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Is Proportionality Your Polestar in eDiscovery?

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The recent *In re State Farm* decision issued by the Texas Supreme Court rests on the key principle of proportionality being the ''polestar'' in electronic discovery. *In re State Farm Lloyds*, 2017 BL 177212, Tex., No. 15-0905, 5/26/17. Though the Texas Supreme Court examined and applied proportionality principles when evaluating the format in which litigants should produce electronically stored information, the proportionality analysis in *In re State Farm* has implications far broader than what format of production a party should make:

> . . . all discovery is subject to the proportionality overlay embedded in our discovery rules and inherent in the reasonableness standard in which our electronic-discovery rule is tethered. . . . Reasonableness and its bedfellow, proportionality, require a case-by-case balancing of jurisprudential considerations. . .

The Court noted that it was writing its opinion to ''provide guidance regarding the application of Rule 192.4's proportionality factors in the electronic-discovery context,'' and that while reasonableness ''cannot be comprehensively defined,'' it should invoke proportionality.

Proportionality Factors

In assessing reasonableness and proportionality in the electronic discovery context, the Texas Supreme Court applied these factors:

(1) the likely benefit of the proposed discovery;
(2) the needs of the case;
(3) the amount in controversy;
(4) the parties' resources;
(5) the importance of the issues at stake in the litigation;
(6) the importance of the proposed discovery in resolving the litigation; and
(7) any other articulable factor bearing on proportionality.

Many of these factors mimic those in Federal Rule of Civil Procedure 26(b)(1), which requires that discovery be relevant and ''proportional to the needs of the case, considering the importance of the issues at stake in the

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action, the amount in controversy, the parties' relative access to the 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.''

Parties claiming that discovery is disproportionate must be prepared to address each of these factors. Accord *Nerium Skin Care, Inc. v. Olson*, No. 3:16-cv-1217-B, 2017 BL 16847, at *5 (N.D. Tex. Jan. 20, 2017) (party resisting discovery on proportionality grounds should come forward with information to address each factor). And no one factor is necessarily more important than another. See *Bell v. Reading Hosp.*, No. 13-5927, 2016 BL 10220, at *2 (E.D. Pa. Jan. 14, 2016) (''no single factor is designed to outweigh the other factors in determining whether the discovery sought is proportional'').

FACTOR ANALYSIS

The Likely Benefit of the Proposed Discovery

As the Court noted, ''if the benefits of the requested form are negligible, nonexistent, or merely speculative, *any* enhanced efforts or expense attending the requested form of production is undue and sufficient to deny the requested discovery.. . . At the opposite end of the spectrum, a particularized need for the proposed discovery will weigh heavily in favor of allowing discovery as requested . . . .'' (emphasis in original).

The Texas Supreme Court noted that the likely benefit of the proposed discovery and burdens should not be viewed in a vacuum. Thus, if there are similar litigations, the burden might ''exponentially increase,'' as in the case when there are different protocols in related litigation, or the discovery sought might have ''broader utility, which could have a cumulative reductive effect.'' So a requesting party should assess what the true burden of the request might be in light of related matters.

For example, if the producing party is facing a related regulatory investigation and must produce information to the regulator, it is minimally burdensome to produce that same information to an opponent. See *In re: E.I. du Pont de Nemours & Co. C-8 Personal Injury Litig.*, Civil Action 2:13-md-2433, 2016 BL 337048 (S.D. Ohio Oct. 7, 2016) (when party had to provide same material to authorities, there was no burden to providing similar materials to opposing litigant). Similarly, it might be less burdensome for a party to produce information already gathered and produced in a similar or related litigation or gathered for other business purposes. *In re State Farm*, 2017 BL 177212, at *8 (''if there are likely uses for the identification and retrieval process beyond the instant mandamus cases, initial burden and expense may be substantially ameliorated. . . .'').

A party objecting to discovery might counter that the data search and review is limited to just the matter and has no broader implications, thereby increasing the burden. See *id.* (if there are no uses for the identification and collection of documents outside the case, ''the burden and expense may be significantly enhanced''). In addition, the objecting party may choose to quickly assess data through sampling, technology assisted review, and early data assessment. Such techniques provide insight into the benefit of the information sought, allowing for predictions as to the importance and usefulness of the information.

