BRYAN CAVE
A Broader Perspective

Alert

Records Management Team

To: Our Clients and Friends

February 9, 2010

Federal Judge Rules that Data Backup Tapes Need not be Retained for eDiscovery, Unless They are the "Sole Source" of Relevant Evidence

What Every Business Needs to Know

Federal Judge Shira Scheindlin of the Southern District of New York has ruled that it is not necessary for the litigants in a case now pending before her to retain and preserve all data backup tapes for *e*Discovery:

"I am not requiring that all backup tapes must be preserved. Rather, if such tapes are the sole source of relevant information (e.g., the active files of key players are no longer available), then such backup tapes should be segregated and preserved. When accessible data satisfies the requirement to search for and produce relevant information, there is no need to save or search backup tapes. See Fed. R. Civ. P. 25(b)(2)(B)." *The Pension Committee of the University of Montreal Pension Plan, et al. v. Banc of America Securities, LLC, et al.* (U.S. District Court, Southern District of New York, January 15, 2010, amending previous Order of January 10, 2010).

Judge Scheindlin is one of the leading and most influential judicial authorities in the field of *e*Discovery under the recently amended Federal Rules of Civil Procedure.

Unnecessary retention of obsolete data backup tapes, like overretention of emails, poses real risks of substantial liability. Learn how Bryan Cave can help significantly reduce your exposure through the process of "Legacy Data Remediation," by clicking on this link: http://www.bryancave.com/rmt/, or by contacting Edwin S. ("Ned") Fryer at 314-259-2397 (or by email to esfryer@bryancave.com).

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