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Discovery Strategies in Personal Injury Litigation Under Amended Rules 26(b) and 34(b)

Drafting or Responding to Interrogatories, Requests for Production of Documents or Admission of Facts, and Third-Party Subpoenas

WEDNESDAY, MAY 2, 2018

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

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DISCOVERY STRATEGIES IN PERSONAL INJURY LITIGATION UNDER AMENDED RULES 26(B) AND 34(B)

2015 & 2016 Changes to the Federal Rules that Impact Discovery

December 2015 Amendments

- Rules 1, 16, 26, 34, and 37
- Significant impact on discovery practice

December 2016 Amendments

- Rule 6
- Impact limited to timing of discovery response

Today's Focus

Rule 26(b)

- Discovery Scope and Limits
- Proportionality

Rule 34(b)

- Requests for Production of Documents and Responses

Rule 26(b)(1)

Discovery Scope and Limits – Scope in General

- Addition of proportionality to the scope of discovery under Rule 26(b)(1): "Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense ***and proportional to the needs of the case***, considering 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 in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable."
- **Eliminates**: "Relevant information need not be admissible at the trial if the discovery appears ***reasonably calculated to lead to the discovery of admissible evidence***."

Gilead Sciences, Inc. v. Merck & Co, Inc., *Case No. 5:13-cv-04057-BLF* (N.D. Ca. Jan. 13, 2016)

- Court recognized that proportionality under the Federal Rules is nothing new

- "No longer is it good enough to hope that the information sought might lead to the discovery of admissible evidence. … Instead, a party seeking discovery of relevant, non-privileged information must show, before anything else, that the discovery sought is proportional to the needs of the case."

Gilead Sciences, Inc. v. Merck & Co, Inc., *Case No. 5:13-cv-04057-BLF* (N.D. Ca. Jan. 13, 2016)

- Defendant filed a motion to compel information re compounds related to its patents
- Court reasoned that the requests were disproportionate under Rule 26(b)(1) – if the requests were permissible, plaintiff would have to produce "discovery on all sorts of compounds that bear no indication of any nexus to the disputes in this case."
- Court analogized the situation to requiring GM to produce discovery on Buicks and Chevys in a patent case about Cadillacs simply because all three happen to be cars
- Court denied defendant's motion to compel given the relevant information already produced, the lack of any reason to doubt the proof already offered by plaintiff, and the cost and potential delay caused by the requested production

Proportionality Standard Expectations

- Courts expect that parties will focus on proportionality analyses in attempt to resolve discovery disputes
- These factors should be taken into account in preparing discovery requests, responses, and objections and during meet and confer sessions
- When raising discovery issues with the court, parties should provide specific, factual support for arguments regarding proportionality factors
- Courts appear willing to curtail otherwise “relevant” discovery after considering proportionality factors – think about whether discovery is likely to be marginally relevant, highly relevant, or somewhere in between

In re: Bard IVC Filters Prods. Liab. Litig., No. MDL 15-02641-PHX DGC (D. Ariz. Sept. 16, 2016)

- Relevancy Analysis
  a. Regulatory communications largely controlled within the United States – captured by ESI searches already

  b. No plaintiffs in MDL are from foreign countries

  c. Discovery sought for a narrow purpose – to determine if foreign communications were inconsistent with communications with US regulators

  d. Court concluded that requested discovery was only marginally relevant

In re: Bard IVC Filters Prods. Liab. Litig., No. MDL 15-02641-PHX DGC (D. Ariz. Sept. 16, 2016)

- Proportionality Analysis
  a. Importance of the discovery in resolving the issues in the case – court referenced its marginal relevance discussion

  b. Parties relative access to relevant information favored plaintiffs, but Court noted "only in defendants' possession of ***possibly relevant*** information"

  c. Burden or expense outweighed likely benefit – defendants would have to search ESI from 18 foreign entities over a 13-year period which outweighed mere possibility of finding an inconsistent communication

In re: Bard IVC Filters Prods. Liab. Litig., No. MDL 15-02641-PHX DGC (D. Ariz. Sept. 16, 2016)

- Defendants need not search ESI of foreign Bard entities because proposed discovery was not proportional to the needs of the case

- Court's relevancy analysis was key to conclusion:
  a. Importance of discovery to resolve issues = "marginally relevant"

  b. Parties access to information = slightly favored plaintiffs only to find "possibly relevant information"

  c. Burden outweighed benefit = "mere possibility" of finding inconsistent communications

Reibert v. CSAA Fire & Casualty Insurance Co., *Case No. 17-CV-350-CVE-JFJ* (N.D. Ok. Jan. 3, 2018)

- Courts continue to embrace broad view of relevance
- Following the 2015 Amendment, "relevance is still to be 'construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on' any party's claim or defense." (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)).
- "The 2015 Amendment continues the trend of 'encouraging more judicial involvement in discovery,' and the broad relevance standard must be considered in conjunction with the proportionality considerations." (citing Fed. R. Civ. P. 26 advisory committee's note to 2015 amendment).