The objecting party might further generate metrics reports that show the overall volume of data sampled in comparison to the amount actually found to be responsive, to support an argument that the data sought is of limited value. See *Vaigasi v. Solow Mgmt. Corp*, 11 Civ. 5088 (RMB)(HBP), 2016 BL 42876, at *18 (S.D.N.Y. Feb. 16, 2016) (requests were disproportionate because a sampling of the ESI requested showed ''nothing of incremental value'').

The Needs of the Case

A requesting party seeking information must be prepared to explain the requested data's relevance and significance to the case. Conversely, a party objecting to the discovery as disproportional may counter that ''[h]ypothetical needs, surmise, and suspicion should be afforded no weight.'' *In re State Farm*, 2017 BL 177212, at *8.

Under this factor, parties may raise the objection that the information is available from a more convenient, less burdensome source. As the Texas Supreme Court noted, when assessing a discovery request, ''the court should consider not only the relative importance of the information to the central issues in the case, but also availability of that information from some other source that is more convenient, less burdensome, or less expensive.''

Objecting parties might also raise issues related to time and effort already expended for discovery. As one federal court recently summarized, ''there exists a point beyond which courts have to tell the parties that if they cannot yet prove their claims then they probably never will.'' *Armstrong Pump, Inc. v. Hartman*, No. 10-CV-446S, 2016 BL 413711, at *5 (W.D.N.Y. Dec. 13, 2016).

The Amount in Controversy

Discovery should be tailored to the amount in controversy; otherwise, a party might try to increase discovery costs to pressure its opponent to settle. See *In re State Farm*, 2017 BL 177212, at *9 (''the advent of e-discovery is forcing settlements, and thus, denying litigants an opportunity to litigate the merits of the case'') (internal citation omitted). For this reason, ''the amount in controversy plays a pivotal role in determining whether production . . . is justified given the burden or expense required to meet the demand.'' *Id.*

Parties making a proportionality objection must be prepared to explain the costs of the proposed discovery in comparison to the amount in controversy. Objecting parties facing smaller litigation may point to the amount in controversy as not justifying the expense of the proposed discovery. See *Fidelis Grp. Holdings, LLC v. Chalmers Auto., LLC*, No. 16-3258, 2016 BL 352744, at *4 (E.D. La. Oct. 24, 2016) (when amount in controversy was barely over $75,000, court found requests disproportionate).

Yet, even when amounts in controversy are large, objecting parties should note that discovery should not be limitless; courts must still determine whether the burden or expense of the proposed discovery outweighs its likely benefit. See Fed. R. Civ. P. advisory committee note (''monetary stakes are *only one* factor, to be balanced against other factors'') (emphasis added). Objecting parties may further argue that certain ESI is not readily accessible, which the Texas Supreme Court

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noted may contribute to increased costs and burdens on the parties that should be weighed against the amount in controversy.

Conversely, requesting parties involved in high stakes or large class action litigation may counter that all discovery is costly and that the amount in controversy when compared to the costs weighs in favor of discovery. *See Siriano v. Goodman Mfg. Co., L.P.*, Civil Action 2:14-cv-1131, 2015 BL 404557, at *7 (S.D. Ohio Dec. 9, 2015) (Federal Rule 26 limits the scope of discovery when compliance '' 'would prove *unduly* burdensome,' not merely expensive or time-consuming''). For example, the District of Connecticut found a proportionality argument ''unavailing'' ''[g]iven that there are 1,047 opt-in plaintiffs, 'potentially hundreds more as class members' in the four states of Connecticut, California, North Carolina and Missouri, and a possible verdict in eight or nine digits if plaintiffs are successful here.'' *Strauch v. Computer Scis. Corp.*, No. 3:14 CV 956 (JBA), 2015 BL 386604, at *3 (D. Conn. Nov. 24, 2015). And, even in a case with little or no monetary stake, the discovery sought and issues at stake may still weigh in favor of discovery. See Fed. R. Civ. P. 2015 amendment advisory comm. note.

The Parties' Resources

Whether a party has the means to produce the requested information can also be a significant proportionality consideration. Courts may compare the resources of the parties in assessing this proportionality factor. See *Vay v. Huston*, No. 14–769, 2016 BL 112871, at *6 (W.D. Pa. Apr. 11, 2016) (noting producing party had ''comparatively greater resources at its disposal'' than the requesting party).

