Courts Issue Practical Rulings on Privilege Logs

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In his July 3, 2013 “Privilege Points” release, Tom Spahn discusses privilege logs:

Some courts have adopted unrealistically strict rules about privilege logs, such as a requirement to list every person who learned a withheld document's content. Fortunately, other courts take a more common-sense view of privilege logs.

In SGD Engineering Ltd. v. Lockheed Martin Corp., Case No. 2:11-cv-2493-DGC, 2013 U.S. Dist. LEXIS 74186 (D. Ariz. Apr. 17, 2013), the court rejected plaintiff's argument that defendant had waived its privilege by submitting five versions of a privilege log and dropping privilege claims for several hundred documents. The court acknowledged that "[i]n large-volume document cases like this, it is not unusual for the privilege proponent to revise the details of its privilege log." Id. at *18. A week later, the Southern District of New York analyzed the government's argument that defendants' privilege log was inadequate. In In re 650 Fifth Avenue & Related Properties, the court noted that "[w]hat is good for the goose is good for the gander," and held that "[i]f the Government persists in its request that defendants revise their log to more adequately support the basis for their assertions of privilege, the Court will require that they produce a log with a similar level of detail." No. 08 Civ. 10934 (KBF), 2013 U.S. Dist. LEXIS 64150, at *10 (S.D.N.Y. Apr. 24, 2013).

It is refreshing to see some courts' realistic approach to privilege log issues.