

The Legal and Strategic Guide to E-Discovery

Best Practices For Corporate Counsel

Park Central
New York, New York

November 10-12, 2004

Pre-Conference Workshop:
Beyond Zubulake V:
Managing The Risks of E-Discovery
For Your Company
November 10, 2004

Chairperson:

Philip R. White

Member; Chair, Construction Law Practice Group
Sills Cummis Epstein & Gross P.C.

Judicial Perspectives From:

Honorable Shira A. Scheindlin

United States District Judge
Southern District of New York

Honorable Charles J. Walsh

Superior Court Judge
Superior Court of New Jersey

Honorable Andrew J. Peck

Chief United States Magistrate Judge
Southern District of New York

Honorable Ronald J. Hedges

United States Magistrate Judge
District of New Jersey

Honorable John J. Hughes

United States Magistrate Judge
District of New Jersey

Key Themes To Be Addressed Include:

- Minimizing the costs associated with E-Discovery
- Best practices for managing and preserving electronic information
- Developing an effective litigation response strategy
- Training and enforcement strategies to increase compliance amongst your employees
- Judicial approaches to E-Discovery – tips and traps for records management and litigation strategy

Continuing Legal Education Credits:

marcus evans will seek CLE accreditation in those States requested by registrants which have continuing education requirements.
To request CLE credits, please indicate in the registration form attached.

Lead Sponsor:

Sills Cummis Epstein & Gross
A Professional Corporation

Co-Sponsors:

Shook,
Hardy &
Bacon LLP

 **Forensics Consulting**
Solutions, LLC

 **emag**
Solutions

Implement

pro-active approaches now
to minimize the risks of E-Discovery later.

Develop Successful E-Doc Management Policies And Plan For
Litigation Contingencies

 **marcusevans**

Featuring Senior Corporate Counsel and Notable Experts From:

Baker & McKenzie

Bank of America

**The Burlington and Northern Santa Fe
Railroad Company**

Cisco Systems, Inc.

Citigroup, Inc.

Converse Technologies, Inc.

Credit Suisse First Boston, LLC

DaimlerChrysler Corporation

The Dow Chemical Company

Dupont

Eastman Kodak Co.

eMag Solutions

Forensics Consulting Solutions, LLC

**General Electric-Employers Reinsurance
Corporation**

Johnson & Johnson

Lehman Brothers, Inc.

Marsh McLennan Companies, Inc.

Martha Stewart Living Omnimedia, Inc.

The May Department Stores Co.

Merrill Lynch Investment Managers

Miller Brewing Company

Mitsubishi Power Systems, Inc.

PSEG Services Corporation

Putnam Investments

Raytheon Company

Schering-Plough Corporation

Shook, Hardy & Bacon LLP

Sills Cummis Epstein & Gross P.C.

Simon Property Group, Inc.

Time Warner, Inc.

Tyco International (US), Inc.

Conference Focus

Almost one-third of all evidence is maintained solely in an electronic format, from inflammatory e-mails to inculpatory memos to negligently drafted design plans that mysteriously disappear. Once litigation begins, forensic experts - at great expense to the company or pursuant to court order - may be called upon to recover and identify thousands or even millions of electronic documents that were inadvertently deleted or never intended to be preserved. On another front, sweeping court rule changes and judicial decisions have significantly altered the obligation of companies to retrieve electronic documents as part of the pre-litigation disclosure process. In order to manage the staggering expense of such litigation, it is crucial to take a proactive approach to electronic document management. Corporate counsel, litigation attorneys, IT specialists and knowledge officers all have roles to play in developing an effective solution.

This senior-level forum will provide a legislative and strategic update on how to manage electronic information. Corporate Counsel will learn how to protect themselves against E-Discovery claims before they spiral out of control. Up to the minute case studies and presentations presented by a distinguished, multi-disciplinary faculty will provide insight on how to effectively manage the costs of disclosure, whether before or during litigation. Corporate counsel, knowledge managers and IT professionals from a broad range of industries, including life sciences, technology, retailing, manufacturing, energy, insurance and financial services, will all find this forum invaluable. Can you afford not to attend?

