

## CLIENT ALERT

### Government Not Immune To E-Discovery Costs

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In *AAB Joint Venture v. United States* (Feb. 28, 2007), the Court of Federal Claims held that Government email files stored on backup tapes were discoverable, even though producing them could cost "between \$85,000 and \$150,000 and take thirty days" -- because the government had a duty to preserve the evidence once plaintiff filed its request for equitable adjustment, and "the Court cannot relieve Defendant of its duty to produce those documents merely because Defendant has chosen a means to preserve the evidence which makes ultimate production of relevant documents expensive." But the Court declined to decide immediately whether the Government should bear the costs of restoring and producing all the responsive documents, instead ordering a "phased approach" in which (1) the government will restore one-quarter of the records at its own expense and (2) based on the content of those records, the Court will decide whether additional restorations are "likely to lead to relevant evidence and consequently who should bear the cost for additional restoration."

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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