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Best Practices for eDiscovery in Bankruptcy

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Agenda

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- What is Electronically Stored Information or ("ESI")?
- What is unique about eDiscovery in bankruptcy?
- What steps must be taken to preserve ESI?
- What information is discoverable?
- How do you properly respond to discovery requests?
- Is meeting and conferring with opposing counsel required?
- What are other eDiscovery best practices?

What is ESI & eDiscovery?

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Types of ESI

- E-mail
- Databases
- Spreadsheets
- Audio/video
- Images
- Metadata
- Internet search history
- Text messages
- Social Media

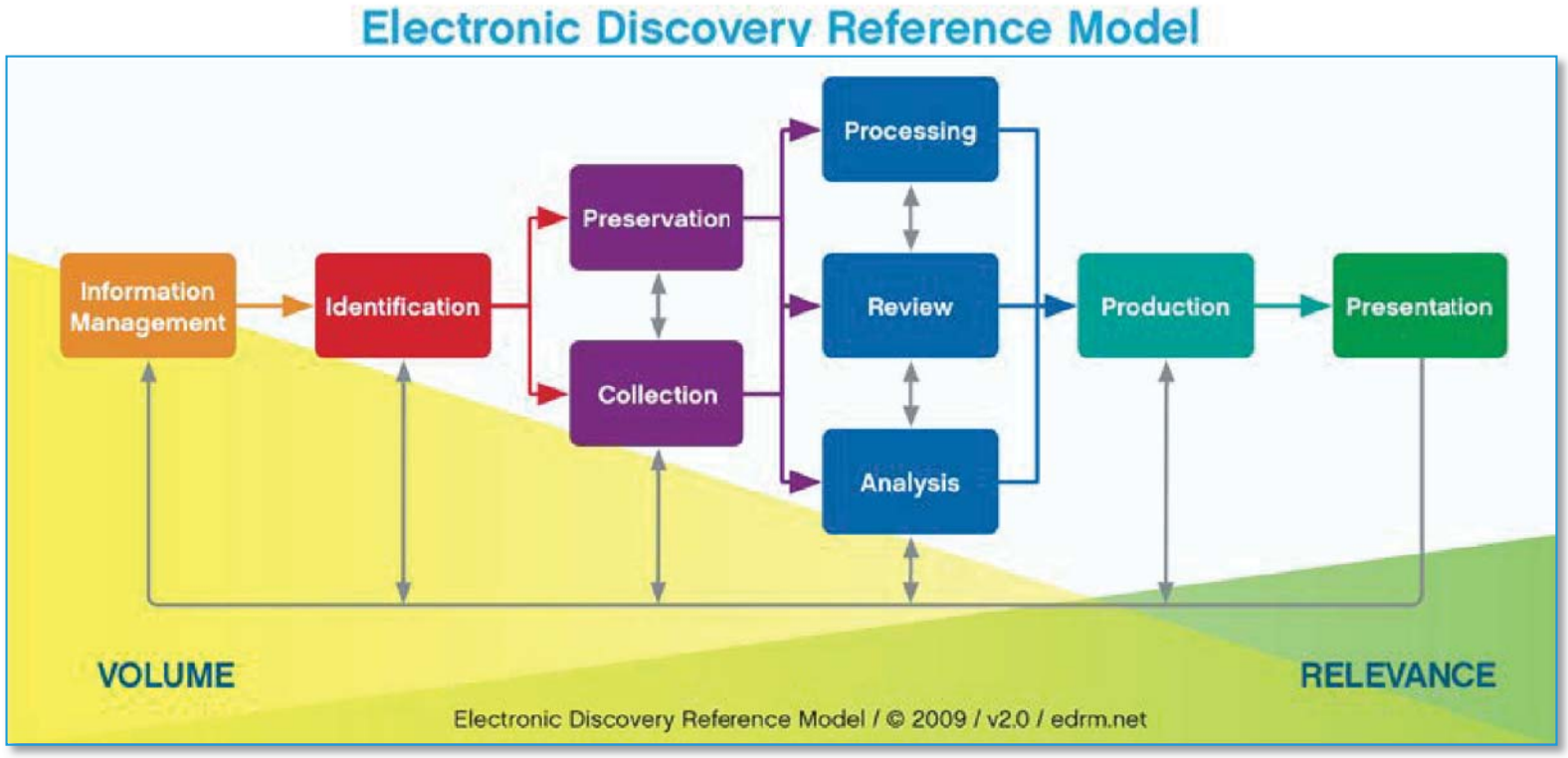
How Does ESI Differ From Hard Copy Documents?