Conference Faculty

Woods Abbott

Senior Manager of Legal Operations
Raytheon Company

Lynne Anne Anderson

Member
Sills Cummis Epstein & Gross P.C.

David Baker

Global Compliance Leader
General Electric-Employers Reinsurance Corporation

M. James Daley

Chair, Technology Law & E-Discovery Group
Shook, Hardy & Bacon LLP

Trent S. Dickey

Member
Sills Cummis Epstein & Gross P.C.

Allegra B. DiGia

Vice President, Senior Counsel
Citigroup, Inc.

Ronald Dolan

Senior Counsel
The May Department Stores Co.

Matt Durnin

Counsel
Time Warner, Inc.

Michael Freese

Managing Attorney
Simon Property Group, Inc.

James Gallegos

Vice President, Corporate General Counsel
The Burlington and Northern Santa Fe Railroad Company

David W. Garland

Member, Co-Chair, Employment and Labor Practice Group
Sills Cummis Epstein & Gross P.C.

Stuart J. Glick

Member
Sills Cummis Epstein & Gross P.C.

Jeffrey J. Greenbaum

Member, Chair, Class Action Litigation Practice Group
Sills Cummis Epstein & Gross P.C.
ABA Section of Litigation Liaison to the US Judicial Conference Advisory Committee on Civil Rules

Heather Greenberg

Assistant Vice President, IP Counsel
Martha Stewart Living Omnimedia, Inc.

Quintin Gregor

Vice President
eMag Solutions

Honorable Ronald J. Hedges

United States Magistrate Judge
District of New Jersey

Robert C. Heim

Partner
Dechert, LLP
Member of the US Judicial Conference Advisory Committee on Civil Rules

William Herr

Counsel, Global Legal Office
The Dow Chemical Company

Honorable John J. Hughes

United States Magistrate Judge
District of New Jersey

Michael Jones

General Counsel
Miller Brewing Company

Michael Koon

Partner
Shook, Hardy & Bacon LLP

KJ Kuchta

President
Forensics Consulting Solutions, LLC

Lori A. Martin

First Vice President and Assistant General Counsel
Merrill Lynch Investment Managers

Julie Mazza

Counsel
Dupont

Jim Michalowicz

Litigation Program Manager
Tyco International (US), Inc.

Steve Monroe

Litigation Counsel
Marsh McLennan Companies, Inc.

David J. Onorato

Deputy General Counsel
Bank of America

A. Ross Pearlson

Member
Sills Cummis Epstein & Gross P.C.

Honorable Andrew J. Peck

Chief United States Magistrate Judge
Southern District of New York

Hope M. Pomerantz

General Labor/Employment Counsel
PSEG Services Corporation

Andrea Quercia

Counsel
Eastman Kodak Co.

Paul Robinson

General Counsel
Comverse Technologies, Inc.

Beth S. Rose

Member
Sills Cummis Epstein & Gross P.C.

Neal Rubin

Senior Litigation Counsel
Cisco Systems, Inc.

Honorable Shira A. Scheindlin

United States District Judge
Southern District of New York

Gideon Schor

Director, Litigation for the Americas
Credit Suisse First Boston, LLC

Richard D. Sidkoff

Vice President and General Counsel
Mitsubishi Power Systems, Inc.

Jose Sierra

Director, Litigation
Schering-Plough Corporation

Thomas Smedinghoff

Counsel
Baker & McKenzie

Martha Solinger

Managing Director & Co-Head of Global Litigation
Lehman Brothers, Inc.

