

Electronic Discovery: The New Legal/Technological Quagmire

Presented by:

Office of General Counsel



What is discovery?

- **Exchange of relevant information between parties in a lawsuit**
- **Includes any matter, not privileged, that is relevant to the subject of the action**



Federal Discovery Rule Changes

- **Must determine at the outset of the case how electronically stored information (ESI) will be preserved, maintained and provided**
 - **Includes cost of storage, retrieval and production**
- **Must disclose copies or descriptions of categories and locations of ESI**



Duty to preserve...

- Party must institute and police modification and/or suspension of routine IT operations to prevent loss of information
 - “Litigation Hold”
 - “Safe Harbor” for inadvertent loss of ESI due to routine, good-faith operation
 - What is “routine”, “good-faith”?



What ESI needs to be preserved?

Electronic information relevant to a lawsuit wherever it is stored and in whatever form it is stored

- **Must be preserved in original electronic form**



What must be provided?

“Reasonably Accessible” ESI

- Information regularly and routinely available in a party’s business operations



What can be requested?

**“Not reasonably accessible”
electronically stored information**

- **If the requesting party can show
“good cause”**



How must it be provided?

Either of two ways:

- **In the form or forms in which the ESI is ordinarily maintained**
- **In a form or forms that are reasonably useable**



Required Activities...

1. **Hold** – ensure that normal business practices are halted to avoid loss of data
 - Tape recycling, data purging
2. **Preserve** – collect snapshot of electronic data to store and preserve for search requests
3. **Search** – do keyword and timeframe searches on preserved data to locate relevant documents



Questions to be answered...

- Who is responsible for collecting and preserving the electronic data?
- How do we determine where to look for ESI?
- What processes should be used to collect potentially relevant data?
- Are new policies/procedures needed for handling ESI?



**Please complete the Electronic
Discovery Department
Questionnaire and return it to the
Office of the General Counsel**



**THANK
YOU**