ELECTRONIC DATABASE DISCOVERY IN PRODUCTS LIABILITY CASES - A PLAINTIFF'S PERSPECTIVE

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ELECTRONIC DATABASE DISCOVERY IN PRODUCTS LIABILITY CASES – A PLAINTIFF'S PERSPECTIVE

I. INTRODUCTION

The law has finally entered the information age. Even though it has been common knowledge for years that the vast majority of corporations store their records on computer databases and internal intranets, the law and corporate defendants have been slow to recognize that computer searches are a necessary component to civil discovery. Now, computer searches are granted as a matter of course. In instances where manufacturers have refused access, courts have ordered them to make the databases available. Brazil v. General Motors Corp., C.A. No. 7-99CV-001-X (N.D. Tex. 1999); Cameron v. General Motors Corp., Civ. Action No. 3:93-1278-07 (D.S.C. Aug. 22, 1998); Newton v. General Motors Corp., Civ. Action No. 922-638 (W.D. La. Nov. 8, 1993); Williams v. General Motors Corp., Civ. A. No. CV 392-037 (S.D. Ga. March 2, 1993); Middleton v. Cooper Tire & Rubber Company, No. 99-CP-25-214 (Hampton County Court of Common Pleas, South Carolina, Nov. 8, 2001); Holder v. General Motors Corp. (Cir. Ct. Fayette County, Ala. Aug. 23, 1993); LaFrance v. Padilla, No. 90-021356 (117th Jud. Cir., Harris County, Texas July 6, 1993); Lafferty v. Ford Motor Co., Civ. Action No. 92VS67182E (Fulton County, Georgia Oct. 22, 1993).Rossetto v. General Motors Corp., No 2293 of 1987 (Ct. Common Pleas, Westmoreland County March 19, 1993); Conkle v. General Motors Corp., Civ. Action No. SC92CV730 (Muscogee County, Ga. Feb. 24, 1981).

Courts and civil discovery rules acknowledge that discovery requests seeking computer database and intranet searches should be routinely granted. As the District Court for the Eastern District of Pennsylvania has noted:

> [W]e know we now live in an era when much of the data which our society desires to retain is stored in computer discs. This process will escalate in years to come; we suspect that by the year 2000 virtually all data will be stored in some

> form of computer memory. To interpret the Federal Rules which, after all, are to be construed to secure the just speedy, and inexpensive determination of every action in a manner which would preclude the production of material such as [the computer data] requested here, would eventually defeat their purpose.

National Union Electric Corp. v. Matsushita Electric Industrial Co., 494 F. Supp. 1257, 1262-63 (E.D. Pa. 1980) (internal citations and quotations omitted).

Most corporations maintain an extensive network of computerized information. Databases store millions of documents which can be "searched" or referenced through various data search techniques and codes. Internal intranets provide manuals and links to other corporate documents on the desk of every corporate employee. Computers link employees and allow them to share information among different offices and divisions of the corporation. Corporate defendants routinely use computer document storage and retrieval systems to catalog voluminous materials.

Some of the most important information to a plaintiff in a products liability case may be contained in electronic format. Customer complaints are often cataloged in computer database systems. Internal communications related to design decisions are often found in emails. Searches of these files almost always unearth dozens of documents responsive to discovery requests that were not produced during "paper" discovery. If a plaintiff's attorney neglects the electronic side of discovery, it is likely that important documents might not be produced.

Even though many defendants recognize that database searches are permissible under the law, other defendants in products liability cases will fight all attempts at access into their computer database systems. Typically, corporations object to a computer search by arguing that they have already conducted such a search and provided the requesting party with responsive documents. Corporations also argue that they should not be required to provide access to their databases unless the requesting party demonstrates that the corporation has not made a good faith

effort to obtain responsive documents. Another common argument is that a search of a computer database system might result in the disclosure of documents protected by the attorney-client privilege. Other arguments are based upon the responding parties assertions that it would be too difficult to conduct such searches because of the method by which the corporation has chosen to store their data. These arguments are routinely rejected.

Although current discovery rules already require a party responding to discovery requests to search all "documents," including those stored in electronic form, it may also be necessary to propound specific discovery requests seeking access to some of this computerized information. Discovery requests directed at the specifics of a defendant's computer system may be helpful in determining what databases should be searched as well as for developing the protocol for the searches. Developing a protocol that will set up an efficient search of the defendant's computer systems is an important component of getting your requested search granted and diffusing the arguments made by the responding party. These topics are discussed in detail below.