Shawn Strickler

Director, Forensic Solutions
eMag Solution

Jason Tucker

Director of Litigation
Putnam Investments

Honorable Charles J. Walsh

Superior Court Judge
Superior Court of New Jersey

Louann Van Der Wiele

Assistant General Counsel
DaimlerChrysler Corporation

Taysen Van Itallie

Associate General Counsel
Johnson & Johnson

Peter G. Verniero

Co-Chair
Corporate Internal Investigations and Business Crimes Practice Group

Pre-Conference Workshop

Wednesday, November 10, 2004

1:00 Registration

1:30 – 4:30 Workshop

Workshop

BEYOND ZUBULAKE V: Managing the Risks of E-Discovery for Your Company

In *Zubulake v. UBS Warburg, LLC*, (02-Civ. 1243) (S.D.N.Y.), District Court Judge Shira A. Scheindlin modified the *Rowe Entertainment* eight-factor test for determining whether cost-shifting of electronic discovery was appropriate and set new E-Discovery compliance requirements for both in-house counsel and outside counsel. In her five (5) separate decisions, the Judge analyzed and addressed the procedural and practical difficulties and the perils facing corporations in attempting to comply with electronic discovery demands. Ultimately, she sanctioned the defendant and criticized its counsel for violating the company's duty to preserve all potentially relevant e-mail. The sting of the astronomical costs the defendant incurred as a result of its conduct and the court's rulings pales in comparison to the ultimate sanction granted – an adverse instruction to the jury on spoliation. Judge Scheindlin's decisions far transcend the particular facts of the case. One New York Justice has decided not to follow Judge Scheindlin's cost shifting analysis from New York State action and ruled that all the cost of E-Discovery should be born by the requesting party. As Judge Scheindlin suggests in her postscript in *Zubulake V*, national standards governing E-Discovery compliance, retention policies and cost shifting of E-Discovery are rapidly evolving.

This workshop will take a detailed look at the *Zubulake* opinions, other decisions, and the proposed revisions to the Federal Rules of Civil Procedure. A hypothetical fact scenario that incorporates many *Zubulake* issues will be used by the panel playing the roles of clients and counsel to address the theoretical and practical problems raised by *Zubulake*. Strategic decisions will be made and judgments rendered on those decisions with significant participation from the attendees. This promises to be a lively discussion that will vet the issues that general counsel, litigation department managers and corporations large and small will be facing in the immediate future with regard to this difficult and rapidly developing area of the law. Corporate Counsel and attorneys involved in the discovery aspects of litigation will find attending this workshop a valuable experience.

This workshop will provide you with valuable insight into:

- Addressing the procedural and practical difficulties facing corporations attempting to comply with E-Discovery demands
- Expert tips on how to remedy E-Discovery entanglements
- Avoiding Sanctions - Understanding standards governing E-Discovery compliance and electronic document retention policies

Led by distinguished attorneys from Sills Cummis Epstein & Gross P.C.

Sills Cummis Epstein & Gross
A Professional Corporation

Lynne Anne Anderson, Member
Sills Cummis Epstein & Gross P.C.

Trent S. Dickey, Member
Sills Cummis Epstein & Gross P.C.

Stuart J. Glick, Member
Sills Cummis Epstein & Gross P.C.

Hope M. Pomerantz, General Labor/Employment Counsel
PSEG Services Corporation

Richard D. Sidkoff, Vice President and General Counsel
Mitsubishi Power Systems, Inc.

Day One

Thursday, November 11, 2004

8:00 Registration and Coffee

8:45 Conference Welcome from Chair

8:50 Opening Remarks and Conference Overview
Peter G. Verniero, Co-Chair,
**Corporate Internal Investigations
and Business Crimes Practice Group**
Sills Cummis Epstein & Gross P.C.
**Former New Jersey Supreme Court
Justice/Attorney General**

9:00

Case Study

Minimizing the Costs Associated With E-Discovery: Developing an Efficient but Comprehensive Approach

Failing to adequately prepare for E-Discovery may cost companies millions of dollars before a trial even begins. Many of these costs can be avoided through the development of effective records management programs and pre-trial litigation strategies. Learn to successfully limit the costs of E-Discovery with up-to-date knowledge and cost-shifting tactics.