The requesting party might point to the size of its opponent if the responding party is a large national company with great resources. See *Labrier*, 314 F.R.D. at 643 (noting case involved an individual versus a national company in determining discovery from company was proportional); see also *Bd. of Comm'rs of Shawnee Cty. v. Daimler Trucks N. Am., LLC*, No. 15-4006-KHV, 2015 BL 407832, at *5 (D. Kan. Dec. 11, 2015) (noting defendant never suggested discovery was beyond its financial capability to produce).

If the responding party has few resources, the requesting party should highlight the importance of the information. See *In re State Farm*, 2017 BL 177212, at *10 citing Fed. R. Civ. P. 26 advisory committee's note to 2015 amendment (''considerations of the parties' resources does not foreclose discovery requests addressed to an impecunious party''); see also *Goes Int'l, AB v. Dodur Ltd.*, No.14-cv-05666-LB, 2016 BL 31835, at *5 (N.D. Cal. Feb. 4, 2016) (when defendant was small but the information sought was important, court noted ''the defendant's financial wherewithal is not decisive'').

A well-off objecting party might counter that the marginal utility of the proposed discovery should impact the court's view of the parties' resources, as ''considerations of the parties' resources does not . . . justify unlimited discovery requests addressed to a wealthy party.'' *In re State Farm*, 2017 BL 177212, at *10 (citing Fed. R. Civ. P. 26 advisory committee's note to 2015 amendment). Even a wealthy party may not need to produce discovery with little to no benefit. Ultimately, ''the court must apply the standards in an even-handed manner that will prevent use of discovery to wage a war of attrition or as a device to coerce a party, whether financially weak or affluent.'' *Id.* Accord *Thermal Design, Inc. v. Guardian Bldg. Prods., Inc.*, Case No. 08–C–828, 2011 BL 105337, at *2 (E.D. Wis. Apr. 20, 2011) (''Courts should not countenance fishing expeditions simply because the party resisting discovery can afford to comply'').

Interestingly, with respect to the native production format request at issue in *In re State Farm*, the Texas Supreme Court looked at not only the producing party's resources but also ''whether the requesting party has the technological resources to make proper use of the ESI in the form requested,'' noting ''if the potential benefits could not be realized any associated burden would be unwarranted.'' The necessity of having the software required to view native files should be discussed by the parties early on when conferring about the relevant sources of ESI and potential production formats. Still, if important enough to the case, a court may require a party to produce native files along with the necessary software required to view the electronic data. Accord *Maldonado v. Union Pac. R.R. Co.*, Case No. 09–1187–EFM, 2010 BL 111122, at *2–4 (D. Kan. May 18, 2010) (defendant had to produce software needed to view event recorder data and locomotive video).

The Importance of the Issues at Stake in the Litigation

The importance of the issues at stake may tip the balance in favor of a producing party expending greater resources than it might otherwise. The Texas Supreme Court noted that cases with small or no monetary value may be of great import when public values are at stake, such as free speech or employment practice cases. See also *Boyington v. Percheron Field Srvs. LLC*, No. 3:14-CV-90, 2016 BL 343094, at *7 (W.D. Pa. Oct. 14, 2016) (misclassification under FLSA important issue); *Vay*, 2016 BL 112871, at *6 (in employment discrimination case, court found ''issues at stake go beyond merely financial considerations''). Similarly, cases brought by the government will likely be deemed important. See *Perez v. Mueller*, No. 13-C-1302, 2016 BL 172467, at *2 (E.D. Wis. May 27, 2016) (issues in an ERISA case brought by DOL ''are important from a public policy perspective, or at least they should be, lest the Secretary be engaging in years of unnecessary litigation at taxpayer expense''). Thus, requesting parties bringing public policy cases should argue the import of the litigation.

Parties involved in theft of trade secrets or competitive behavior cases may also argue importance of the issues, see *First Niagara Risk Mgmt., Inc. v. Folino*, 317 F.R.D. 23, 28 (E.D. Pa. 2016) (when executive was accused of plan to start competing business, issues at stake were of ''grave importance'' to business), as might those involved in class insurance cases, *Hume, (discussing import of ''issues in determining whether plaintiffs should recover for extensive life care plans'')*, or those attempting to follow money trails. *In re ClassicStar Mare Lease Litig.*, No. 1877, 2017 BL 774 (E.D. Ky. Jan. 3, 2017) (''There is undoubtedly a strong public (and private) interest in the Court's judgment being fully and properly executed''). Other cases of import could include those seeking injunctive relief.