II. THE SAME RULES REQUIRING DISCLOSURE OF "PAPER DOCUMENTS" ALSO REQUIRE DISCLOSURE OF INFORMATION STORED IN ELECTRONIC FORMATS.

Access to computer databases is neither novel nor untested. Both discovery rules and courts recognize that this information is discoverable. Bills v. Kennecott Corp., 108 F.R.D. 459, 461 (D. Utah 1985) (recognizing that "[i]t is now axiomatic that electronically stored information is discoverable under Rule 34 of the Federal Rules of Civil Procedure if it otherwise meets the relevancy standard prescribed by the rules").

The Georgia Civil Practice Act expressly authorizes parties to search and access information stored on computer databases. O.C.G.A. § 9-11-34 (permitting party to serve requests for such things as "data compilations from which information can be obtained"). The

definition of "documents" in Rule 34 of the Civil Practice Act is identical to that used in the Federal Rules. As the Advisory Committee's Notes to Federal Rule of Civil Procedure 34 make clear:

> The inclusive description of "documents" is revised to accord with changing technology. It makes clear that Rule 34 applies to electronic data compilations from which information can be obtained only with the use of detection devices, and that when the data can as a practical matter be made usable by the discovering party only through respondent's devices, respondents may be required to use his devices to translate the data into usable form.

Advisory Committee Notes to Fed. R. Civ. P. 34. In Georgia and elsewhere, access to computer database searches, in some instances, is the only way in which a party can discover pertinent and relevant information in a case. In fact, the Manuel for Complex Litigation also recognizes that "[c]omputer-stored data and other information responsive to a request will not necessarily be found in an appropriately labeled file" and that "[b]road database searches may be necessary." § 21.446, at 80 (3rd ed. 1995).

Corporate defendants cannot claim ignorance that the data stored on their computers is discoverable in the same manner as that in paper format. Emerick v. Fenick Indus., Inc., 539 F.2d 1379, 1380-81 (5th Cir. 1976) (rejecting defendant's argument that plaintiffs' discovery request for ledgers or journals did not include similar records kept on computer and finding that this interpretations was in "flagrant disregard" of the court's prior discovery order); see also In Re Brand Name Prescription Drugs Antitrust Litigation, No. 94 C 897, MDL 997, 1995 WL 360526, at *1 (N.D. Ill. June 15, 1995) (holding that e-mail and other "computer-stored information is discoverable under the same rules that pertain to tangible, written materials" pursuant to Rules 26(b) and 34).

In Crown Life Insurance Company, the defendant responded to a motion for sanctions for failing to provide requested documents by arguing that the data at issue was "not 'documents'

because it was never in any hard copy form and the plaintiff requested 'written documents.'" Crown Life Ins. Co. v. Craig, 995 F.2d 1376, 1383 (7th Cir. 1993). This argument was rejected, and the defendant was sanctioned for not providing the computer data because "the Advisory Committee notes to the 1970 Amendment of Federal Rule of Civil Procedure 34 make clear that computer data is included in Rule 34's description of documents." Id. at. 1383-84; see also Santiago v. Miles, 121 F.R.D. 636, 639-40 (W.D.N.Y. 1988) (finding that a "request for raw information in computer banks via a properly designed computer request is proper and obtainable under the discovery rules").

Accordingly, if the information that a plaintiff is requesting is discoverable and is maintained in electronic format, plaintiffs are entitled to discovery of the electronic data because the same rules governing "paper" discovery also govern electronic discovery.

III. DATABASE SEARCHES ARE GRANTED EVEN WHEN THE DEFENDANT CLAIMS THAT THE INFORMATION HAS ALREADY BEEN PROVIDED IN "PAPER" FORM.

Frequently, a corporate defendant will argue that a search of its computer databases is unnecessary because it has already searched its computer databases and provided in paper form all responsive documents. Although the defendant claims it has made a thorough search of its computer databases for responsive material, the plaintiff is entitled to search those same databases for requested and discoverable information and to request that the information be provided in electronic format.

The defendant will also argue that the proposed search is too intrusive and that only the defendant should conduct the search. Database searching is quite different than an opposing attorney going through a file cabinet to find relevant information. By targeting databases that store information relevant to the litigation and by using search terms that are designed to only

produce relevant "hits," it is possible to perform a comprehensive search of documents and still stay within the bounds of permissible discovery.