Reibert v. CSAA Fire & Casualty Insurance Co., *Case No. 17-CV-350-CVE-JFJ* (N.D. Ok. Jan. 3, 2018)

- Moving the proportionality considerations to the text of Rule 26(b)(1) reinforced the court's obligation to consider the factors when ruling on disputes and the parties' obligation to consider them when serving requests, responses, and objections

- Analysis of proportionality considerations – shifting burden

  - "A party claiming undue burden or expense ordinarily has far better information – perhaps the only information – with respect to that part of the determination. A party claiming that a request is important to resolve the issues should be able to explain the ways in which the underlying information bears on the issues as that party understands them." - Fed. R. Civ. P. 26 advisory committee's notes to the 2015 amendment.

Reibert v. CSAA Fire & Casualty Insurance Co., *Case No. 17-CV-350-CVE-JFJ* (N.D. Ok. Jan. 3, 2018)

- The court addressed the parties' burden arguments and also addressed the other proportionality factors in finding the discovery, as limited by the court, was proportional:
  - Manual review of approximately 460 claims already identified was not an undue burden, in consideration of the needs of the case and other proportionality factors
  - Requests were limited to only those cases in which the specific inspector was used and only for cases of wind or hail damage in Oklahoma during a three-year time period = targeted discovery
  - Additionally, plaintiffs requested only numerical data, not entire claim files; plaintiffs presented support for their case theory and made a showing that justified the targeted discovery; defendant already identified the relevant reports and has adequate resources to review them

Wagoner v. Lewis Gale Med. Ctr., LLC, Civil Action No. 7:15cv570 (W.D. Va. July 13, 2016)

- Wrongful termination case based on claims related to discrimination, retaliation, and failure to accommodate in violation of the Americans with Disabilities Act
- Plaintiff worked as a security guard for defendant for approximately two months
- Plaintiff filed motion seeking to compel defendant to conduct a search of its computer systems for ESI maintained by two custodians during a four-month time period
- Plaintiff also proposed search terms that included the plaintiff's name in conjunction with other sets of limiting terms like ADA or disabled or disability or security, etc.

Wagoner v. Lewis Gale Med. Ctr., LLC, Civil Action No. 7:15cv570 (W.D. Va. July 13, 2016)

- Defendant did not have the technical capability to perform the type of global search requested and obtained an estimate of more than $20,000 from a third party vendor to collect the requested ESI with an additional $24,000 estimated for review fees
- Defendant argued the discovery was not proportional because plaintiff worked as a security guard for only two months and his potential damages would be less than the cost to perform the ESI search
- Defendant already produced emails gathered manually by the custodians

Wagoner v. Lewis Gale Med. Ctr., LLC, Civil Action No. 7:15cv570 (W.D. Va. July 13, 2016)

- Court found that the burdens and costs of obtaining the ESI did not render it not reasonably accessible and that defendant failed to show that the discovery was not proportional
- Importantly, defendant failed to provide any information regarding how a more targeted search could reduce the ESI cost estimates
- Court also noted that it would be difficult to find an undue burden or disproportionate requests simply because defendant apparently chose to use a system that did not automatically preserve emails for more than three days and did not preserve emails in a readily searchable format, making it expensive to produce them

Wagoner v. Lewis Gale Med. Ctr., LLC, Civil Action No. 7:15cv570 (W.D. Va. July 13, 2016)

- If arguing requests are disproportionate, propose reasonable alternatives
  - "Proportionality consists of more than whether the particular discovery method is expensive"
  - "Here, defendant advances no other reasonable alternative to obtain the requested information"
  - The court found that the request was proportional to the needs of the case where the request was limited to two custodians, by search terms, and by time period

O'Malley v. Public Belt Railroad Comm'n for the City of New Orleans, Civil Action No. 17-4812 (E.D. La. February 6, 2018)

- Claims under the Federal Employer's Liability Act to recover expenses for medical treatment and expenses and lost wages/benefits after plaintiff was struck by a locomotive
- Defendant brought motion to compel production of financial information (checks, savings/checking bank account, credit card, debit card statements) and documents relating to social media account activity
- Plaintiff opposed motion arguing that the request for financial information was overly broad and that the request for social media activity should be denied because courts "do not typically allow unfettered access to social networking records as sought by [defendant] here"

O'Malley v. Public Belt Railroad Comm'n for the City of New Orleans, Civil Action No. 17-4812 (E.D. La. February 6, 2018)

- Proportionality considerations under Rule 26(b)(1) – the parties and the court have a collective responsibility to ensure that discovery is proportional
- Social media materials are discoverable when they are relevant and proportional to the needs of the case
- Simply because plaintiff has put his or her mental and physical conditions at issue does not permit "unfettered access to plaintiff's social networking sites" – akin to rummaging through desk drawers and closets in plaintiff's home

O'Malley v. Public Belt Railroad Comm'n for the City of New Orleans, Civil Action No. 17-4812 (E.D. La. February 6, 2018)

- Court denied request for financial records because request was overly broad; court noted medical expenses would be found in medical bills not plaintiff's savings/checking account, credit card, or debit card statements

- Court denied request for social media records because it was overly broad - similar to requests rejected by courts in other cases

- Appropriate request would limit production to, for example, postings that relate to the accident in question, alleged emotional distress, inconsistencies in claimed mental injuries, alleged physical injuries, and/or other injuries sustained by plaintiff or inconsistencies with alleged injuries