- Cost control – how to manage discovery requests:
 - Practical advice on technical experts, best practices and sampling techniques
 - Keeping down the costs of retrieving e-mails, back up tapes and hard drives
 - Dealing with hidden costs: privilege; relevance; confidentiality review
 - Effective legal and technical cost-reducing solutions
- What you should expect to pay and how to maximize your return
- Cost-shifting: recent applications and interpretations
- Advanced tips on the most recent *Zubulake* case and its impact on costs

Neal Rubin, Senior Litigation Counsel

Cisco Systems, Inc.

Jose Sierra, Director – Litigation

Schering-Plough Corporation

Beth S. Rose, Member

Sills Cummis Epstein & Gross P.C.

10:00

Panel Discussion

Best Practices for Managing and Preserving Electronic Information

Every corporation in the United States will confront E-Discovery. Each company must ask themselves whether their document retention policy is complying with developing legal obligations and whether it is protecting their company against potentially debilitating E-Discovery costs. 'What is more efficient and less expensive long term- keeping up as you go along, or waiting until you get hit with an E-Discovery request that's hundreds of pages long, and then trying to dig through everything?' Learn how to handle the challenges associated with E-Discovery from the companies who have already faced the issues and survived the battle.

- Best practices for protecting your company from E-Discovery
- Successful strategies for using electronic document systems to your advantage
- Constructing an E-Document retention policy: how to successfully formulate electronic records management practices which meet your business needs and give you long term value
 - Implementing an effective corporate document retention policy
 - Innovative steps to control the collection of documents
- Creating a viable e-mail auto-deletion policy – what you need to take into account
- How the experts manage disaster recovery systems in light of legal obligations
- Lessons learned: what every corporate counsel must know about E-Discovery
- Establishing legal procedures and policies long before litigation begins: what you need to know
- How experienced corporate counsel have overcome risky E-Discovery experiences

Moderator:

Woods Abbott, Senior Manager Legal Operations
Raytheon Company

Panelists:

Matt Durnin, Counsel

Time Warner, Inc.

Steve Monroe, Litigation Counsel

Marsh McLennan Companies, Inc.

Gideon Schor, Director of Litigation for the Americas

Credit Suisse First Boston

11:15

Refreshment and Networking Break

11:30

Case Study

Employee Management: Training and Enforcement Strategies to Increase Compliance and Regain Control Over the Way Sensitive Information is Communicated

Recent high profile cases have underscored the fact that the most complex and critical challenges facing corporate counsel are the emails and other corporate communications, which flow through the organization daily. It is imperative that corporations initiate pro-active strategies to limit risk by ensuring that electronic information is handled appropriately and that contentious documents are not created on corporate systems.

- Email retention policies: your obligations and what should be flagged for regulatory purposes
- Safe communication: preventing the creation of 'bad documents' and minimizing the risks of 'smoking gun' emails
- Raising your employees' consciousness: training your employees to be aware of risky e-doc communication
- Guiding your employees to be their own individual records managers: how to enforce and maintain a document retention program
- Creating an effective and workable management structure

Allegra B. DiGia, Vice President, Senior Counsel
Citigroup, Inc.

Andrea Quercia, Legal Counsel
Eastman Kodak Company

David W. Garland, Member, Co-Chair, Employment and Labor Practice Group
Sills Cummis Epstein & Gross P.C.

12:30 Luncheon Sponsored by:



1:30 Panel of Experts

The Latest Word on E-Discovery Specific Procedural Rules: What Corporate Counsel Need to Know Now

E-Discovery is a focal point of proposed amendments to the Federal Rules of Civil Procedure that were published August 15, 2004. The changes generally seek to modernize existing rules to explicitly address E-Discovery issues. Understanding how the proposed rules will affect the E-Discovery process and documentation retention practices will enable corporate counsel to develop effective strategies which comply with revised legal obligations and standards.