- ESI is more likely to reside in multiple locations
  - Email accounts, text, social media, etc.
- Retrieving and producing ESI may be particularly costly if the platform or technology on which it is stored has become obsolete
- ESI tends to yield more voluminous production because large amounts of data can be more readily stored as compared to hard copy documents
- ESI tends to yield productions with a greater number of duplicate documents, e.g., forward of email chains with attachments
- ESI contains additional information, metadata, concerning the substantive content (e.g., who created the file, when it was created, the date sent, etc.)
- ESI tends to be searchable

ESI Has Increased the Number of Documents that Need to be Searched, Reviewed, and Produced

- To help visualize and put ESI in perspective, on average, an employee sends and receives at least 50,000 emails per year
  - Measured in gigabytes, these emails translate to approximately 10 GB of data
  - 1 GB produces approximately 40,000 pages, and so one years worth of an employee's emails would fill a pickup truck with 16-20 file boxes
- When combined with document collection from hard drives, home drives (employee network storage folders), network shares, thumb drives and other media, the average volume collected per employee is often at least 20 GB and sometimes well over 100 GB (depending on date range).
- Hard copy files are still used and often scanned into electronic format for both business and discovery purposes, which increases the volume of ESI.

Overview of the eDiscovery Process



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Understanding How to Handle ESI is Just as Important, and Potentially More Complicated, in Bankruptcy as in Regular Litigation

- ESI is everywhere!
  - E-mail correspondences between creditors and debtors
  - Contracts and agreements stored on enterprise management systems
- In large Chapter 11 bankruptcy cases there are potentially hundreds of creditors.
  - More Parties + More Custodians = Tremendous Number of Documents
- Bankruptcy proceedings often move forward at a faster pace than commercial litigation, which exacerbates the challenges associated with dealing with ESI and discovery issues.

Federal Rules Governing Discovery in Bankruptcy

- The Federal Rules of Bankruptcy 7026 through 7034 incorporate Federal Rules of Civil Procedure 26 through 34.
- About three years ago, several amendments were made to the Federal Rules of Civil Procedure to:
  - Reduce the costs associated with discovery
    - "Proportionality" considerations were re-introduced to Rules 26, 30, 31, and 33
  - Clarify the ESI preservation and spoliation standards
    - Rule 37
  - Improve efficiency
    - Rules 1, 4, 16, 26, and 34

But Do Not Forget that Other Rules May be Applicable

- **Local Rules** might set forth special obligations
- **State rules** might be applicable in adversary proceedings

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What “Reasonable Steps” Must be Taken to Preserve ESI?

The Duty to Preserve

- "[T]he duty to preserve and produce documents rests on the party. Once that duty is made clear to a party, either by court order or by instructions from counsel, *that party is on notice of its obligations and acts at its own peril*."
  - (Former) U.S. District Judge Shira A. Scheindlin in Zublake v. UBS Warburg LLC, 229 F.R.D. 422, 436 (S.D.N.Y. 2004).
- The duty to preserve requires a party to *identify, locate, and maintain* information relevant to the litigation.

When Does The Obligation to Preserve ESI Arise?

- Whenever litigation is *reasonably anticipated, threatened or pending* against an organization, that organization has a duty to undertake reasonable and good faith actions to preserve relevant and discoverable information.
  - Failure to preserve and retain relevant and discoverable information may lead to *sanctions, negative inferences, and even an adverse judgment*.

The Duty to Preserve is Triggered as Soon as Filing for Bankruptcy is Considered

- ESI and other documents should be preserved *as soon as filing for bankruptcy is considered* because at that time litigation is reasonably anticipated.
- Debtors have an obligation to preserve ESI and other evidence related to the filing of a *contested matter, adversary proceeding, or any other disputed issue*.
- A debtor's preservation efforts should extend to *representatives and affiliates* of the debtor, and the debtor should consider issuing appropriate instructions regarding preservation to such third parties.

The Duty to Preserve is Not Boundless

- The obligation to preserve does *not* require a debtor to preserve all information in its possession.
- Regular document retention policies may still be followed with respect to information that is unlikely to be relevant to any potential litigation, such as:
  - Email accounts of individual's who were not involved with the matter in question
  - Documents relating to transactions or events that are not anticipated to be relevant to any litigation
- However, it is best to always err on the side of preservation.