In Dunn v. Midwestern Indemnity, the defendant refused to allow the plaintiff to search its databases and contended that all relevant information had already been provided to the plaintiffs in another form. 88 F.R.D. 191, 194 (S.D. Ohio 1980). In granting the plaintiffs' request for a database search, the court held as follows:

> To the extent that defendant's computer capabilities may foster, contribute to, or reflect the formulation or application of the defendant's underwriting standards, which are the subject matter of this action, the plaintiffs' discovery requests are relevant under Rule 26(b), either because the information sought would be admissible at trial or because said information appears reasonably calculated to lead to the discovery of admissible evidence. Because the production of or access to conventional files and computer print-outs and docs does not provide the information herein sought in another form, the discovery which has thus been completed is no substitute for the present requests.

Id. at 195.

Searching the defendant's databases with your own search terms and deciding which databases to search may result in documents being identified that were not previously provided in discovery. As with most discovery, the defendant may read the plaintiff's requests narrowly and only search a limited number of databases with a limited number of search terms. Accordingly, when a plaintiff's attorney searches these same databases, it is likely that additional relevant and discoverable documents will be unearthed during the searching. Order, Dize v. DaimlerChrysler Corp., Civ. Action No. 00-C-4666-5 (State Court of Gwinnett County, Georgia, Dec. 3, 2001), withdrawn by consent order, Consent Order, Dize v. DaimlerChrysler Corp., Civ. Action No. 00-C-4666-5 (State Court of Gwinnett County, Georgia, Dec. 12, 2001) (striking the defendant's answer for failing to provide documents in response to plaintiffs' discovery requests that were eventually discovered during a database search).

Of course, it is also likely that the corporate defendant will strongly oppose and refuse your requests to search these databases. Fortunately, the law recognizes a plaintiff's right to conduct their own search of a corporation's databases. See, e.g., Anti-Monopoly, Inc. v. Hasbro, Inc., 94CIV.2120, 1995 WL 649934, *2 (S.D.N.Y. Nov. 3, 1995) (recognizing that the argument that computerized data does not have to be produced just because hard copies of the information have already been provided was rejected fifteen years ago and holding that it is black letter law that computerized data is discoverable if relevant); Anderson v. Cornejo, No. 97 C 7556, 2001 WL 219639, * 6 (N.D. Ill. March 6, 2001) (granting plaintiffs' motion to compel information in a computer-readable form from defendant's databases); see also Brazil v. General Motors Corp., C.A. No. 7-99CV-001-X (N.D. Tex. 1999); Cameron v. General Motors Corp., Civ. Action No. 3:93-1278-07 (D.S.C. Aug. 22, 1998); Newton v. General Motors Corp., Civ. Action No. 922-638 (W.D. La. Nov. 8, 1993); Williams v. General Motors Corp., Civ. A. No. CV 392-037 (S.D. Ga. March 2, 1993); Middleton v. Cooper Tire & Rubber Company, No. 99-CP-25-214 (Hampton County Court of Common Pleas, South Carolina, Nov. 8, 2001); Holder v. General Motors Corp. (Cir. Ct. Fayette County, Ala. Aug. 23, 1993); LaFrance v. Padilla, No. 90-021356 (117th Jud. Cir., Harris County, Texas July 6, 1993); Lafferty v. Ford Motor Co., Civ. Action No. 92VS67182E (Fulton County, Georgia Oct. 22, 1993).Rossetto v. General Motors Corp., No 2293 of 1987 (Ct. Common Pleas, Westmoreland County March 19, 1993); Conkle v. General Motors Corp., Civ. Action No. SC92CV730 (Muscogee County, Ga. Feb. 24, 1981).

IV. RELEVANT INFORMATION STORED ON COMPUTER BACKUP TAPES IS ALSO DISCOVERABLE.

Courts have also compelled production of electronic information stored on computer backup tapes, even when the cost of the restoration was significant. In Linnen v. A.H. Robins Co., the court ordered the restoration of backup tapes to produce communications stored on the

tapes despite an estimated cost of restoring the backup tapes to be around $1 million. No. C-3-78-105, 1999 WL 462015 (Mass. Sup. Ct. June 16, 1999).

> While the court certainly recognizes the significant cost associated with restoring and producing responsible communications from these tapes, it agrees with the District Court for the Northern District of Illinois In re: Brand Name Prescription drugs Antitrust Litigation that this is one of the risks taken on by companies which have made the decision to avail themselves of the computer technology now available to the business world. To permit a corporation such as Wyeth to reap the business benefit of such technology and simultaneously use that technology as a shield in litigation would lead to incongruous and unfair results.

