

Insights: Publications

# WARNING: Follow Your ESI Protocol Because the Court Will – Part TWO

*LitSmart E-Discovery Blog*

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In Part Two of this blog series, I discuss a recent case regarding noncompliance with preservation provisions in an ESI protocol and provide best practices for negotiating and drafting an ESI protocol. In Part One of this series ([which you can find here](#)), I analyzed how courts have resolved ESI protocol disputes with TAR and metadata provisions. In *In re Valsartan Products Liability Litigation*, the court held the protocol required defendants to timely disclose its use or possible use of TAR when defendants objectively knew or reasonably should have known that they might use TAR and the Court found that defendants violated the protocol by not timely disclosing its use or possible use of TAR. In contrast, in *Livingston v. City of Chicago*, where the protocol did not include a collaboration requirement, the court held plaintiff's insistence that the defendant must collaborate with them to establish a review protocol and validation process has not foothold in the federal rules governing discovery and the court declined to adopt plaintiff's alternate TAR protocol. Regarding metadata provisions, in *Cody et al. v. City of St. Louis*, the Court denied plaintiff's motion compelling the defendant to reproduce prior ESI productions and to produce future ESI productions in either native format or accompanied by metadata because the parties agreed to a format of ESI production that did not require production in native format or with metadata.

## Related People

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