

2026 SURETY BONDING & CONSTRUCTION RISK MANAGEMENT CONFERENCE

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What Really Happens Behind the eDiscovery Curtain: Perspectives from In-House Counsel and an ESI Industry Expert

By: Brett Lamb, Construction Discovery Experts; Amy Salley, Skanska USA Building Inc.; Jeffrey Brannen, Balfour Beatty; and Kristin Protas, Gilbane Building Company

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RISK MANAGEMENT CONFERENCE

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Abstract:

Electronic discovery has become one of the largest and least understood components of construction litigation budgets. With data volumes skyrocketing and AI being marketed as a silver bullet, in-house counsel, outside counsel, and experts face increasing pressure to control costs while navigating complex technology decisions.

This session brings together in-house counsel from major general contractors and a former construction litigator and general counsel turned eDiscovery expert to reveal what drives eDiscovery costs, how to evaluate vendors, and how to manage the expanding technical landscape. The panel will provide practical insights into AI's real capabilities (and limitations), the shift from human review time to computer processing time, and the budgeting challenges created by rapidly evolving tools.

Through candid perspectives and real case examples from construction disputes, attendees will learn where hidden costs arise, how to set expectations with outside counsel and experts, and how to leverage technology without letting functionality derail a litigation budget. The discussion will empower attendees to make smarter, data-driven decisions that reduce spend, strengthen internal processes, and increase confidence when navigating discovery on behalf of general contractors.

Session Format & Engagement Style:

This session will follow a dynamic panel discussion format supported by clear, visual explanations of industry standards, pricing models, and case studies from construction litigation. Rather than a linear lecture, panelists will rotate fluidly, offering contrasting perspectives from in-house counsel, outside counsel, and an eDiscovery industry expert.

Real-world examples will be woven throughout the conversation to illustrate budgeting pitfalls, vendor considerations, AI use cases, and practical decision-making strategies. The presentation will emphasize transparency—pulling back the curtain on costs, workflows, and risks—through charts and anonymized case comparisons.

Given the rapidly evolving technology landscape, this session will also qualify for ethics credit, highlighting counsel's duty of technical competence and reasonable oversight. Engagement will be conversational, example-rich, and focused on immediately applicable insights rather than theoretical discussions.

Learning Objectives:

Objective 1:

To understand modern eDiscovery business models and cost structures, including trends that make vendor comparison difficult, and learn how to evaluate and oversee eDiscovery spending within a construction litigation budget.

Objective 2:

To learn what evolving technologies and AI can—and cannot—achieve, and how in-house counsel can leverage them responsibly to manage costs without relying on unrealistic promises.

Objective 3:

To identify where hidden costs arise in typical construction litigation workflows, using case examples that show what was spent and what was achieved, to help attendees anticipate and avoid unnecessary cost overrun.

Objective 4:

To gain practical strategies for managing outside counsel and experts by setting clear expectations around technical competence, budgeting discipline, and the appropriate use of technology and AI.

Target Audience:

The session is designed for in-house counsel, outside counsel, and expert witnesses working with large general contractors.

In-house counsel will benefit from greater transparency into eDiscovery pricing, vendor selection, budgeting challenges, and the real impact emerging technologies have on litigation spend. As eDiscovery becomes a significant and expanding budget line, understanding what drives costs—and how to control them—is essential.

Outside counsel will gain clarity on in-house expectations around budgeting, communication, and technical acumen in discovery. With the explosion of data in construction disputes, outside counsel face unprecedented pressure to reduce costs; this session provides guidance on how to meet those expectations.

Experts will learn how to manage their own data-related costs and use technology to uncover more comprehensive document sets for expert analysis and testimony, giving them a competitive advantage.

This session appeals broadly because it offers practical, real-world insights from leaders who handle eDiscovery every day in the construction industry.

Breadth of Perspectives (Optional):

The panel brings diverse perspectives across the legal and technical landscape: in-house counsel from major general contractors, moderated by a former construction litigator and general counsel of a top ENR general contractor turned eDiscovery consultant. Collectively, the panelists understand the financial, legal, technological, and operational pressures associated with discovery.

This combination of roles allows the audience to see how each stakeholder experiences eDiscovery challenges—budgeting, workflow design, AI adoption, risk decisions, and vendor oversight—from different angles. The discussion blends decades of practical experience and offers a comprehensive yet highly pragmatic understanding of how to manage discovery in a way that serves both the litigation strategy and the organization’s long-term objectives.

CLE Information:

Over the last decade, the volume, complexity, and cost of electronically stored information (ESI) have increased dramatically as construction teams rely on email, text messaging, cloud-based project management platforms, scheduling software, mobile devices, and collaboration tools—each generating discoverable data. At the same time, artificial intelligence has entered discovery workflows at an unprecedented pace.

A recent study has highlighted the unprecedented pace of generative artificial intelligence adoption in the United States. A widely cited industry study reported that just two years after the public release of ChatGPT, 39.4% of Americans aged 18–64 had used generative AI, with approximately 28% using such tools in the workplace, far exceeding the early adoption rates of personal computers and the internet. With nearly 40% of working-age Americans now using generative AI, pressure on legal teams to understand and govern its use responsibly is accelerated. See **VentureBeat**, *Generative AI adoption surpasses early PC and internet usage, summarizing findings on generative AI adoption trends (2024)*.

Against this backdrop, the panel will “pull back the curtain” on what actually drives eDiscovery costs. In-house counsel will discuss how discovery has become a significant and often unpredictable litigation expense, and why vendor pricing remains difficult to compare. The discussion will address how the shift from human review time to computer processing and analytics has altered cost structures—sometimes reducing one category of spend while quietly expanding another.

The panel will then examine how AI and Technology-Assisted Review (TAR) are used in real construction disputes. Drawing on guidance from **The Sedona Conference**, TAR will be discussed as a process that leverages human judgments and statistical models to prioritize and code ESI—not as a standalone solution. Panelists will emphasize that while courts have accepted TAR for more than a decade, including in **Da Silva Moore v. Publicis Groupe**, 2012 WL 607412

(S.D.N.Y. Feb. 24, 2012), its effectiveness depends on workflow design, validation, and attorney oversight rather than technology alone.

Anonymized case examples will illustrate where hidden costs most often arise, including overbroad custodian selection, late additions of data sources, prolonged hosting in multi-year disputes, and failure to use early case assessment tools. The panel will also explore instances where advanced functionality delivered little value, contrasted with examples where targeted analytics and TAR produced meaningful cost savings and defensible results. As courts have recognized, discovery is not perfect, and proportionality and judgment remain central to effective outcomes.

A significant portion of the discussion will focus on ethical obligations and stakeholder expectations. Panelists will reference **ABA Model Rule 1.1, Comment 8**, and **ABA Formal Opinion 512**, which make clear that competence includes understanding the benefits and risks of technology, including generative AI. The session will address risks such as AI hallucinations, confidentiality concerns, and data retention issues, with reference to cases like **Mata v. Avianca**, 22-cv-1461 (S.D.N.Y. 2023), as well as emerging governance challenges surrounding unapproved AI use driven by efficiency pressures.

The session will conclude by reinforcing that technological competence and reasonable oversight are now core components of effective representation in construction litigation. Attendees will leave with practical strategies for managing discovery costs, setting expectations with outside counsel and experts, and responsibly integrating AI into discovery workflows while meeting ethical and professional obligations.