O'Malley v. Public Belt Railroad Comm'n for the City of New Orleans, Civil Action No. 17-4812 (E.D. La. February 6, 2018)

- Court determined that limited time frame (the time of the accident to the present) was appropriate
- Court permitted defendant to serve a revised request for production of social media materials that is consistent with the case law, appropriately considers relevance, and balances its need for information with the burden on plaintiff and his privacy interests

Continental Casualty Co. v. J.M. Huber Corp., Civil Action No. 13-4298 (D. N.J. Dec. 19, 2017)

- Matter involved a motion by non-party to quash a Rule 30(b)(6) subpoena and for entry of a protective order
- Of note, court cites to pre-amendment language regarding relevancy to the subject matter of the action
- "Discovery sought via a subpoena issued pursuant to Rule 45 must fall within the scope of discovery permissible under Rule 26(b)."
- Party issuing subpoena "must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena" – Rule 45(d)(1)
- Non-party failed to state its objections with specificity or articulate any specific harm; accordingly, its motion to quash was denied, but the court did limit some of defendant's inquiries

After Amendments to Rule 26(b), Ask . . .

- Are the requests sufficiently limited to seek relevant matter? Consider whether similar information has already been produced. Have support based on claims or defenses as to why the information is relevant
- What are the likely burdens associated with the requests? Consider whether information can be located in a less burdensome manner
- If claiming undue burden, what specific information supports the argument that discovery is not proportional? Consider all proportionality factors. Be specific and provide support regarding the costs and effort required to comply
- What other ways can relevant information be obtained? If opposing discovery, offer alternatives to the type of information sought
- Can the requests be limited? Meet and confer with opposing parties to attempt to limit requests based on custodians, geography, time period, search terms

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NEW RULES OF DISCOVERY

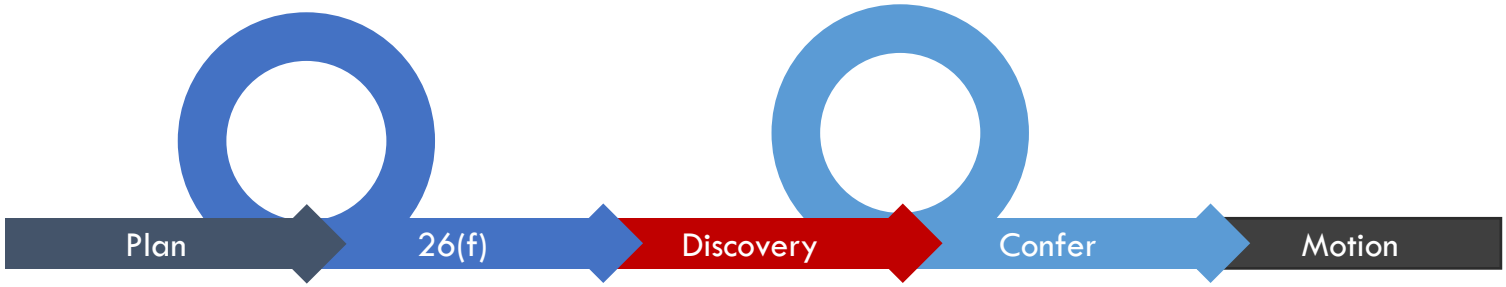
Rule 26 + Proportionality

Responding and Objecting

Andrew D. Gross

CRAFTING PROPORTIONATE DISCOVERY

CRAFTING PROPORTIONATE DISCOVERY



Planning the Discovery

PLANNING

Davis v. United States Dep't of Veterans Affairs, No. 16-CV-00701-CBS, 2017 WL 3608192, at *8 (D. Colo. Aug. 22, 2017)

"The relevance and **proportionality** requirements in Rule 26(b)(1) do not permit a requesting party "to engage in a **fishing expedition** in the hopes that he may turn up some relevant or useful information."

Rule 26(f) Conference

DISCOVERY CONFERENCE

Adidas Am., Inc. v. TRB Acquisitions LLC, No. 3:15-CV-2113-SI, 2016 WL 6963037, at *6 (D. Or. Nov. 28, 2016)

Further, the Court is concerned about the rising expense of discovery in this case and related issues o proportionality (for all parties). Therefore, the Court **directs the parties to hold a meaningful** additional discovery conference either in person or over the telephone within two weeks from the date of this Opinion and Order.