The Filing of a Proof of Claim Does Not Necessarily Require Special Preservation Efforts

- If proofs of claim triggered preservation obligations, the debtor would be required to preserve everything, which would unnecessarily exhaust estate resources.
  - *See, e.g.*, In re Kmart Corp., 71 B.R. 823 (Bankr. N.D. Ill. 2007).
- Additional factors to consider when deciding whether preservation efforts should be made based upon the filing of a particular proof of claim include:
  - Size of the claim
  - Nature of the claim
  - Specificity of the basis of the claim
  - Nature and extent of debtor's opposition to the claim

Both Debtors and Creditors Should Issue Litigation Holds When Litigation is Reasonably Anticipated

- A litigation hold is a *written* directive to a party or entity instructing that party to maintain and preserve all information that is relevant to a legal action.
- When should you issue a litigation hold to your client?
  - "*Once a party reasonably anticipates litigation*, it must suspend its routine document retention/destruction policy and put in place a 'litigation hold' to ensure preservation of relevant documents."
    - Zubulake v. UBS Warburg LLC, 220 F.R.D. 212, 218 (S.D.N.Y. 2003).
- Sending a written notice, and then forgetting about it, is **not** enough to fulfill one's discovery obligations!
  - "A party's discovery obligations do not end with the implementation of a 'litigation hold'—to the contrary, that's only the beginning. *Counsel must oversee compliance with the litigation hold*, monitoring the party's efforts to retain and produce the relevant documents."
    - Zubulake v. UBS Warburg LLC, 229 F.R.D. 422, 432 (S.D.N.Y. 2004).

Steps to Take when Issuing a Litigation Hold

- Identify sources and locations of documents
- Identify document custodians
- Impose or issue the legal hold
  - Ensure that it is broad enough in scope/recipients to reasonably assure that all potentially responsive data will be preserved
  - But to the extent possible, identify documents with precision
  - Periodically follow-up regarding the status of the hold
- The litigation hold may need to be revised as previously unforeseen issues arise

Best Practices for Litigation Holds

- Collect ESI … but don't forget the paper files!
- When complying with a litigation hold, make sure to document all procedures and actions taken because compliance may become an issue.
- Failure to demonstrate compliance could lead to sanctions, adverse inferences, or dismissal of the claim.

Spoliation Can Result From the Failure to Preserve Documents

- Once an obligation to preserve ESI arises and a party *fails to take reasonable steps to preserve it*, a claim for spoliation of evidence can be asserted and sanctions may by imposed.
- FRCP 37(e) provides that when another party is prejudiced by the failure to preserve information, and the *failure to preserve was intentional*, a court may presume that the lost information was unfavorable to the party that failed to preserve it, and instruct a jury to presume as such, or dismiss the action or enter a default judgment.
  - However, dismissal of the action or entry of a default judgment should only be used "*as a last resort, when less drastic sanctions would not ensure compliance with the court's orders*."
    - Malautea v. Suzuki Motor Co., 987 F.2d 1536, 1542 (11th Cir.1993).