Id. at *6.

Information on backup tapes is no different than documents or other information that remains in a defendant's possession. Even if the corporate defendant claims that certain information is not retained as part of its document retention policy, it may have copies of backup tapes that can be accessed to find otherwise destroyed documents. To pursue this, it may be necessary to direct specific discovery requests or to depose employees familiar with the company's computer systems.

V. A DEFENDANT'S CHOICE TO MAINTAIN ITS DATA IN A SYSTEM DIFFICULT TO SEARCH IS NO DEFENSE TO DISCOVERY OF INFORMATION STORED IN THAT SYSTEM.

A corporate defendant may argue in response to a discovery request that a database search should be denied because it will be a time consuming and disruptive process for the corporate defendant. By making the database search sound complicated and difficult, the corporate defendant hopes to convince the court that allowing the database search to go forward will create an undue burden on the defendant and should not be granted.[1] Courts have not been

[1] Of course, this argument is an admission that the corporate defendant failed to search its own databases for responsive documents even though the rules require electronic documents to be searched in response to discovery requests.

receptive to this argument. "It would be a dangerous development in the law if new techniques for easing the use of information became a hindrance to discovery or disclosure in litigation. The use of excessive and technical distinctions is inconsistent with the guiding principle that information which is stored, used, or transmitted in new forms should be available through discovery with the same openness as traditional forms." Daewoo Elecs. Co. v. United States, 650 F. Supp. 1003, 1006 (Ct. Int'l Trade 1986).

In Dunn v. Midwestern Indemnity, the defendant argued that it was impossible with its computer system to provide some of the electronic information that the plaintiff sought in discovery. 88 F.R.D. 191, 198 (S.D. Ohio 1980). In rejecting the defendant's argument, the court held that it "recognizes that the problems presented in complying with plaintiffs' requests in this case may be more complex or of a different nature" than those present in other cases. The court reasoned, however, "it wishes to make clear that it will not be receptive to defendants' impossibility contentions insofar as they are grounded in the peculiar manner in which defendants maintain their computer systems." Id.

"[R]elevant case law instructs that the mere fact that the production of computerized data will result in a substantial expense is not a sufficient justification for imposing the costs of production on the requesting party." In Re Brand Name Prescription Drugs Antitrust Litigation, No. 94 C 897, MDL 997, 1995 WL 360526, at *2 (N.D. Ill. June 15, 1995). "[I]f a party choose an electronic storage method, the necessity for a retrieval program or method is an ordinary and foreseeable risk." Id. The court further reasoned that the plaintiffs should not be forced to bear a burden caused by the defendant's choice of electronic storage because "the costliness of the discovery procedure involved is a product of the defendant's record-keeping scheme over with the plaintiffs have no control." Id. at *2-3 (internal citations and quotations omitted).

A party may also be required to package the electronic data in a format usable by the requesting party. In Daewoo Electronics Company. v. United States, the court ordered that the defendant order the data into sequential files. 650 F. Supp. at 1006. "The normal and reasonable translation of electronic data into a form usable by the discovery party should be the ordinary and foreseeable burden of a respondent in the absence of a showing of extraordinary hardship." Id.

Based upon the relevant case law, a defendant cannot rely on its own choice of computer systems as an impediment to prevent a plaintiff from receiving the information that the plaintiff is entitled to receive.

VI. CORPORATE DEFENDANTS CANNOT SHIELD COMPUTER DATA FROM DISCOVERY BY "DELETING" THE INFORMATION.

With paper documents, a shredded document can "disappear" from a company's records. With data stored on computers, it is not always easy to get rid of documents in the same fashion. As the Advisory Committee Notes to Rule 34 indicate:

> Rule 34 applies to electronic data compilations from which information can be obtained only with the use of detection devices, and that when the data can as a practical matter be made usable by the discovering party only through respondent's devices, respondent may be required to use his devices to translate the date into usable form.

Advisory Committee Notes to the 1970 Amendments to Rule 34. In other words, plaintiffs are entitled to search the defendant's computers to recover information that may be stored in an otherwise unusable format.