DISCOVERY CONFERENCE

http://www.mnd.uscourts.gov/FORMS/Clerks_Office/eDiscovery-Guide.pdf

A. Preservation and Litigation Hold

B. Relevant ESI Types and Reasonable Accessibility

C. Collection/Search/Review Protocol and Limitations

D. Metadata

E. Form of Production

F. Timing of Production

G. ESI in Custody or Control of Non-Parties

H. Privileged Material

I. Confidentiality and Protective Orders

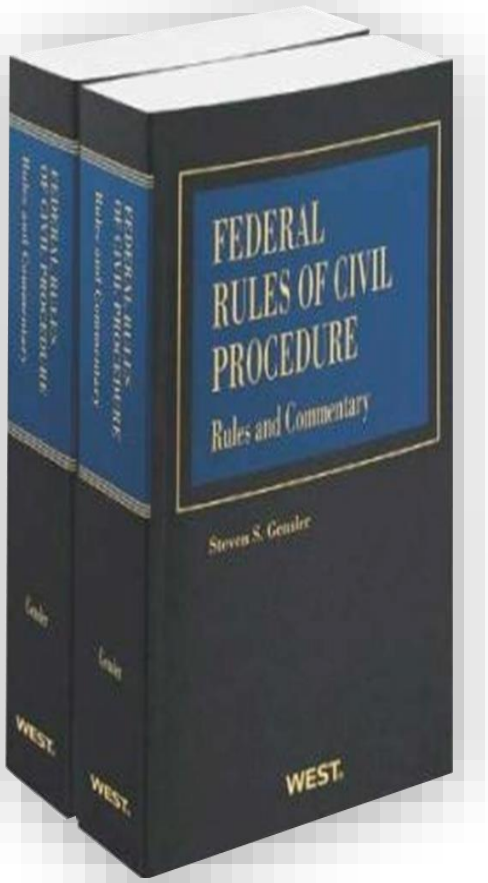
J. Costs and Cost Allocation

K. Forensic Preservation and Searching

L. Continuing Communications

Discovery – 30(b)(6)?

30(B)(6): DEPOSITIONS BY ISSUE DESIGNATION



- Organization
- Produce person
- "Matters on which examination is requested"

TELL THEM WHAT YOU WANT TO FIND OUT.

THEY NEED TO TELL YOU.

WHERE CAN IT BE FOUND?

- Electronic Device
- Server
- Backup
- Program System

WHERE IS IT STORED?

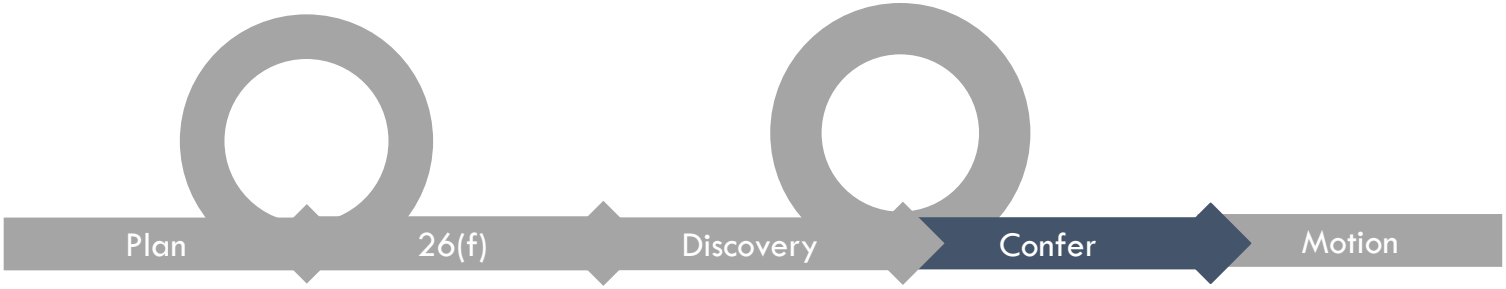
- Organization of IT department
- Hardware
- Software

HOW ORGANIZED?

- Organization of IT System
- Data organization

WHAT IS THE MOST EFFICIENT METHOD OF RETRIEVING THE DATA?

- Hardware
- Software
- Software capabilities
- Reporting capability



Meet and Confer

MEET AND CONFER

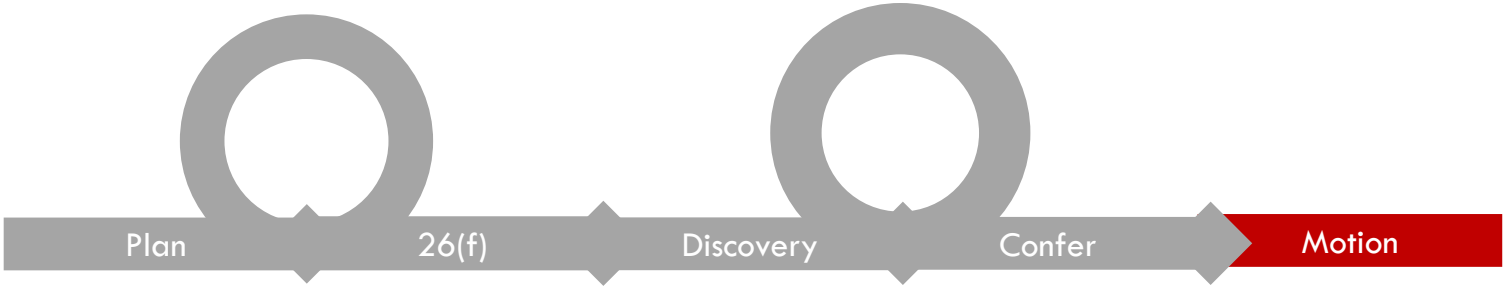
"The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action."

Fed. R. Civ. P. 37(a)(1)

MEET AND CONFER

"Accordingly, and as explained below, the parties are **DIRECTED** to meet and confer regarding ways to engage in proportionate discovery in compliance with this Order. A joint status report that includes specific proposals is due to the Court within fourteen days of this Order."

