Court Requires an Adversary to Specifically Challenge a Litigant's Privilege Log

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In his July 2, 2014 “Privilege Points” release, Tom Spahn discusses the degree of specificity required for privilege logs:

In most situations, litigants withholding protected documents must specifically list and describe the documents, rather than relying on blanket privilege or work product assertions. Do courts require an adversary to show the same level of specificity in challenging a litigant's privilege log?

In *Feld v. Fireman's Fund Insurance Co.*, Civ. A. No. 12-1789 (JDB), 2014 U.S. Dist. LEXIS 52525 (D.D.C. Apr. 16, 2014), circus owner Feld sought attorneys' fees after winning an insurance coverage action against defendant insurance company. Among other things, the insurance company challenged Feld's withholding of documents on work product protection grounds. Although acknowledging that the defendant "ha[d] not seen the actual documents, so it might have been difficult to offer detailed objections to individual entries on Feld's privilege log," the court noted that defendant "has not even attempted to do so, instead offering only one paragraph of generalized argument that is purportedly applicable to every single document in dispute." *Id.* at *9. The court rejected the insurance company's blanket challenge to Feld's log -- concluding that Feld's lawyers "are presumed to be conducting themselves diligently and in good faith" in preparing privilege logs in their role as "officers of the court." *Id.* at *11. The court nevertheless "reviewed a limited sample of the disputed documents in camera" and found Feld's privilege log adequate. *Id.* (footnote omitted). Interestingly, the court specifically described one log entry as an "email thread" -- thus implicitly disagreeing with courts that require each email to be separately logged. *Id.* at *13.

Corporations that frequently log numerous protected documents should take comfort in both aspects of such common-sense opinions.