In Playboy Enterprises, Inc. v. Welles, the defendant had a practice of deleting all emails after she had read them. 60 F. Supp.2d 1050 (S.D. Ca. 1999). This practice continued during the course of the litigation. The plaintiff requested that it be allowed to search the hard drive of defendant's computer to recover deleted emails, which were relevant to the disputed issues in the

litigation. The court granted the plaintiff's request. Id. The court reasoned that had the defendant "printed any relevant emails as is directed by the Advisory Notes to Fed.R.Civ.P. 34, such e-mails would have been produced as a document." Id. at 1053. The court also rejected the defendant's arguments that her business would suffer financial losses while her computer was shutdown for the discovery operation and that certain e-mails were subject to the attorney-client privilege. The court further rejected defendant's argument that this computer search would be an invasion of her privacy. Id. at 1054. To address the parties' concerns, the court devised a protocol which dealt with the issues that the defendant had raised. Id. Specifically, the court appointed a "computer expert who specializes in the field of electronic discovery to create a mirror image of defendant's hard drive." Id. at 1055. After the mirror image was created, the defendant was allowed to review the e-mails to and have an opportunity to "control and review all the recovered e-mails, and to produce to Plaintiff only those documents that are relevant, responsive, and non-privileged." Id. The defendant was also ordered to record all withheld documents on a privilege log. Id. The computer expert was required to sign a protective order to protect against disclosure of this information. The court also requested that the computer expert "to accommodate defendant's schedule as much as possible." Id. The court reasoned that "the burden of attempting the recovery must fall on Defendant as the process because the process has become necessary due to Defendant's own conduct of continuously deleting incoming and outgoing e-mails, apparently without regard for this litigation. " Id. at 1054

Even if a corporation provides hard copies of information also stored in electronic format, destruction of those electronic records may result in sanctions. Fletcher v. Atex, Inc., 156 F.R.D. 45, 54 (S.D.N.Y. 1994) (holding that plaintiffs were entitled to information regarding other incidents stored on the defendant's computer databases"). "Corporate defendants have a duty to

preserve data in an electronic format even when the same data has been preserved in printed form. Otherwise, courts may impose sanctions against parties not preserving these computer records to punish the party for spoliation of evidence." United States v. Koch Indus., Inc., 197 F.R.D. 488, 491 (N.D. Ok. 1999) (holding that the defendant was required to reimburse the plaintiff for its costs in recreating computer data from hard copies of defendant's data).

VII. A PROPERLY CONDUCTED COMPUTER SEARCH CAN LEAD TO DISCOVERABLE INFORMATION WITHOUT UNNECESSARILY INCONVENIENCING THE PARTY WHOSE DATA IS SEARCHED AND WHILE PROTECTING ITS ASSERTIONS OF PRIVILEGE.

Defendants often argue that a database search should not be allowed because it may lead to the production of privileged documents. Defendants will also argue that the process is too difficult and unwieldy to be possible. Plaintiffs can respond to these arguments by proposing protocols that will address a defendant's concerns while still allowing access to the requested databases.

In response to motions to compel, defendants will raise the specter of plaintiff's attorneys perusing all the corporation's electronic documents without respect to privilege. This argument is easily dealt with by using a protocol that protects privileged documents. When a motion to compel is filed, plaintiff's attorney should also propose a protocol to provide to the Court which will respond to many of the logistical issues that might arise with the database search. A well-drafted protocol will diffuse many of the arguments that defense counsel will raise in opposing the database search.

If the computer search is properly tailored, it will provide the necessary protection to corporations to assure that privileged documents are protected from disclosure. A well-tailored protocol will allow the corporation to review the computer data or documents responsive to the plaintiffs' search before showing the documents to the requesting party. The corporation then

has the opportunity to raise appropriate privilege objections pursuant to the process outlined in the proposed order. This process should negate any privilege objections the corporation might maintain in objecting to this request.

Specifically, one method of conducting the search has the plaintiff's attorney, defendant's attorneys, and defendant's computer operator in the same room. Order, Dize v. DaimlerChrysler Corp., Civ. Action No. 00-C-4666-5 (State Court of Gwinnett County, Georgia, Sept. 21, 2001). The plaintiff will provide the search terms that they would like to use to query the data. The defendant's computer operator will then run the search. The results of the search will appear on the computer screen of the defendant's attorneys. The defendant's attorneys will then be able to view the documents or the computer screens and determine if any privileged material is present. If the information is not privileged, the information is then shown on a larger screen which the plaintiffs can view. If the plaintiffs would like a copy of the screen or the document, they can then request it. A court reporter is present to take down the discussions so that there will be no confusion.

