

# Bullet-Point Update: Electronic and Federal Court Discovery Issues for the Week of July 7, 2017

CYBERSECURITY AND PRIVACY | LITIGATION AND TRIALS | TECHNOLOGY | JULY 7, 2017



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## Cloud Computing

- Use this to convince your clients that their cloud storage will be discoverable: *PC Connection, Inc. v. Mereos*, 2017 WL 1078121 (D. Md. March 22, 2017)(Awarding emergency injunction requiring independent forensic search of ESI including cloud storage to determine if trade secrets were stolen).

## Text Messages

- Use this to defend against having to produce texts: *Tingle v. Herbert*, 2017 WL 2536584 (M.D. La. June 9, 2017)(Denying discovery of text messages on proportionality grounds).
- Use these to persuade your clients they need to preserve their texts:
  - *Brown v. Certain Underwriters at Lloyd's London*, 2017 WL 2536419 (E.D. Pa. June 12, 2017)(Granting sanctions for failure to preserve text messages).
  - *Shanghai Weiyi Int'l Trade Co. v. Focus 2000 Corp.*, 2017 WL 2840279 (S.D.N.Y. June 27, 2017)(Sanctions for requests involving text messages).

## Predictive Coding and Technology-Assisted Review

- Use this to get a court to let you use predictive coding nested with keyword searching to save time and money: *FCA US LLC v. Cummins, Inc.*, 2017 WL 2806886 (E.D. Mich. March 28, 2017) (Ordering use of TAR and then keyword searching).
- Use this to get a court to let you use predictive coding to save time and money: *Duffy v. Lawrence Memorial Hospital*, 2017 WL 1277808 (D. Kansas March 31, 2017)(Calling it a “myth” that CAR is not as good as manual review).
- Use this to get a court to let you use predictive coding and to explain when review should end on the basis of proportionality: *Davine v. The Golub Corp.*, 2017 WL 549151 (D. Mass. Feb. 8, 2017)(Allowing predictive coding and ceasing review on good faith burden determination).

## Proportionality

- Use this to support the idea that careful explanations are required to support a motion to compel: *American Home Assurance Co. v. Weaver Aggregate Transport, Inc.*, 2017 WL 2721510 (M.D. Fla. June 23, 2017)(Compelling discovery where party explained proportionality by showing significance to issues in the case).
- Use this to argue for more candid and fulsome responses to interrogatories as required by proportionality rules: *Samsung Electronics America, Inc. v. Chung*, 2017 WL 283621 (N.D. Tex. June 26, 2017)(Denying interrogatories motion to compel on proportionality but discussing need for specific objections and candid responses).
- Use these to resist a motion to compel on proportionality grounds:
  - *Leadership Studies, Inc. v. Blanchard Training and Development, Inc.*, 2017 WL 2819847 (S.D. Cal. June 28, 2017) (Denying discovery on proportionality of confidential documents).
  - *Medicinova, Inc. v. Genzyme Corp.*, 2017 WL 2829691 (S.D. Cal. June 29, 2017) (Partially denying discovery on proportionality where counsel refused to narrow overly broad requests).
  - *Babcock Power, Inc. v. Kapsalis*, 2017 WL 2837019 (W.D. Ky. June 30, 2017), and *In re Blue Cross Blue Shield Antitrust Litig.*, 2017 WL 2889679 (N.D. Ala. July 6, 2017)(Both denying discovery on proportionality).

## Sanctions and Preservation

- Use this to explain to business people why it's important to properly search for and produce ESI: *Nachurs Alpine Solutions, Inc. v. Banks*, 2017 WL 2695301 (N.D. Iowa June 22, 2017)(Granting sanctions re ESI).

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