Factors that Courts Consider When Deciding Whether Spoliation Warrants Sanctions

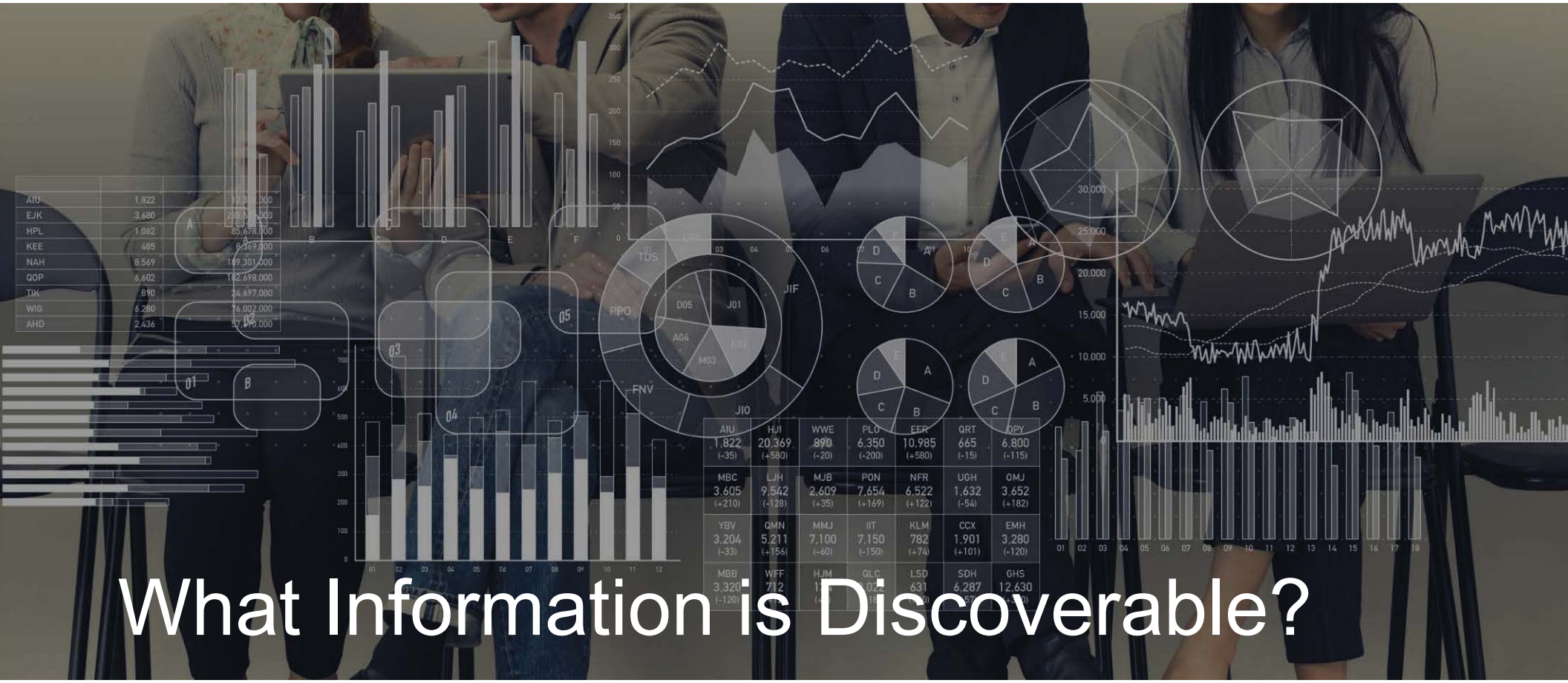
- Courts often evaluate whether to enact sanctions by examining:
  - "(1) *the degree of fault* of the party who altered or destroyed the evidence; (2) *the degree of prejudice suffered* by the opposing party; and (3) *what degree of sanction is necessary to avoid substantial unfairness* to the opposing party *and to deter such conduct* by others in the future."
    - In re Stone & Webster, Inc., 359 B.R. 102, 116 (Bankr. D. Del. 2007).
  - It is important to remember that Rule 37(e)(2) requires a finding of intent to harm the opposing party in order to levy sanctions; innocent mistakes are not sanctionable.

Case Law Demonstrates that Courts are Hesitant to Enact Case Terminating Sanctions Absent a Finding of Intent

- A court in the Southern District of California did not impose an adverse inference order against a plaintiff for failing to prevent the destruction of text messages. While the plaintiff did not institute a litigation hold, the court did not find that the plaintiff intentionally failed to preserve the text messages to deny them from the defendants.
  - Nuvasive, Inc. v. Madsen Med., Inc., 2016 WL 305096 (S.D. Cal. Jan. 26, 2016).
- Sanctions were imposed against a plaintiff for intentionally altering emails in a trademark infringement case before a court in the Southern District of New York. The judge found that "the plaintiffs' manipulation of the email addresses is not consistent with taking 'reasonable steps' to preserve the lost evidence."
  - Cat3 LLC v. Black Lineage, Inc., 2016 WL 154116 (*S.D.N.Y. Jan*. 12, 2016).

Case Law Demonstrates that Courts are Hesitant to Enact Case Terminating Sanctions Absent a Finding of Intent (Cont.)

- Monetary sanctions to reimburse plaintiff's expenses, costs, and attorney fees were awarded when defendant was found to have never instituted a litigation hold (even after three lawsuits were filed), admitted to destroying documents, and failed to inspect several employees' computers for relevant information.
  - In re Xyience Inc., 2011 Bankr. LEXIS 4251, at *24-25 (Bankr. D. Nev. Oct. 28, 2011).



What Information is Discoverable?

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The Federal Rules Place Proportionality at the Heart of Every Discovery Request

- Fed. R. Civ. P. 26(b)(1) - "Parties may obtain discovery regarding any *nonprivileged* matter that is *relevant* to any party's *claim or defe*nse and *proportional* to the needs of the case . . . . Information within this scope of discovery *need not be admissible* in evidence to be discoverable."
- The Advisory Committee noted that reintroducing proportionality:
  - "contemplates *greater judicial involvement* in the discovery process and thus acknowledges the reality that it cannot always operate on a self-regulating basis."
  - and is a recognition that "[t]he information explosion of recent decades has greatly *increased* both the *potential cost* of wide-ranging discovery *and the potential for* discovery to be used as an instrument for *delay or oppression*."