Import can be based upon serial, related, or repeat litigation. The Texas Supreme Court noted that when ''the precedential value may be more significant'' it will

''justify[] the outlay of time and expenses that would otherwise be unwarranted.''

Responding parties might counter that ''[l]egal disputes are always important to those who are litigating them'' but that does not mean that the issues are of import. So as not to undermine the import argument, responding parties should be careful how they staff and handle litigation, as a court may impute more significance to the issues in a matter based on the staffing. See *Wal-Mart Stores, Inc. v. Tex. Alcoholic Beverage Comm'n*, No. A-15-CV-134-RP, 2016 BL 338688, at *3 (W.D. Tex. Oct. 11, 2016) (noting ''the sheer number of attorneys who have made appearances in the case'' was a ''persuasive demonstration of the importance of the issues at stake'').

The Importance of the Proposed Discovery in Resolving the Litigation

Perhaps the most important of the factors, ''[d]iscovery must bear at least a reasonable expectation of obtaining information that will aid the dispute's resolution.'' *In re State Farm.* 2017 BL 177212, at *10. Thus, ''[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 comm. note (2015). Recognizing that not every piece of relevant information need be produced, courts have found that ''the greater the relevance of the information in issue, the less likely its discovery will be found to be disproportionate.'' *Vaigasi*, 2016 BL 42876, at *16.

The party seeking discovery ''should explain why the information being sought is 'important to resolving the case and why it would be a good use of [resources] to search for it. . . .' '' *Waters v. Drake*, No. 2:14-cv-1704, 2016 BL 262242, at *22 (S.D. Ohio Aug. 12, 2016) (internal citations omitted). Requesting parties may argue that information relates to key issues likely to have a bearing on the claim, see *In re: Suboxone (Buprenorphine Hydrochloride & Naloxone) Antitrust Litig.*, No. 13-MD-2445, 2016 BL 206781, at *9 (E.D. Pa. June 27, 2016) (overruling magistrate ruling that discovery was disproportionate because information sought went to ''heart'' of claim), and that the producing party will need to gather the requested information for its own claim or defense or for purposes of settlement. See *Labrier*, 314 F.R.D. at 642 (party gathering information for own purposes); *Goes*, 2016 BL 31835, at *5 (finding requested information was likely to benefit both parties who were in settlement discussions because it would ''accurately fill out the picture of this developing lawsuit'').

Conversely, parties objecting to discovery should show the potential discovery is of limited or no value and is merely a fishing expedition. See *Waters*, at *25–31 (when plaintiff sought additional discovery that was not an area of inquiry critical to the claim, additional discovery was disproportionate and would not serve to resolve issues in the case); see also *In re: Bard IVC Filters Prods. Liab. Litig.*, 317 F.R.D. 562, 566 (D. Ariz. 2016) (importance of discovery in resolving issues ''appears marginal''); *Alaska Elec. Pension Fund v. Bank of Am. Corp.*, No. 14-CV-7126 (JMF), 2016 BL 380969, at *6–7 (S.D.N.Y. Nov. 16, 2016) (finding discovery disproportionate because of marginal utility of requests seeking all documents provided to or received from regulators); *Flynn v. Square One Distrib, Inc.*, Case No. 6:16-mc-25-Orl-37TBS, 2016 BL 167133, at *5 (M.D. Fla. May 25, 2016) (noting discovery ''must be more than tangentially related to the issues that are actually at stake'' when finding discovery regarding process of creating warning was disproportionate because issue was whether warning was sufficient). Sampling and statistics may further evidence the limited value of the information requested, see *Vaigasi*, 2016 BL 42876, at *18; see also *Moore v. Lowe's Home Ctrs., LLC*, No. 14-1459 RJB, 2016 BL 48649, at *6–7 (W.D. Wash. Feb. 19, 2016) (discovery was overly broad and not proportional to the case when hundreds of thousands of irrelevant emails would be hit by plaintiff's proposed search terms, even though ''additional search terms could possibly yield some relevant results''), and prove that the discovery will not uncover a large volume of relevant documents. *Wilmington Tr. Co. v. AEP Generating Co.*, No. 2:13-cv-01213, 2016 BL 68988, at *2–4 (S.D. Ohio Mar. 7, 2016) (discovery disproportionate when party faced with searching and reviewing hundreds of thousands if not millions of pages, though the volume of relevant documents was likely ''small'' and the effort would not uncover ''any great volume of documents'').