If the documents or data is subject to a privilege then the defendant can claim privilege for that document and file a privilege log with the court in accordance with the agreed protocol. Often times, any privilege claim to these documents will be deemed waived because it pertains to a document which should have already been provided to the plaintiff and to which no original privilege objection was made.

If a plaintiff's attorney spends time at the outset drafting a workable protocol, it will be much more likely that the court will grant the plaintiff's request and that the search will go smoothly. Resolving the logistical issues beforehand will make it possible to conduct the search

with minimal court intervention, while making it possible for the plaintiff's attorney to receive important documents for the case.

VIII. DISCOVERY DIRECTED AT THE DEFENDANT'S COMPUTER SYSTEMS PROVIDES ASSISTANCE IN NAVIGATING ITS DATABASE SYSTEMS.

To determine the best protocol to use in searching a corporate defendant's data, it may be necessary to conduct discovery directed at the defendant's computer database systems. Discovery requests targeted to obtain the names of the database systems, the types of information stored in the database systems, the manner in which the data is stored, the backup data systems the company uses, and the employees most knowledgeable about these systems may be helpful. Before conducting a database search, it may also be helpful to depose someone in the technical department of the corporate defendant who has extensive knowledge about these computer systems to find out the best way to go about the searches. Similarly, a computer person from the corporate defendant should be present (and under oath) during the database search so that technical questions about the database search can be answered as they are raised.

It may also be helpful to retain a consulting expert who is familiar with the defendant's computer system or understands how computer systems can be searched. This expert can assist you in developing your discovery requests and in the actual search of the corporation's database systems. When a corporate defendant claims that a certain computer search is impossible, this consulting expert will provide you the information you need in determining if this is actually a valid excuse or merely another attempt to thwart discovery.

The Manuel for Complex Litigation recognizes that

> In many instances it will be essential for the discovering party to know the underlying theory and the procedures employed in preparing and storing the machine-readable records. When this is true, litigants should be allowed to discover any material relating to the record holder's computer hardware, the

> programming techniques employed in connection with the relevant data, the principles governing the structure of the stored data, and the operation of the data processing systems. When statistical analyses have been developed from more traditional records with the assistance of computer techniques, the underlying data used to compose the statistical computer input, the methods used to select, categorize, and evaluate the data for analysis, and all of the computer outputs normally are proper subjects for discovery.

§ 2.715, at 75 (3rd ed. 1977), quoted in Bills v. Kennecott Corp., 108 F.R.D. 459, 461 (D. Utah 1985).

Courts have also recognized that information about a defendant's computer system is discoverable. In Dunn v. Midwestern Indemnity, the plaintiff sought information about "the defendant's computer capabilities, including information about their computer equipment, raw data, programs and data management systems, in addition to the production of tapes which contain information about past and present" customers. 88 F.R.D. 191 (S.D. Ohio 1980). The court granted plaintiffs' request. Id. at 194. In Bills v. Kennecott Corp., the court also recognized that "[d]epending on the type of case, a Court might even permit discovery of computer capabilities and capacities." 108 F.R.D. at 461; see also Fletcher v. Atex, Inc., 156 F.R.D. 45, 54 (S.D.N.Y. 1994) (holding that plaintiffs were entitled to the computer manuals relating to the defendant's computer databases because these manuals were "relevant to an assessment of the data contained on these computer databases").

Accordingly, discovery related to a defendant's computer system might be necessary to ensure that a proper search of the computer system is made. It can also assist the parties in developing a protocol that will help the searches proceed in the most efficient manner.

IX. SOME CORPORATE DEFENDANTS VOLUNTARILY ALLOW THEIR DATABASES TO BE SEARCHED.

Corporate defendants have begun to recognize the propriety of requests for access to document databases and have provided access to their own databases in product liability

litigation, without judicial intervention. General Motors, the world's largest automotive manufacturer, recognizes that database searches fall well within the purview of discovery and routinely consents to them. In a recent case in Georgia, Bampoe-Parry v. General Motors Corp., Civ. Action File Nos. 98VS138297J & 98J (Fulton County, Ga.), GM consented to a computer database search without judicial involvement. DaimlerChrysler is now routinely consenting to database searches.

As discovery rules and court orders recognize, discovery of computerized information is a well-recognized and commonplace part of civil discovery. Corporations are no longer being allowed to withhold access to this discoverable information. A properly formulated request for discovery of this computerized information and a willingness to pursue this issue with the courts will now likely result in the disclosure of this electronic information.