Tween Brands Inv., LLC v. Bluestar All., LLC, No. 2:15-CV-2663, 2016 WL 5216632, at *1 (S.D. Ohio Sept. 22, 2016)



Motion Practice

PROPORTIONALITY AND DISCOVERY RESPONSES

1

PAUSE AND CONSIDER

"The circumstances here lead the Court to find that Defendant's undue burden and overbreadth objections, at least in response to most of the requests in Plaintiffs' First Set of Requests for Production, based **were simply boilerplate objections made without Defendant's counsel's pausing and considering whether,** on a reasonable inquiry, there is a factual basis for an objection."

Heller v. City of Dallas, 303 F.R.D. 466, 491 (N.D. Tex. 2014)

"NOR IS THE CHANGE INTENDED TO PERMIT THE OPPOSING PARTY TO REFUSE DISCOVERY SIMPLY BY MAKING A BOILERPLATE OBJECTION THAT IT IS NOT PROPORTIONAL."

Fed. R. Civ. P. 26 – 2015 Advisory Comments

2

PROVIDE FACTUAL BASIS

"broad boilerplate objections are waived if they are not asserted with specificity and if no factual basis for the objection is provided"

Perez v. El Tequila LLC, No. 12-CV-588-JED-PJC, 2014 WL 5341766, at *2 (N.D. Okla. Oct. 20, 2014), *objections overruled,* No. 12-CV-588-JED-PJC, 2014 WL 12652310 (N.D. Okla. Nov. 18, 2014)

"Further, PIMCO does not adequately explain how these individual compensation records are not proportional to the needs of this case"

Kenny v. Pac. Inv. Mgmt. Co. LLC, No. C14-1987-RSM, 2016 WL 6856610, at *3 (W.D. Wash. Aug. 5, 2016)

Rule 34(b)(2)

Producing Documents and ESI … Responses and Objections

- Requirement to object with specificity under Rule 34(b)(2)(B): "For each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons. …"
- Requirement to state whether responsive materials are being withheld under Rule 34(b)(2)(C): "An objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest."

Kissing Camels Surg. Cen., LLC v. Centura Health Corp., *Civil Action* No. 12-cv-03012-WJM-NYW (D. Colo., Jan. 22, 2016)

- Court addressed the parties obligations under Rule 34(b) and Rule 1 on plaintiffs' motion to strike requests

- Court cited to Chief Justice John Roberts in his Year-End Report on the Federal Judiciary to remind the parties that the rules amendments were intended to:

  - Encourage greater cooperation among counsel
  - Focus discovery on what is truly necessary to resolve the case
  - Engage judges in early and active case management
  - Address serious problems associated with vast amounts of ESI

Kissing Camels Surg. Cen., LLC v. Centura Health Corp., *Civil Action* No. 12-cv-03012-WJM-NYW (D. Colo., Jan. 22, 2016)

- The Court took issue with Plaintiffs' boilerplate objections, which it instructed were improper under Rule 34(b)
- "The responding party has the obligation to explain and support its objections."
- Plaintiffs failed "to provide any specificity to their objections, including their objection that they have already produced responsive documents"

Kissing Camels Surg. Cen., LLC v. Centura Health Corp., *Civil Action* No. 12-cv-03012-WJM-NYW (D. Colo., Jan. 22, 2016)

- The Court also agreed that many of Defendants' requests for production were improper on their face as "omnibus requests"
- Court permitted Defendant to identify categories of documents in its requests to which Plaintiffs objected based on their objection that they were duplicative of documents already produced
- Court ordered Plaintiffs to then identify Bates ranges of responsive documents to those categories
- Court advised parties to follow principles under Rule 34(b) and Rule 1

Scranton Prods., Inc. v. Bobrick Washroom Equip., Inc., Case No. 3:14-CV-00853 (M.D. Pa. June 2, 2016)

- Plaintiff brought claims under the Lanham Act for false and misleading advertising
- Parties had been engaged in highly contentious discovery disputes for two years
- Defendant claimed plaintiff improperly redacted information from relevant documents
- Defendant sought, *inter alia*, an order requiring plaintiff to disclose whether it had silently withheld documents based on its objections under Rule 34(b)

Scranton Prods., Inc. v. Bobrick Washroom Equip., Inc., Case No. 3:14-CV-00853 (M.D. Pa. June 2, 2016)

- Court reminded the parties of their obligations under Rule 1 and that discovery is not a "competition to see which party can manipulate legal doctrines to gain advantage"
- Burden was on plaintiff as the party refusing to provide discovery to demonstrate how the redacted information was not relevant - plaintiff failed to meet its burden on most categories
- Court instructed that no party could redact information it deemed irrelevant without first obtaining leave of court
- Based on amended Rule 34(b), court required plaintiff to amend its discovery responses and disclose whether it "silently withheld" documents based on its objections

Mitchell v. Universal Music Grp. Inc., No. 3:15-CV-174-JHM, 2018 BL 113079 (W.D. Ky. Mar. 30, 2018)

- Matter involved a motion to compel in copyright infringement action
- Defendants asserted objections based on alleged attorney-client privilege and/or work product protections but failed to submit a privilege log
- Defendants lodged the objections "out of an abundance of caution"
- Defendants also raised a general proportionality objection dozens of times
- Defendants objected that an interrogatory asking them to state the factual basis for their contention that they did not infringe upon the copyright at issue was not proportional to the needs of the case, among other objections

