

ELECTRONIC DOCUMENTS: HANDLE WITH CARE

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Today's society communicates digitally. Email, word processing, project management software, CAD software, digital cameras, handheld devices, and the like make communication easier, quicker ... and more prolific. We leave electronic forms of communication everywhere and in extraordinary quantities.

When construction disputes arise, resolution may require the use of arbitration or litigation in a court of law. Each process requires a significant amount of "discovery" to take place. During the discovery phase parties are obligated to exchange documents, essentially any piece of information related to the dispute. As noted above, each project will generate a vast amount of information, often located in several different places and forms. Collecting this information accurately and completely can be very time consuming and labor intensive but nonetheless must be done. Parties who ignore this duty to collect and produce, or take the duty half heartedly, have been hit with severe sanctions – in some cases millions of dollars.

Pre-dispute organization, retention, and destruction of electronically stored information or "ESI" have become more important than ever. Depending on how an organization routinely manages and organizes its ESI can cost, **or save**, tens of thousands of dollars if faced with



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dispute resolution. Proper organization of information, regardless of any dispute, enhances the company's daily operations and effectiveness.

The instant a company knows or has reason to suspect that a dispute is lurking, it must suspend all destruction policies and procedures that would effect the preservation of potentially relevant information. Failure to do so can lead to disastrous results. A *Litigation Hold Notice* should be sent out to all persons who may have any information, electronic or paper, related to the project. The litigation hold duty falls to everyone in the organization but especially to top level management. The hold must be regularly monitored to insure compliance. Both in-house and outside counsel have an even greater burden to insure that all relevant information is preserved and collected.

Since email usually accounts for the largest portion of ESI, careful consideration should be given to how a company uses, organizes and stores email. Email attachments must be preserved with its parent email. Email users should be instructed, and periodically reminded that anything they write in an email may potentially be displayed, **in big, bold letters**, to a jury.

Management should review how electronic information is created, organized and stored within the company's computer system. a central, network storage location, or document management system, is preferable to individual storage locations. Standard file saving methods, naming conventions, policies and practices should be discussed with the entire organization. Discourage individual electronic storage cache and methods. Explain that at sometime, the organization may be tasked with the collection of ALL electronically stored information in anyway relating to a project or projects.

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