



District Court Orders Party to Produce Litigation Hold Notices

Client Advisories

01.26.2015

In a recent opinion, the U.S. District Court for the District of Columbia held that Defendants' litigation hold notices to their employees were discoverable, dispelling the widespread belief that litigation hold notices are generally privileged from production.

In *United States ex rel. Barko v. Halliburton Co.*, Judge Gwin ordered the Defendants to produce the litigation hold notices that they circulated to company employees. Typically, litigation hold notices are protected by the attorney-client privilege, which shelters confidential communications between an attorney and client made with the primary purpose of seeking or providing legal advice, or the work product doctrine, which protects documents and other tangible things prepared in anticipation of litigation. However, Judge Gwin found that the litigation notices at issue in the Halliburton case were not protected by privilege because they were sent to "large groups of individuals, such as 'all KBR employees.'" In addition, employees were encouraged to share the litigation hold notices with other employees who may not have received the first notice. Despite the "Privileged and Confidential" language contained in the notices, the court found that the notices lacked confidentiality instructions and were too widely disseminated to maintain the attorney-client privilege, finding that "sharing of otherwise confidential information within a corporation-even if the sharing is only with employees-can result in loss of the privilege if the sharing goes beyond [the] 'need to know limitation.'"

In light of this decision, litigants and attorneys should take precautions to protect the confidentiality of their litigation hold notices by including specific confidentiality instructions and limiting the list of recipients to employees responsible for implementing the hold, such as the IT department and employees directly involved with the information subject to the hold. While litigants have a duty to preserve all potentially relevant documents and data in anticipation of litigation, overbroad dissemination of litigation hold notices may have the unintended consequence of destroying confidentiality.

For further information about litigation holds or confidentiality issues, please contact [Kate A. Sozio, Esquire](#) or a member of [Archer Discovery Strategies](#), a team of legal and technical professionals experienced in electronic discovery litigation and document management best practices.

DISCLAIMER: This client advisory is for general information purposes only. It does not constitute legal advice, and may not be used and relied upon as a substitute for legal advice regarding a specific legal issue or problem. Advice should be obtained from a qualified attorney licensed to practice in the jurisdiction where that advice is sought.

© 2025 Archer & Greiner, P.C. All rights reserved.

