

John Rosenthal Discusses Overpreservation of Data with *Bloomberg BNA*

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Winston & Strawn partner [John Rosenthal](#) was quoted in the July 5, 2012 *Bloomberg BNA* article titled “Overreaction to Potential Sanctions Can Lead to Overpreservation, Panelists Warn.”

The article discusses the need that many corporations feel to overpreserve data in case of possible lawsuits, due to the current uncertainty of what will be considered a reasonable preservation measure in the future. In a June 26, 2012 webcast, Mr. Rosenthal said “a corporation cannot even risk the threat of having to face a spoliation allegation, even a meritless one, because it injures a corporation’s reputation. The reaction has been overpreservation.”

According to Mr. Rosenthal, under the current discovery rules, the typical plaintiff’s counsel “has no stake in the game to be reasonable,” adding that in his experience with preservation negotiations, “nine times out of 10, I’m going to get absolutely nowhere.” Mr. Rosenthal went on to note that it could be years before lawyers and clients will have enough guidance to make a reasoned calculation of what a court will find to be reasonable preservation efforts. “You still have reactionary judges that say, ‘When it comes to preservation, proportionality doesn’t apply.’”

John Rosenthal is a litigation partner in the firm’s Washington, D.C. office who represents clients across the globe in an array of complex antitrust and litigation matters. His practice also involves counseling clients on a variety of trade regulation, trademark, and commercial issues.

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