

In McCabe's Mechanical Service Inc. v. Ballweg, 2020 WL 1848082 (Del. Ch. Apr. 9, 2020), the Court of Chancery of Delaware resolved a plaintiff's request to require defendant to use a third-party e-discovery vendor by ruling that the cost of such a vendor would be allocated to the plaintiff unless the vendor identified issues with the defendant's initial production, in which case the costs would be shifted to the defendant.

The plaintiff filed a motion requesting that the defendant be required to retain a third-party vendor to search his ESI instead of accepting the self-production offered by the defendant. The defendant argued that his self-production was adequate and retaining a third-party vendor would create unnecessary expenses given the scope of the claim. *Id.* at *1.

The court ordered the defendant to submit an affidavit to the plaintiff affirming that he had fully responded to all relevant document requests. If, after receiving this affidavit, the plaintiff still felt that involving a third party was necessary, then the parties would agree on an acceptable vendor, with the plaintiff responsible for any associated costs. However, if the vendor identified spoliation of evidence or an incomplete production, these costs would be shifted to the defendant.