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# Fannie Mae and the Case of the Budget-Busting E-Discovery Stipulation

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Experienced attorneys already know that whenever they enter into a stipulated order affecting their client's procedural or substantive rights, it is incumbent on the attorney to fully understand and advise their client of all possible ramifications of that stipulated order. However, as reflected below, when that stipulated order involves the collection and production of electronically stored information, extra caution and planning can be critical.

A few weeks ago, a government attorney learned this lesson painfully, in In Re Fannie Mae Securities Litigation, 2009 U.S. App. LEXIS 9 (D.C. Cir. January 6, 2009). The attorney entered into a stipulated order that ended up costing his client $6 million, a sum equal to nine percent of the client's annual budget, and also resulted in a civil contempt citation.

The stipulation concerned the protocol for searching the government agency's disaster recovery backup tapes for email which had been subpoenaed by several defendants in an on-going litigation. The agreed-to protocol allowed the defendants at their sole discretion to select the search terms to be used. Due to the large number of search terms chosen by defendants over 660,000 documents were pulled from the backup tapes. The final cost of processing the data, reviewing it for privilege and producing a privilege log exceeded $6 million.

On its face, most attorneys will say that they will never encounter a similar problem. However, a closer review of this case is warranted because these types of unexpected e-discovery problems and consequences are becoming increasingly common. For a copy of the appellate Court's opinion, go here.