

2022 eDiscovery Case Law Year In Review

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Winston & Strawn LLP's eDiscovery & Information Governance Group is pleased to present the following year in review of important decisions and developments concerning a wide variety of electronic discovery and cross-border discovery issues.

The past year has continued a multi-year trend—hastened by the COVID-19 pandemic—toward the dramatic expansion of collaboration and short message formats in discovery —with collaboration messaging platforms like Slack, Microsoft Teams, and Discord, and with app-based messaging ecosystems such as WhatsApp and Signal. We also saw a continuation of a troubling trend in the context of motions brought under Rule 37(e) over loss of ESI. On the topic of the 2015 amendments, we continue to observe that courts are struggling with how to apply the abstract notion of proportionality in practice. Finally, we witnessed a dramatic slowdown in the number of opinions on TAR, while observing TAR is becoming commonplace in document review – at least for prioritization and quality control. To that end, we still observe some decisions and regulators that are placing undue and unwarranted obligations regarding “transparency” or limitations of the use of TAR in conjunction with search terms.

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