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## NJ State Court Re-Affirms Value of Coordinated Pre-Trial eDiscovery Frameworks in MDL

A recent New Jersey Superior Court decision demonstrates the willingness of some judges to control and manage eDiscovery costs incurred by defendants in complex litigation. In *In re DePuy ASR Hip Implants Litig.*, No. BER-L-3971-11 (N.J. Super. Ct. Law Div. Oct. 18, 2011), the court denied a plaintiff's motion to compel production that differed from the format previously adopted by the negotiated MDL protocol. The court noted that although it will not automatically follow the protocol of an MDL or other Jurisdiction, it will look to the reasonableness of eDiscovery decisions made in other related pretrial conferences.

After hosting an informal conference with federal and state judges associated with the matter, as well as with attorneys located throughout the country involved in cases in the MDL or other jurisdictions, the court noted that it was “undisputed that the MDL Protocol was a product of negotiations between the defense counsel, the leadership in the MDL, and liaison counsel in various jurisdictions including New Jersey.” In fact, the attorneys negotiating the protocol actually considered and later rejected the two production formats requested by the state court plaintiff. The court went on to remark that to compel the defendant to produce the same documentation in various formats would be “unduly burdensome.”

The denial of the motion highlights the importance of carefully discussing and documenting eDiscovery concerns in pre-trial conferences – especially early ones in complex litigation. Proactive due diligence and negotiations early in these matters will only serve to bolster a producing party's arguments against potentially redundant and burdensome document requests that arise later – whether in that initial court or anywhere else in the country. In short, a well-considered strategy, combined with reasonableness and good faith in negotiations, will provide a substantial bulwark against a later court second-guessing the initial agreements or substituting its judgment for those of other courts when it comes to discovery agreements.

A copy of the opinion can be found at <http://druganddevicelaw.net/Opinions%20in%20blog/DePuy.NJ.Hip.pdf>.

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