Playing In The Big Leagues: E-Discovery in Large, Complex Cases

Today’s Starting Line-Up:
Hon. John M. Facciola (Ret.)
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Team vs. Individual Sports

• Class Actions
  • Preservation challenges
  • Discovery prior to certification
  • To bifurcate or not? Resolve ? early...

• Multi-district litigation
The Players: Managing and Fielding Your Team

• Plaintiffs’ committees

• Joint defense agreements

• Central/common document depositories
  ✓ Key documents
  ✓ Correspondence
  ✓ Evidence

• Shared resources and frequent coordination
The Process Playbook

• Preservation & collection
  • The use and importance of a computer forensic expert
  • Supervising outside vendor and collection plan protocol = defensibility

• Meeting (and conferring) on the mound
  • Prepare to prevent problems and disputes in conference
  • Avoid data gaps by identifying a comprehensive list (data, custodians, and dates)

• Phased, iterative discovery

• Playbook checklist
  ✓ Federal Rules
  ✓ Demands to be Resisted
  ✓ Rule 34 & 26(f)
The Technical Edge: Good Gear Gets it Done

- Search and review of collected data
- Utilizing Technology Assisted Review (TAR)
- Utilizing contract lawyers
- Privilege review and logging
- Production of ESI
- Data security and privacy issues
Respect the Referees

• Be mindful about when and how to challenge

• Let’s go to the Magistrate

• E-Neutrals and E-mediators for e-discovery disputes
Post-Game Analysis

• End goal = get what you need at the price you can/should pay!
Questions?

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• Reserve the dates!

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