Mitchell v. Universal Music Grp. Inc., No. 3:15-CV-174-JHM, 2018 BL 113079 (W.D. Ky. Mar. 30, 2018)

- Court classified these types of objections as little more than boilerplate
- "Aside from wasting the time of both the Court and the receiving party, boilerplate objections to interrogatories and requests for production are forbidden by the Federal Rules of Civil Procedure." citing Rules 33(b) and 34(b)
- Court stated that boilerplate objections also violate the ABA's Model Rules of Professional Conduct, citing to Model Rule 3.4(d) – "A lawyer shall not . . . in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party."

Mitchell v. Universal Music Grp. Inc., No. 3:15-CV-174-JHM, 2018 BL 113079 (W.D. Ky. Mar. 30, 2018)

- Court advised that the "consequence for lodging objections in such a frivolous fashion is waiver, regardless if the objection was made as a precautionary measure."

- The court therefore found that defendants waived any discovery objections based on attorney-client privilege, work product doctrine, and on the basis that they are disproportionate to the needs of the case

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NEW RULES OF DISCOVERY

Document Requests

Andrew D. Gross

YES, PROPORTIONALITY APPLIES TO DOC REQUESTS

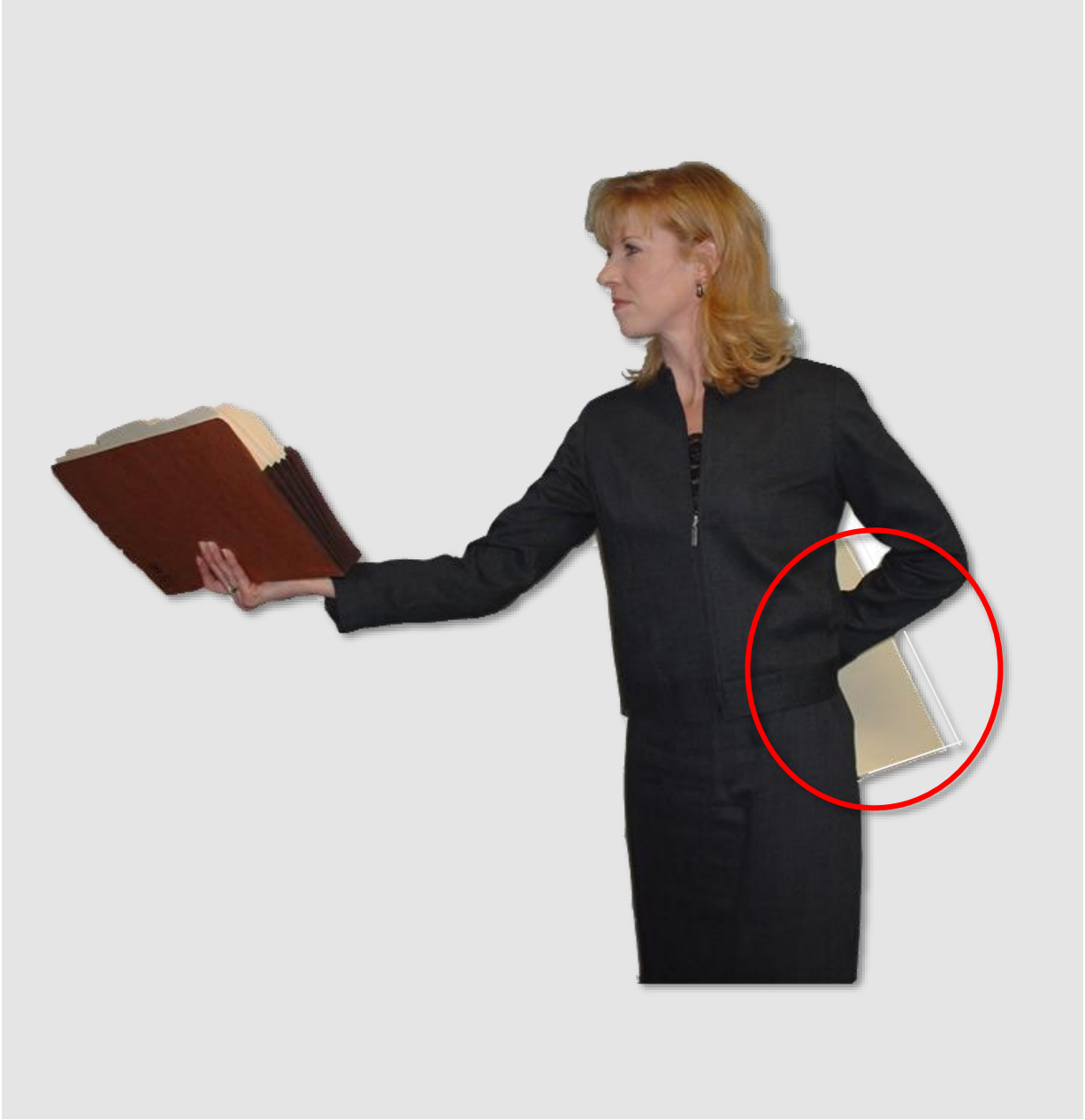
"The expanse of this request reveals **no attempt by Mayo to consider proportionality in making the request,** which a requesting party is required to do both when drafting a request and when attempting to resolve a discovery dispute. . . . . It takes no great imagination to see that this request would require the production of many communications **having no value in evaluating** the correctness of the tax at issue."

