04-CV-157

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01/24/2005 03:20 PM

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CivilRules: Yes
Comments:

I write to object to the proposed changes to FRCP relating to E-discovery.

I am a trial lawyer with almost thirty years of experience representing injured people and consumers in product liability claims. Many of my current cases involve medical products and foodborne illness. Of those, several involve e-discovery disputes including one case in which the defendant is claiming that the cost of e-discovery should be shifted to the three plaintiffs (the defendant is a a Fortune 500 company) and that the only way the plaintiff can access any e-discovery material is through a very limited number of search terms (rather than direct access to the e-document).

The case in question is not a class action claim and does not involve spurious claims or novel theories. In fact, the foodborne illness outbreak involved the second largest meat recall in US history, the deaths of 8 or more people and scores of serious injury.

The proposed rules would only make access to e-documents that much more difficult, time consuming and expensive.

Using such terms as "reasonably accessible" in determining whether a party has to produce e-discovery means that virtually every case will require a hearing; that a huge amount of subjectivity will be introduced into the process; that decisions from court to court will vary widely and, worst of all, corporate defendants will be "rewarded" for their creativity in making their e-document inaccessible. This is all the more troublesome as commerce becomes less and less dependent on paper. Ironically, technology will result in less, not more, transparency.

These new proposals also create new opportunities for spurious privilege claims and reduce or

eliminate penalties for spoliation. Frankly, it is inconceivable that anyone other than corporations and their counsel derive any benefit from these proposed rule changes. They are some of the least objectively neutral rules I have seen. I strongly recommend they not be promulgated.

Fred Pritzker

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