

January 11, 2019

Northern District of Illinois Updates Mandatory Initial Discovery Pilot Project

Beginning last month, the Northern District of Illinois (or the “Court”) modified its Mandatory Initial Discovery Pilot Project (the “Pilot Project”) in ways that should come as a relief to corporate defendants. Most notably, the Pilot Project no longer requires a defendant to answer the complaint and proceed with mandatory initial discovery responses when it has filed a Rule 12(b) motion to dismiss, as originally required. This is welcome news to defendants seeking to have claims dismissed before incurring the expense, business distraction, and added litigation risk of making potentially voluminous initial disclosures at the onset of litigation.

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In June 2017, the Northern District launched its Pilot Project, joining a handful of federal district courts nationwide in an effort to improve speed and efficiency in the litigation process. The Pilot Project, which applies to most civil actions in the Northern District, replaces the initial disclosures required by Federal Rule of Civil Procedure 26(a)(1)(A) with six mandatory discovery requests.

The Pilot Project’s discovery requests, and the accompanying rules governing responses to those requests, are quite robust in comparison to traditional Rule 26(a)(1)(A) initial disclosures. For instance, the required disclosures include identifying the facts and legal theories relevant to each party’s claims or defenses, a detailed description of damages, and, significantly, listing all documents—including electronically stored information (ESI)—that “may be relevant to any party’s claims or defenses.” Such ESI must then be produced within 40 days of each party’s initial disclosures. Moreover, parties are not excused from providing a response because they have not fully investigated the case, because they challenge the sufficiency of another party’s response, or because another party has not provided a response. Parties must provide “favorable [and] unfavorable” facts, no matter “whether they intend to use the information in presenting their claims or defenses.” And responses must be signed under oath by each respective party.

While these requirements have not changed with the Pilot Project’s recent amendment, the required timing for these disclosures *has* changed for many litigants. The deadline to respond to the six mandatory initial discovery requests is set at 30 days after the answer. Originally, the rules required defendants to file an answer—and thus respond to the mandatory requests within 30 days—*regardless of whether the defendant also filed a motion to dismiss*. The Pilot Project’s recent amendment, effective December 1, 2018, lifted this requirement (although the amendment permits the Court to order otherwise). This should come as a relief for many institutional defendants who believe the claims at issue are subject to early dismissal.

Parties must still be prepared to navigate discovery under the Pilot Project because the Court may order a defendant to answer even when its motion to dismiss is pending and in the event motion practice is unsuccessful. But the recent rule change restores to defendants the benefits of deferring the cost and risk of initial discovery when an effective motion to dismiss may extinguish meritless claims or drive an advantageous settlement.