04-CV-235

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Comments:

I respectfully wish to register my objections to the proposed changes to the Federal Rules with respect to "E-discovery." I have been litigating products liability cases for nearly 25 years, representing severely injured plaintiffs in claims against major manufacturers. E-discovery has been an important part of fully and fairly preparing these cases, and often has turned up evidence that has led to an early settlement, or proven liability. Let me give you several examples of how E-discovery, under the present rules, has led to resolution of such matters:

1. Newton v General Motors, USDC, WD of Louisiana, Civil Action #CV92-0638S. Pre-trial discovery led to the production of an old email, created under the PROFS email system, which we called the "headache memo." It outlined the frustrations felt by one company engineering employee with management's desire to reduce force levels proposed by scientists for making a new seat back strength standard. This old email was a key part of the evidence in proving that management overrode scientific analysis and reason, leading to a liability verdict in this matter. Under the new proposed rules, it would be easy for a defendant to claim that such old emails are "too burdensome" to locate and produce, resulting in relevant evidence being hidden, or leading to enormous cost being imposed on the plaintiff (who was on Medicaid due to being poor) for locating this email.

2. Hennen v General Motors, USDC D.Minn., Case No. 3-93 Civil 18. In this case, we were allowed to search databases of the defendants scientific research on retraint systems. Old reports were found that demonstrated the existence of alternative designs already available. This led to a compromise settlement of the case. Again, proposed changes in

the rules would permit defendants to make such databases expensive for plaintiffs to obtain, and likely to result in relevant evidence remaining secret.

3.
Breeden v Dorel, Circuit Court for Wood County, West Virginia, Civil Action 02-C-239, 2002. Electronic discovery turned up customer service calls of parents reporting failures of a certain type of child restraint to protect occupants in low speed accidents. The records also revealed that the company's customer service representatives were telling callers exactly what the plaintiff's experts were saying, that children less than 40 pounds in weight should not be using this particular seat, but an alternative made and sold by the defendant at the same time. This case settled prior to trial. The evidence generated during E-discovery was a key part of plaintiff's proof in this matter. The proposed rules would again, make this difficult to find by permitting the defendants to claim that it was too burdensome to locate the same.

If time and space permitted, I could provide numerous other examples of how E-discovery under the present rules has made a clear difference in the outcome of a case. In most instances, the proposed changes to the rules would negate a highly effective and efficient form of discovery.

Because of the extensive experience we have gained in E-discovery in the past several years, we are now able to work with defense counsel in formulating discovery requests to minimize both cost and time incurred by both parties. I am now able to list out specific databases for the defendant to search, and give them queries that match fields in particular databases so as to be sure that we are requesting information that really exists. I've been able to do this with Ford and General Motors in the recent past in both state and federal court cases.

The proposed changes to the rules regarding E-discovery, including cost-shifting, clawback, and other provisions, would significantly affect a claimaint's ability to discover key, relevant evidence. I object to the presently proposed changes to the rules.

Donald H. Slavik

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