

Auditing Document Productions Via Third-Party Subpoenas

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In *Parsi v Daiouleslam*, the plaintiffs, Parsi and the National Iranian American Council (NIAC), sued Daiouleslam for defamation and portrayal in a false light. After encountering “difficulties in getting responsive information from Plaintiffs for one reason or another,” Daiouleslam obtained emails to or from NIAC employees via third-party subpoenas, including subpoenas sent to the plaintiffs’ expert witnesses.

Although relevant according to the court, only a few of the emails obtained by subpoena had been produced by plaintiffs. Accordingly, Daiouleslam filed a motion for summary judgment and, simultaneously, a motion for sanctions. He argued that the plaintiffs should be ordered to pay for the cost of issuing these third-party subpoenas, which would not have been necessary but for plaintiffs’ incomplete productions.

The court agreed. Characterizing the plaintiffs’ failure to produce the emails as “indefensible,” the court required plaintiffs to pay the costs for serving all but one of the third-party subpoenas and costs related to the motion for sanctions. The court was particularly concerned by the fact that the plaintiffs had evidently gathered these emails for their experts, but failed to produce them to the defendant and could not articulate any legitimate reason for this failure.

The *Parsi* opinion is a good example of how a third-party subpoena can be used to check the completeness of an opposing party’s document productions. And this may be especially useful if an opponent’s email production from a key custodian is, for example, sparse or shows large gaps in time. Here, third-party subpoenas were used to determine whether an opponent failed to produce all relevant emails, and also whether spoliation had occurred.

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