Prudence Requires Erring on the Side of Over-Retention

- "[C]ourts have recognized that in the context of preservation, this proportionality standard may prove too amorphous to provide much comfort to a party deciding what files it may delete or backup tapes it may recycle. Accordingly, until a more precise definition is created by rule, *prudence favors retaining all relevant materials*."
  - United States District Court Judge James L. Cott in Pippins v. KPMG, LLP, 2011 WL 4701849, at *5 (S.D.N.Y. Oct. 7, 2011) (emphasis added).

What does "Proportionality" Really Mean?

- Courts consider 6 factors when deciding whether a given discovery request is "proportional to the needs of the case:"
  - The *importance* of the issues at stake in the action;
  - The *amount* in controversy;
  - The parties' relative *access* to relevant information;
  - The parties' *resources*;
  - The importance of the discovery to the *outcome* of the issues at stake; and
  - Whether the burden or expense of the proposed discovery outweighs its likely benefit.
- "[N]o single factor is designed to outweigh the other factors in determining whether the discovery sought is proportional," and all proportionality determinations must be made on a *case-by-case basis*.
  - Oxbow Carbon & Minerals LLC v. Union Pac. R.R. Co., 322 F.R.D. 1, 6 (D.D.C. 2017).

Proportionality is Especially Important in Bankruptcy

- Debtors have limited assets, and Creditors are often faced with the prospect of less than a full recovery.
- Parties should not be forced to spend a disproportionate amount of already limited resources on the preservation and production of ESI.
- "The parties and the court have a ***collective responsibility to consider the proportionality of all discovery*** and consider it in resolving discovery disputes."
  - Fed. R. Civ. P. 26(b)(1) Advisory Committee's note to 2015 amendment.

Proportionality Case Studies – Discovery Costs

- The burden is on the party resisting discovery to show that the discovery request would impose undue burden or expense.
- When arguing that a discovery request would impose an undue burden or expense, it is important not to show the burden or expense in a vacuum, but rather that the burden or expense is *disproportionate* to what is at stake.
  - A party opposing a discovery request on proportionality grounds should do its best to accurately estimate the cost to answer the request and refer to this estimate in their opposition.

Proportionality Case Studies – Discovery Costs (Cont.)

- "The only factor Plaintiff mentions is the cost of the discovery. *Plaintiff does not set forth* what *the relative cost of production* would be as *compared to the amount in controversy*. . . . Plaintiff's unsupported estimate of $4,000 to $5,000 per custodian in discovery costs does not lead the Court to find that ordering the requested discovery violates proportionality".
  - Cargill Meat Sols. Corp. v. Premium Beef Feeders, LLC, 2015 WL 3937410, at *4 (D. Kan. June 26, 2015).
- $140,000 to comply with a discovery request was not excessive when the damages in question were roughly $150 million
  - Oxbow Carbon & Minerals LLC v. Union Pac. R.R. Co., 322 F.R.D. 1, 6 (D.D.C. 2017).

Proportionality Case Studies – Discovery Costs (Cont.)

- Even where a large corporation is clearly able to pay the discovery costs, courts still must evaluate the relevance of the evidence sought.
  - "Plaintiffs essentially argue that WellPoint can handily bear whatever expenses may be incurred in producing e-discovery, no matter the size or breadth of their Demand. Yet, *while resources may play an appreciable role* when weighing the burden of cost against its benefit, *it is not the only factor this Court may consider*. … [c]ontrolling litigation cost, and discovery costs in particular, is vital so not to upend the scales of justice. … Yet, the *Court cannot disregard the relevance and materiality of the information being sought*."
    - Ruggles v. WellPoint, Inc., 2010 WL 11570681, at *5 (N.D.N.Y. Dec. 28, 2010).
  - The court ultimately found cost-saving measures, such as limiting the number of custodians and the relevant timeframe, helpful in easing the discovery burden.

Proportionality Is Not Yet Explicitly Incorporated into Rule 2004 Discovery

- A proposal to incorporate “proportionality” language into Bankruptcy Rule 2004 was rejected 7-6 by the Advisory Committee on Bankruptcy Rules in April 2018.
  - The amendment would have aligned Bankruptcy Rule 2004 with Federal Rule 26(b)(1).
- Critics of the amendment noted that a Rule 2004 examination is intended to be a general exploration of a case and as such should be left unrestrained.
  - Discovery under Federal Rule 26, on the other hand, deals with specific and detailed factual issues.
- Some proponents of the proposed amendment remain optimistic that proportionality principles will nevertheless be applied in practice because unlike discovery under Federal Rule 26 where judges do not get involved until a dispute arises, Rule 2004 examinations require judicial input from the outset.

