

## Introduction to BLS Pilot Project

The Business Litigation Session (the BLS) will implement a Pilot Project on a voluntary basis beginning January 4, 2010 for all new cases in the BLS and all cases that have not previously had an initial Rule 16 case management conference. The BLS Pilot Project was developed as a result of (i) a joint effort of the BLS judges and the BLS Advisory Committee<sup>1</sup> to address the increasing burden and cost of civil pretrial discovery, particularly electronic discovery, and (ii) release of the Final Report on the Joint Project of the American College of Trial Lawyers Task Force on Discovery and the Institute for the Advancement of the American Legal System dated March 11, 2009.

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<sup>1</sup> Robert J. Muldoon, Jr., Chair, Wayne A. Budd, Paul T. Dacier, James C. Donnelly, Jr., Sandra L. Jesse, Michael B. Keating, Joan A. Lukey, Katherine A. Robertson; Margaret R. Hinkle, Stephen E. Neel, Judith Fabricant, JJ.

## BLS Pilot Project

For all cases filed in the Business Litigation Session between January 4, 2010 and December 31, 2010 and all cases with an initial Rule 16 Case Management Conference occurring within those dates, the parties may elect to participate in a voluntary pilot project intended to reduce discovery costs and therefore better serve the needs of the parties. The BLS pilot project incorporates certain of the proposed principles (often in their exact wording) in the March, 2009 Final Report of the American College of Trial Lawyers Task Force on Discovery and the Institute for the Advancement of the American Legal System (“the Final Report”).

For cases in the pilot project, the following principles will apply:

A. The court, with the parties, will determine the scope and timing of permitted discovery, generally at the initial Rule 16 Case Management conference. The concept of limited discovery proportionally tied to the magnitude of the claims actually at issue will be the guiding principle. Final Report at 7, 10. In making a proportionality assessment, the factors to be considered include, but are not limited to, the needs of the case, the amount in controversy, the parties’ resources, and the complexity and importance of the issues at stake in the case. In limiting discovery, the parties and the court will consider such techniques as numerical and time limitations and limiting the persons from whom discovery can be sought. Final Report at 10. Contentious interrogatories will be disfavored.

B. If possible, discovery will be staged to insure that discovery related to a potentially dispositive issue (such as interpretation of a contract) occurs initially so that the potentially dispositive issue may be adjudicated first. Final Report at 7.

C. At the beginning of litigation, each party will be expected to produce “all reasonably available non-privileged, non-work product documents and things that may be used to support that party’s claims, counterclaims or defenses.” Final Report at 7. Absent agreement of the parties, the court will set the timing of this disclosure. The parties will have an ongoing duty to supplement this disclosure. Final Report at 8.

D. Discovery in general and document discovery in particular will be limited to documents and information that would enable a party to prove or disprove a claim or defense, or enable a party to impeach a witness. Final Report at 8.

E. Promptly after litigation is commenced, the parties will be expected to discuss and attempt to reach agreement about preservation of electronic documents.

F. Electronic discovery will also be limited by proportionality. The factors governing the scope of permitted electronic discovery will include the “nature and scope of the case, relevance, importance to the court’s adjudication, expense and burdens.” Final Report at 14. If the parties cannot agree about the scope of electronic discovery, after a hearing, the court will issue an order governing electronic discovery. “That order will address the scope of allowable proportional electronic discovery and the allocation of its cost among the parties.” Final Report at 12.

G. Beyond what is set forth above, the parties will conduct no additional discovery absent agreement or a court order, which will be made only after a showing of good cause and proportionality. Final Report at 9.

H. The parties will be expected “to confer early and often about discovery and, especially in complex cases, to make periodic reports of these conferences to the court.” Final Report at 21. The court will conduct periodic litigation control conferences concerning discovery, beginning promptly after service of the complaint, either on the request of a party or on the court’s initiative. Final Report at 19.

I. Participants in the pilot project will be expected to comply with Superior Court Standing Order 1-09 (Written Discovery).

J. The court anticipates that parties who participate in the pilot project will be willing to provide feedback so data may be gathered and analyzed to assess the efficacy of the project.