Mayo Clinic v. United States, No. 016CV03113JNEKMM, 2017 WL 8676991, at *7 (D. Minn. Dec. 15, 2017).

OTHER ISSUES BESIDES PROPORTIONALITY?

UNILATERALLY NARROWING SEARCH

OBJECTION: WITHOUT WAIVING…



DISCOVERY ABUSES

Polycarpe v. Seterus, Inc., No. 616CV1606ORL37TBS, 2017 WL 2257571, at *4 (M.D. Fla. May 23, 2017)

"Responding to discovery "subject to," or "notwithstanding" objections "preserves nothing and wastes the time and resources of the parties and the court."

DISCOVERY ABUSES

Network Tallahassee, Inc. v. Embarq Corp., 2010 WL 4569897, *1 (N.D. Fla. Sept. 20, 2010)

"an unscrupulous attorney could withhold properly discoverable information—a smoking-gun document, for example—and assert later that he did nothing dishonest because he had, after all, objected to the discovery request and simply withheld the information based on the (unwaived) objection."

AMENDED RULES

"AN OBJECTION MUST STATE WHETHER ANY RESPONSIVE MATERIALS ARE BEING WITHHELD ON THE BASIS OF THAT OBJECTION."

Rule 34(b)(2)(C)

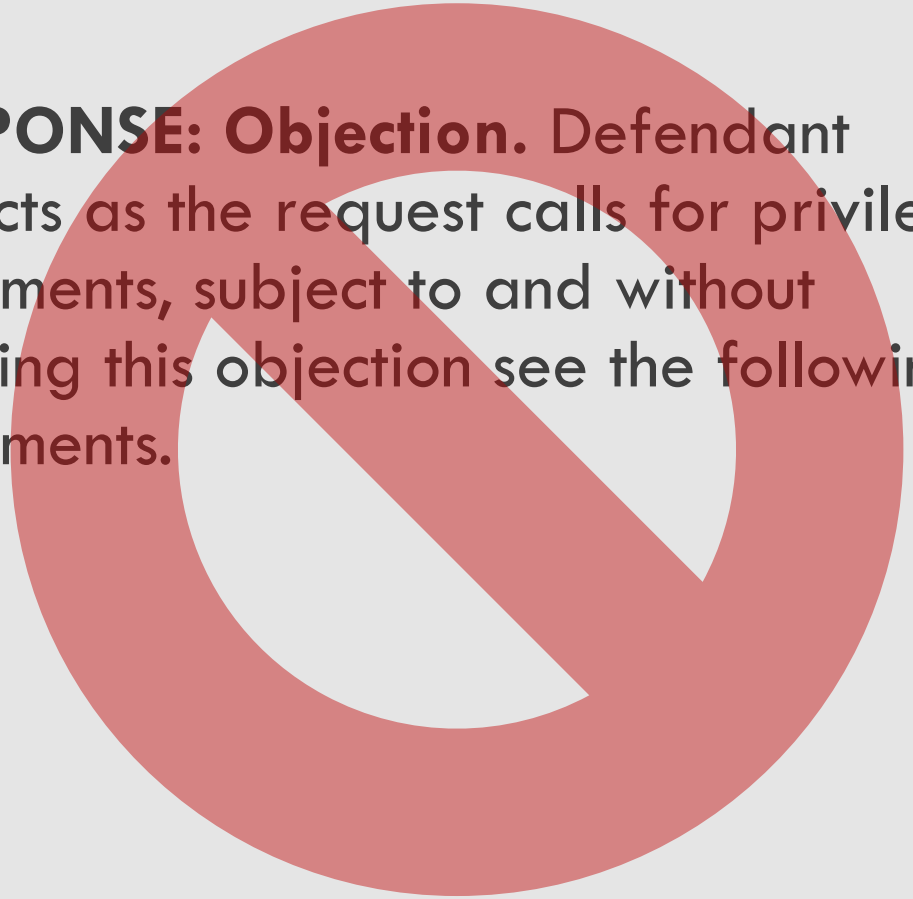
RULE 34(B)(2)(C) – 2015 COMMENTS

"This amendment ***should end*** the confusion that frequently arises when a producing party states several objections and still produces information, leaving the requesting party uncertain whether any relevant and responsive information has been withheld on the basis of the objections."

34(B)(2)(C)

Are docs withheld?

RESPONSE: Objection. Defendant objects as the request calls for privileged documents, subject to and without waiving this objection see the following documents.



34(B)(2)(C)

Are docs withheld?

RESPONSE: Objection. Defendant objects to the extent that the request seeks privileged documents, and has withheld the documents detailed in the privilege log attached herein. As to the remainder of the request, see the following documents.