Making and Responding to Discovery Requests

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What Standard Governs the Form in Which ESI Must be Produced?

- Rule 26(b)(1)(C) expressly provides that a request "*may specify the form or forms* in which electronically stored information is to be produced".
- Rule 34(b)(2)(E) provides that *if a request is silent* as to the form in which to produce ESI:
  - (ii) "a party must produce it in a form or forms *in which it is ordinarily maintained or in a reasonably usable form or forms*"; and
  - (iii) "[a] party need *not* produce *the same* electronically stored *information in more than one form*."
- Rule 34(b)(2)(D) allows a party to object "*to a requested form for producing electronically stored information*."

Considerations and Examples of Forms in Which to Produce ESI

- As part of their ESI stipulation or protocol, parties typically agree on the manner in which to produce documents, including what metadata (i.e., data about the documents) to include in the production.
  - This metadata includes the file name, dates created/last modified, author, storage path, etc., and can be very helpful in executing targeted searches during document review.
  - Thus, it is crucial that documents be collected from your client in a forensically sound matter, with metadata intact.
- Documents are typically produced in TIFF image format, with extracted text (i.e., searchable text), OCR text (for documents that are redacted or lack extracted text), and metadata in a “load file” capable of being uploaded into an eDiscovery review tool.
  - Excel files are commonly produced in native format, as spreadsheets images can be difficult to view.

Courts Do Not Accept Generalized Objections to Discovery Requests

- Discovery responses *must state the grounds for objections with specificity* and must state whether any responsive materials are being withheld on the basis of that objection.
  - Parties should not use boilerplate phrases like "*the request is not reasonably calculated to lead to the discovery of admissible evidence*," in responding to discovery requests.
  - "It is time, once again, to issue a discovery wake-up call to the Bar in this District . . . . responses to discovery requests must: state grounds for objections with specificity . . . . most lawyers who have not changed their "form file" violate . . . . these changes."
    - Fischer v. Forrest, 2017 U.S. Dist. LEXIS 28102, at *2 (S.D.N.Y. Feb. 28, 2017).

Crafting Acceptable Objections to Discovery Requests

- When responding to a discovery request it is good practice to:
  - Clearly indicate any responsive documents that are being produced, and
  - Provide specific objections to the request and reasons for withholding other potentially relevant documents.
- Be sure to integrate case specific facts to support the following types of objections:
  - The proposed discovery is not important in resolving the issues in the action;
  - The amount in controversy does not justify the expense required to comply with the request;
  - The requesting party has equal or similar access to relevant information;
  - The proposed discovery is overbroad and not suitably tailored to the needs of the case; or
  - The document request seeks confidential and / or privileged materials that are outside of the scope of the present litigation.

A Party Be Can Be Compelled to Produce Materials Not Directly in Their Possession

- In addition to possession, the Federal Rules use the terms *custody and/or control* to determine what materials a party may be required to produce.
  - Most circuits have held that custody or control means *the legal right to obtain and produce the information*.
    - *See e.g.*, In re Bankers Tr. Co., 61 F.3d 465, 469 (6th Cir. 1995) (collecting cases citing the majority view).
  - The Second Circuit, however, has held that a party has "control" over documents or ESI when that party has *the right, authority, or practical ability to obtain the documents* from a non-party to the action."
    - In re NTL Securities Litigation, 244 F.R.D. 179, 195 (S.D.N.Y 2007).

What if the ESI is Not "Reasonably Accessible?"

- Although certain ESI may technically be within a party's possession, custody, or control, when responding to a discovery request a party may identify certain ESI sources as being not *"reasonably accessible"* due to undue burden or cost. Federal Rule 26(b)(2)(C).
- The Federal Rules leave the determination as to whether something is "reasonably accessible" to the courts because technology is constantly evolving.
  - For example, courts have determined that backup tapes are inaccessible in some circumstances.
    - U.S. ex rel. Carter v. Bridgepoint Educ., Inc., 305 F.R.D. 225, 241 (S.D.Cal. 2015).

What if the ESI is Not "Reasonably Accessible?" (Cont.)

- Courts have ordered that a party must conduct a forensic examination of ESI and other documents in situations where the *party's actions were directly attributable to the loss or disposal of potentially relevant information*.
  - In *Peskoff v. Faber*, the court ordered a defendant to pay all of the costs relating to forensic examination of ESI because the defendant conducted cursory searches of ESI in responding to document requests, and failed to deactivate document retention protocols, after his duty to preserve arose, that automatically deleted ESI.
    - Peskoff v. Faber, 251 F.R.D. 59, 62 (D.D.C. 2008).