Any Other Factor Bearing on Proportionality

The Texas Supreme Court recognized the need for an additional factor, in light of constantly evolving technology. The Court stated:

> The foregoing factors are derived directly from the discovery rules, but are certainly not exclusive. As history tells, technology is constantly evolving at rapidly increasing rates. The legal system is not nearly as agile, leaving us in a perpetually responsive posture. Trial courts have flexibility to consider any articulable factor that informs this jurisprudential inquiry.

Thus, as technology evolves, counsel should be creative in assessing the burdens and benefits of producing ESI. The use of technology assisted review, data analytics, email threading, and other technologies may be considered by the court in assessing the burden. *Id.* n. 60 citing Fed. R. Civ. P. 26 advisory committee note to 2015 amendment (''The burden or expense of proposed discovery should be determined in a realistic way. Computer-based methods of searching such information continue to develop[, and] [c]ourts and parties should be willing to consider the opportunities for reducing the burden or expense of discovery as reliable means of searching electronically stored information become available.'').

Moreover, though not specifically addressed by the Texas Supreme Court as a separate factor as in Federal Rule of Civil Procedure 26, the parties' relative access to the relevant information may impact the proportionality analysis. If a requesting party does not have access to relevant information, it should point this out to the court as a reason to find the benefit of discovery outweighs the burden. See *Labrier*, 314 F.R.D. at 643 (when information at heart of the matter was located in insurance database and defendant insurer refused to permit access to database or even provide listing from it, court found discovery proportional); see also *Albritton v. CVS Caremark Corp.*, No. 5:13-CV-00218-GNS-LLK, 2016 BL 207016, at *4 (W.D. Ky. June 28, 2016) (noting information sought in discovery was in the sole possession of defendant).

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Objecting parties should also consider any additional facets of a request that might impact the burden. For example, a producing party may have an additional burden argument to make if the information sought implicates employee or third party privacy issues. See *Biggio v. H20 Hair, Inc*., No. 15-6034, 2016 BL 407363, at *3 (E.D. La. Dec. 7, 2016) (discovery unimportant to issues at stake ''while only increasing expense and burden, in the form of non-party privacy intrusion. . .'').

Evidence Regarding Burden

The lower court in *In re State Farm* rejected any proportionality concerns based on a lack of evidence related to the time, expense, and extraordinary steps required to produce the ESI in the requested format. This highlights the need for an objecting party to marshal evidence regarding both the burden (estimates of time and costs) and the benefit of the proposed discovery. See also *Labrier v. State Farm & Cas. Co.*, 314 F.R.D. 637, 642 (W.D. Mo. 2016) (discussing party's lack of evidence about the hours and costs associated with obtaining requested information); *N.U. v. Wal-Mart Stores, Inc.*, No. 15-4885-KHV, 2016 BL 220272, at *4 (D. Kan. July 8, 2016) (party must ''provide sufficient detail in terms of time, money and procedure required to produce the requested documents'' and mere speculation as to burden without evidence of time and expense for compliance was insufficient). The objecting party bears the burden of proving that any discovery is disproportionate to the needs of the case. See *Carr v. State Farm Mut. Auto. Ins*., 312 F.R.D. 459 (N.D. Tex. 2015) (objecting party must show discovery is burdensome).

Cost-Shifting

Objecting parties might seek to shift the costs of any disproportionate discovery. The Texas Rules of Civil Procedure mandate cost shifting if the proportionality factors weigh against production but the requesting party shows a particularized need for the data and the court orders the production. See Tex. R. Civ. P. 196.4 (''If the responding party cannot – through reasonable efforts – retrieve the data or information requested or produce it in the form requested, the responding party must state an objection complying with these rules. If the court orders the responding party to comply with the request, the court must also order the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information''). The Texas Supreme Court noted ''a particularized need for the proposed discovery will weigh heavily in favor of allowing discovery as requested but, depending on the force of other prudential concerns, may warrant cost-shifting for any 'extraordinary steps' required'' per Texas Rule of Civil Procedure 196.4. The court specifically noted that the rule places the ''burden of specifying 'any extraordinary steps for retrieval and translation' on the *requesting* party, which may necessitate collaborating with the responding party before requesting production of electronic discovery . . . .'' (emphasis added). Similarly, a federal court might shift costs if it deems discovery is disproportionate. See, e.g., *Boeynams v. LA Fitness Int'l, LLC*, 285 F.R.D. 331 (E.D. Pa. Aug. 16, 2012).