FAILURE TO STATE WHETHER WITHHELD

Polycarpe v. Seterus, Inc., No. 616CV1606ORL37TBS, 2017 WL 2257571, at *4 (M.D. Fla. May 23, 2017)

Defendant's discovery response "fails to "state whether any responsive materials [were] withheld on the basis of [the objections]," as required by FED. R. CIV. P. 34(b)(2)(C) Defendant's objections to the requests for production are overruled on this basis.

AN OBJECTION TO PART OF A REQUEST MUST SPECIFY THE PART AND PERMIT INSPECTION OF THE REST.

Rule 34(b)(2)(C)

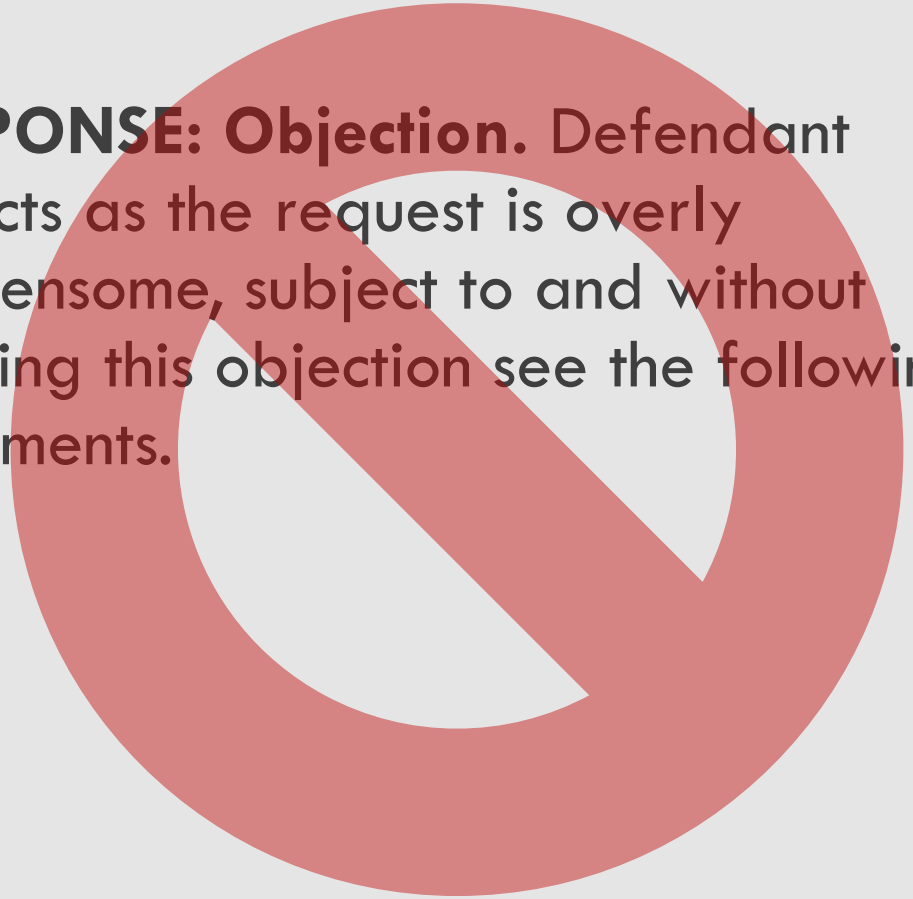
RULE 34(B)(2)(C) – 2015 COMMENTS

"An objection may state that a request is overbroad, but if the objection recognizes that some part of the request is appropriate the objection should state the scope that is not overbroad. Examples would be a statement that the responding party **will limit the search to documents** or electronically stored information created within a given period of time prior to the events in suit, or to specified sources."

34(B)(2)(C)

Are docs withheld?

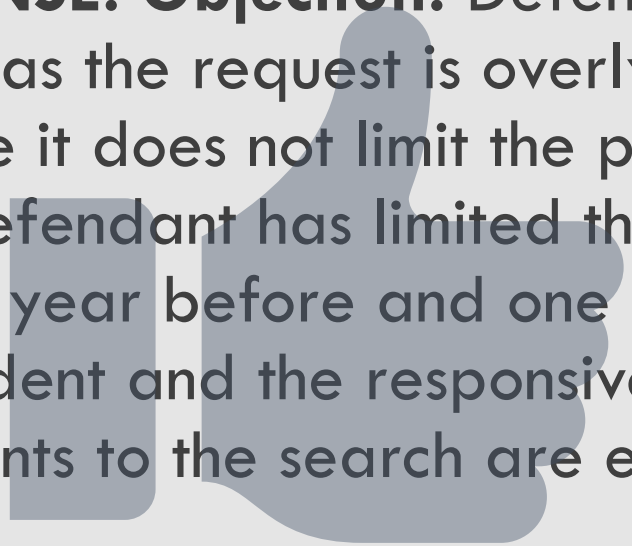
RESPONSE: Objection. Defendant objects as the request is overly burdensome, subject to and without waiving this objection see the following documents.



34(B)(2)(C)

Are docs withheld?

RESPONSE: Objection. Defendant objects as the request is overly broad because it does not limit the period of time. Defendant has limited the search for one year before and one year after the incident and the responsive documents to the search are enclosed herein.



KOSIERADZKI•SMITH

LAW FIRM LLC

THANK YOU

Andrew D. Gross