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Subject Federal Rule Making

As a practicing attorney, in the Federal system for 28 years, representing consumers and dealing with corporate opponents in product liability, insurance, and HMO litigation, I have dealt with the stonewalling techniques of corporate America, and the underhanded secretion of corporate documents, that not only establish liability against these corporations, but address the very issue of their knowledge concerning a product defect. The corporation's decision in the majority of these cases to place the dollar over the interest of the consumer.

I object to the proposed new restrictive rules on discovery on information from databases, email, and other electronic sources. Specifically, I object to the initial exemption from production on a claim of "not reasonablely accessible," as the same would invite more stonewalling and the secretion of damaging documents by corporate America. Corporate America and this economy are now run through a computer, with email and memoranda. To allow such a broad sweeping nebulous response would completely destroy the consumers, already mounting battle against Corporate America.

Secondly, I object to the right of the defendant to retrieve already produced material later claimed as privilege. This flies in the face of existing State law that declares the privilege nonexistent once disclosure is made. The amendment would require return and/or destruction of liability establishing material that attorneys forward to corporative programs that provide information to other litigants that may not have been produced by the corporate defendant in other litigation. I have been a victim of this very conduct in litigation with one defendant who did not produce documents that were produced and used in another litigation, and only through the corporative program did I obtain these discoverable documents.

Lastly, I object to exempting defendants from sanctions when they destroy electronic files through their routine document retention system as the same would give corporations an incentive to routinely purge their data at very short intervals. The government's own fraud litigation against the tobacco industry shows the dangerous nature of this rule.

All of these rules would require plaintiffs to file motions to compel, or motions to contest a claimed privilege which would overburden the already overburden judges in the Federal system. I understand that we are in a time when corporate America runs the Federal government with their lobbyist and special interest legislation, i.e. tort reform, however such lobbying and corporate influence should have no influence with the court system and/or its rule makers.

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