If a party is ordered to produce electronically stored information in spite of the proportionality factors, the party should take care to separate out and itemize the extra costs and expenses incurred as a result of producing the data so that it may prove its costs for reimbursement.

Avoiding Proportionality Issues Through Cooperation From the Start

From the start, many proportionality disputes can be avoided through the application of another key principle of electronic discovery - cooperation. See *In re Weekly Homes, L.P.*, 295 S.W.3d 309, 321 (Tex. 2009) (''A fundamental tenant of our discovery rules is cooperation between parties and their counsel, and the expectation that agreements will be made as necessary for efficient disposition of the case''). As the Federal Rules of Civil Procedure Advisory Committee Notes emphasize, the court and parties ''have a collective responsibility to consider the proportionality of all discovery and consider it in resolving discovery disputes.''

Parties should try to negotiate electronic discovery parameters at the outset of discovery to prevent disproportionality arguments in the future. In order to effectively do so, a party's counsel must learn about electronically stored information early on to allow for the sharing of information necessary for an attempt to reach an agreement regarding an electronic discovery protocol. See *In re Weekly Homes*, 295 S.W.3d at 321-22. An electronic discovery protocol may address a variety of discovery issues such as preservation, relevant sources of data, search terms or other technologies being employed to locate relevant information, deduplication, email threading, production formats, and privilege issues.

Subsequent Negotiations Based Upon Proportionality

Even after an ESI protocol has been entered, responding parties might invoke proportionality in further negotiating and refining the scope of discovery. Proportionality concepts may strengthen a party's position in negotiating search terms. See *Duhigg v. Goodwill Indus.*, No. 8:15CV91, 2016 BL 307103, at *3 (D. Ne. Sept. 16, 2016) (search for plaintiff's first name was disproportionate in discrimination matter and would include privileged information, sensitive commercial and proprietary information, and information with no relevance to the case); see also *FlowRider Surf, Ltd. v. Pac. Surf Designs, Inc.*, No. 15cv1879-BEN (BLM), 2016 BL 369715, at *10–12 (S.D. Cal. Nov. 3, 2016) (request to provide all hits for previously agreed upon search terms without further relevance review disproportionate given likely irrelevant documents hit). A responding party might also counter a request by proposing alternative, less expensive discovery methods to provide the information sought. See *Buchanan v. Chi Transit Auth.*, No. 16-cv-4577, 2016 BL 407143, at *7–9 (N.D. Ill. Dec. 7, 2016) (court denied request for relevant records in FMLA matter when production would require manual review of over 10,000 files when plaintiff could use other discovery tools to obtain information sought).

The responding party could also apply proportionality concepts in offering to produce sample data instead of all data sought. See *B&R Supermarkets, Inc. v. VISA, Inc.*, No. 16-cv-01150-WHA (MEJ), 2017 BL 16026 (N.D.

Cal. Jan. 19, 2017) (when a plaintiff in a class action sought data that was important to the issues in the case and only in the opposing party's possession, such that information could not be obtained from another source, but it would take thousands of hours to collect requested information related to millions of transactions located in six databases, court ordered sampling of data); see also *FTC v. DIRECTV, Inc.*, No. 15-cv-01129-HSG (MEJ), 2016 BL 184723, at *2 (N.D. Cal. June 9, 2016) (sampling instead of full-scale production would achieve proportionality).

Let Proportionality Be Your Polestar in Discovery

Above all, parties should be creative when assessing their case, the proportionality of any discovery sought, and ways to reduce the burden on parties in obtaining the information needed to prosecute or defend against a claim. By making proportionality their ''polestar,'' parties focus on the merits of the case in such a way that there will be a ''just, fair, equitable and impartial adjudication . . . with as great expedition and dispatch and at the least expense . . . as may be practicable.'' *In re State Farm*, 2017 BL 177212, at *13 (quoting Tex. R. Civ. P. 1).

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