovery assessment practices and procedures are an increasingly common and important part of corporate litigation practice. In commercial, pattern, class-action, intellectual property, and other complex or high-exposure litigations, the best practices outlined above will help your clients achieve the best practicable e-discovery outcomes at a substantially

reduced cost over the long run and with reduced risk of spoliation findings and adverse inference instructions. This reminds us of the famous marketing slogan for Fram oil filters: “You can pay me now, or pay me later.” That is, you can pay me a small sum now for replacement oil and a new filter, or you can pay a large sum later for the replacement of the vehicle’s engine. E-discovery in complex litigation requires the same mindset to obtain success for your clients: They will save defenses fees and costs and get better results with lower risk by acting early.

About Mike Williams

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Mike Williams's practice focuses on complex business litigation and product liability litigation, especially class actions and national coordination of regulatory investigations and related "pattern" litigations. He has represented international manufacturers, small businesses, and individuals in more than 20 states across the country, including in trials, evidentiary hearings, and appeals. His experience includes advising clients in various industries regarding safety investigations, pre-suit preparedness and emergency response to product recalls and catastrophic accidents, crisis management, television and print media relations, and implementation of business strategies for avoiding litigation and reducing liability.

Mr. Williams is listed in Best Lawyers, The Legal 500 United States, and Colorado Super Lawyers Rising Stars. As reported in The Legal 500, clients and other lawyers have described Mr. Williams as "'exceptional,'" "'always available,'" "'a great trial strategist,'" and possessing "'the rare ability to communicate with business leaders in a meaningful way.'"

Practice Areas

- Appellate
- Class Actions
- Commercial
- Personal Injury Defense
- Product Liability
- Professional Liability

Legal Memberships, Activities and Honors

- Best Lawyers -- Commercial Litigation, 2013-2014; Mass Tort Litigation, 2011-2014; Product Liability Litigation, 2014
- The Legal 500 United States -- Litigation: Product Liability and Mass Tort Defense, 2007-2013
- Benchmark Litigation -- Commercial Litigation - Colorado, 2013; Future Star - Colorado, 2013
- Colorado Super Lawyers -- Class Actions/Mass Torts, 2014
- Colorado Rising Stars -- Class Action/Mass Torts, 2009-2013
- Colorado Bar Association
- Denver Bar Association
- American Bar Association

Education

- Yale Law School, J.D., 2000 -- The Yale Law Journal, Senior Editor
- University of Notre Dame, B.A., Government and Economics, summa cum laude, 1997 -- Phi Beta Kappa; Pi Sigma Alpha; Omicron Delta Epsilon