We Can Work It Out

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Parties Must Develop an eDiscovery Plan

- Rule 26(f) requires parties to discuss issues about ESI discovery and to develop an eDiscovery plan.
- Many federal courts have their own ESI protocol templates that are easily adapted for individual cases.
- Parties are encouraged to meet and confer early on regarding these protocols to prevent later eDiscovery disputes.
- ESI Protocols should address the following issues:
  - Custodians
  - Non-custodial data sources
  - Third party data sources
  - Inaccessible data
  - Preservation standards
  - Search Methodology
  - Production format
  - Handling of metadata

Parties Should Endeavor to Work Cooperatively and Resolve any Discovery Issues Amongst Themselves

- "*Early discussion* of all discovery issues, including the overall scope of discovery, preservation, and production of ESI, *should reduce misunderstandings, disputes, and the need for court intervention*."
  - The Sedona Principles, Third Edition, 71.
- In matters and proceedings where the Federal Rules of Bankruptcy apply, conferring with opposing counsel *is required*.
  - Rule 7026(f) requires parties to confer "as soon as practicable" and develop a discovery plan.
- Courts are reluctant to get involved in ESI disputes because most of the time these disputes are rooted in a lack of communication. Such issues are most quickly and cost-effectively resolved through discussions between the parties.
- Communicating with opposing counsel is especially necessary in bankruptcy proceedings as they are fast paced, and there is a natural imperative for cost savings.

Check the Local Rules!

- Some bankruptcy courts have enacted measures that require parties to provide a statement to the court certifying that they have made a good faith effort to resolve the dispute prior to bring a motion before the court to compel discovery.
  - *See* S.D.FL Bankr. R. 7007-1; S.D.N.Y. Bankr. R. 7007-1.
- For instance, Local Rule 7007-1(a) of the District of Delaware Bankruptcy Court requires parties to use "reasonable, good faith and proportional efforts" to identify discovery limits, such as:
  - Limits on custodians;
  - Identification of relevant subject matter; and
  - Time periods for discovery.

Best Practices and Other Considerations

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Be Aware of the Stress that eDiscovery Places on Your Client

- eDiscovery is costly, time-consuming, and inconvenient.
- The backdrop of a bankruptcy proceeding may only aggravate those feelings.
- It is crucial to rationalize the cost and explain the importance of the discovery process to your client.
- Remember, it is the attorney's responsibility to ensure that preservation methods are employed and effectively implemented.
  - Be sure to periodically check in with your client regarding any litigation hold.

Formulate Precise Search Terms

- Developing precise search terms helps limit the potential universe of responsive documents, and therefore reduce costs.
- Best Practices include:
  - Reviewing a sampling of documents to identify key terms or abbreviations;
  - Using “wild cards” and other Boolean search terms to narrow results;
  - Restricting the search to a specific time period;
  - Limiting the search to certain sources of discovery, i.e., documents, emails, etc.;
  - Avoiding search strings that include common words or articles; and
  - Revising search terms after completing and reviewing search results.

Courts Weigh In on Search Terms

- Most courts require the parties to meet and confer regarding the method of searching, and the words, terms, and phrases to be searched.
  - *See* D.DE. Bankr. R. 7026-3(e).
- The growing body of law regarding the adequacy of search terms reflects that courts are increasingly examining the mechanics of eDiscovery:
  - "[W]here counsel are using keyword searches for retrieval of ESI, *they at a minimum must carefully craft the appropriate keywords, with input from the ESI's custodians as to the words and abbreviations they use*, and the proposed methodology must be *quality control tested* to assure accuracy in retrieval and elimination of 'false positives.'"
    - William A. Gross Constr. Assocs. v. Am. Mfrs. Mut. Ins. Co., 256 F.R.D. 134 (S.D.N.Y. 2009).

Courts Weigh In on Search Terms (Cont.)

- A court in the Southern District of New York recently ordered the City of New York to search nearly 200,000 documents using 665 additional plaintiff-developed search terms, despite the City arguing that the additional searches would cost nearly $250,000.
  - Winfield v. City of New York, 2017 WL 5664852, at *5-8 (S.D.N.Y. Nov. 27, 2017).

Consider Utilizing Technology Assisted Review

- TAR refers to the process of leveraging computer analytics to assess data for potential relevance, or privilege, and cluster like documents, even when they lack specific search terms.
- Utilizing Technology Assisted Review ("TAR") can reduce document review costs as large volumes of data can be evaluated more quickly.
  - When "trained" by human document coding decisions, the computer system can:
    - Sort relevant from irrelevant content;
    - Assign a score to each document indicating its likely relevance;
    - Prioritize documents more likely to be relevant and sort them in descending order; and
    - Assign issue tags based on trained topics.

