Insights: Perspectives

My My, What Big Claws You Have! Navigating the Pitfalls of Drafting Clawback Agreements

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One of the greatest fears in any litigation matter is that you will somehow accidentally produce work product or attorney-client privileged documents to the opposing side and waive the privilege. As a result, it has become standard protocol for parties to enter into clawback agreements that protect sensitive electronically stored information (ESI). Clawback agreements allow parties to agree that the inadvertent production of privileged information will not automatically waive the privilege and provide a process for the return or destruction of that privileged material.

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