Final Thoughts

Key Takeaways…

- ESI is everywhere in our digital world, and is especially relevant in bankruptcy cases.
- Parties have an obligation to preserve documents and ESI whenever litigation is reasonably anticipated, threatened, or pending.
- Failure to preserve ESI once an obligation arises can result in a claim of spoliation of evidence and possibly sanctions.
- Parties may obtain discovery regarding any non-privileged material that is relevant to any party's claim or defense and proportional to the needs of the case.

Key Takeaways… (Cont.)

- When evaluating the appropriateness of discovery requests, courts consider several proportionally factors on a case-by-case, fact-specific basis.
- Attorneys can no longer rely on boilerplate discovery request responses and should instead make specific objections based on the facts of the case.
- The Federal Rules require parties to meet and confer early in the proceeding to resolve discovery disputes before burdening the court.
- Developing precise search terms is crucial to ensure that all relevant documents are produced and reviewed, while reducing time and expense by excluding irrelevant documents from the review universe.

Any Questions?

About the Presenters

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- Jeff Marwil has held lead roles in some of the highest-profile Chapter 11 bankruptcy cases in America. He is the U.S. co-head of the Firm's Business Solutions, Governance, Restructuring & Bankruptcy Group, and head of the Chicago office. During his 30+ years of experience in bankruptcies, workouts and corporate restructurings, he has developed a reputation for providing sophisticated strategic advice to companies in distress, and solving challenging legal and business issues.
- Jeff represents publicly traded and privately held companies, in and out of court, in the restructuring of complex capital structures and reorganizing their financial affairs and business operations. With his in-depth understanding of the roles and responsibilities of officers and directors of both publicly-traded and privately-held companies, Jeff regularly provides advice on issues of corporate governance and fiduciary duty related to companies in distress, their officers and directors, creditors and their shareholders.
- Jeff currently serves as lead counsel for debtors, official committees and trustees in some of the largest cases in America, including Energy Future Holdings Corp, the Official Committee of Unsecured Creditors of Caesars Entertainment Operating Company, Inc. and ITT Educational Services, Inc. He also regularly represents private credit finance lenders in workouts and restructurings of their distressed credits.

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- Christine Myatt is a member of the Bankruptcy & Financial Services group at Nexsen Pruet. She represents a wide variety of banking and financial institutions on real estate, construction, development and tax credit lending transactions and in workouts, debt restructuring and bankruptcy. She also represents a variety of farm credit associations throughout the Southeast and Texas on borrower rights, debt restructuring, bankruptcy, criminal referrals and policy issues related thereto.
- Christine has extensive experience representing trustees, creditor's committees, debtors, secured and unsecured creditors, bondholders, guarantors, and others in numerous bankruptcy and workout cases in North Carolina, Virginia, the Southern District of New York and Delaware. She has also served as a receiver in various state and federal matters on behalf of various creditors and the United States Securities and Exchange Commission.
- Christine is certified as a specialist in Business Bankruptcy by the American Board of Certification and in Bankruptcy Law by the North Carolina State Board of Legal Specialization. She has been named among North Carolina's “Legal Elite” in bankruptcy law by Business North Carolina for seven consecutive years and received the Lifetime Achievement Award from the North Carolina Bar Association Bankruptcy Section in 2015.

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- Kathy Bazoian Phelps has 25 years of experience as a lawyer in bankruptcy law and fraud litigation. Kathy's practice includes representing trustees and receivers, debtors, and secured and unsecured creditors in bankruptcy cases and other insolvency proceedings. She has served as Chapter 11 trustee and frequently represents operating and liquidating trustees and receivers in the United States District Court, the United States Bankruptcy Court, and the Superior Court of the State of California. She also represents defendants in bankruptcy litigation, including fraudulent transfer defendants in Ponzi scheme cases, and has extensive litigation experience in a variety of bankruptcy litigation matters.
- Kathy has lectured widely and written on bankruptcy and receivership matters, with a focus on Ponzi schemes. Her new book entitled The Ponzi Book: A Legal Resource for Unraveling Ponzi Schemes, co-authored with Hon. Steven Rhodes, has garnered national and international attention as the authoritative work on Ponzi scheme law.
- In addition to her roles as lawyer, speaker and author, Kathy also serves as a mediator and is currently on the Bankruptcy Mediation Panel for the Central District of California.

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Best Practices for eDiscovery in Bankruptcy

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