- Where we are now: critical update on the new rules
- How understanding the rationale behind the rules can improve your in-house system
- How the proposed rules affect corporate counsel specifically
- ABA Civil Discovery Standards: what has changed and how to meet new standards
- Constructive feedback from Civil Rules Advisory Committee members
- Local Rules: what corporate counsel need to know

Moderator:

Jeffrey J. Greenbaum, Member; Chair, Class Action Litigation Practice Group
Sills Cummis Epstein & Gross P.C.

ABA Section of Litigation Liaison to the US Judicial Conference Advisory Committee on Civil Rules

Panelists: Judges and lawyers who have been actively involved in the development of the proposed rules, including:

Honorable Shira A. Scheindlin, United States District Judge
Southern District of New York

Honorable Ronald J. Hedges, United States Magistrate Judge
District of New Jersey

Robert C. Heim, Partner
Dechert LLP

Member of the US Judicial Conference Advisory Committee on Civil Rules

Taysen Van Itallie, Associate General Counsel
Johnson & Johnson

2:30

The Sedona Guidelines: Best Practices for Managing Information and Records in the Electronic Age

Today, as much as 95% of all corporate information is generated electronically. According to some estimates, about 35% of this information is never reduced to paper. Vast amounts of electronic data are being created and maintained indefinitely, without reasonable records retention guidance. This rapid proliferation of electronic information strains traditional concepts of records management. The recently released Sedona Conference 'Best Practices for Managing Information & Records in the Electronic Age,' outlines legal, records retention and information technology requirements and pro-active solutions for electronic records management. This presentation will focus on:

- Obligations of in-house and outside counsel to ensure electronic records retention
- Legal requirements for the management of electronic records
- When and how long electronic records must be retained
- When can electronic records safely be destroyed?
- Industry standards for cost-effective electronic records management systems
- Proactive approaches to electronic records retention and management
- Reducing litigation and E-Discovery costs via electronic records management

M. James Daley, Chair, Technology Law & E-Discovery Group
Shook, Hardy & Bacon LLP

3:30 Refreshment and Networking Break

3:45

Case Study

The Role of Forensics in Identifying and Locating Electronic Evidence

Computer forensics experts can help to determine whether a reasonable basis for bringing an action exists and can protect a party against sanctions for having brought an action. The preservation and restoration of electronic information are challenges faced by corporate counsel during E-discovery. The danger of loss or alteration of data, as a result of a bungled effort may outweigh the cost of retaining an expert. Understanding what the experts do, what the courts require and the value derived from the selection of an appropriate expert can help counsel to appropriately prepare for litigation, resulting in reduced long-term costs and increased efficiencies.

- What can be revealed by a forensic investigation?
- The role of experts in electronic discovery: what they do, how they do it and why they do it
- What you need to know about your company's computer system
- Technical tips: how to manage electronic data, what to store, and how to trace information when facing E-Discovery
- What your expert should cost
- How to successfully select an expert
- Court-appointed computer forensic experts: protocols and procedures

KJ Kuchta, President

Forensics Consulting Solutions, LLC

4:45

In-Depth Focus Session

E-Discovery Demands in the Context of Corporate Liability under Sarbanes-Oxley and Criminal Obstruction of Justice Statutes

The recent convictions of Arthur Anderson/Enron, Frank Quattrone and Martha Stewart demonstrate that alleged document alteration or destruction is "not a good thing." Regulators and prosecutors are increasingly focusing on corporate electronic records retention conduct as a major factor in deciding whether to investigate and indict corporate officials. Often, there is a tension between the desire for perfect knowledge, and the ability of a corporation to retain and manage information. Disclosure requirements under *Sarbanes-Oxley*, as well as current DOJ Prosecutorial Guidelines need to guide corporate management's records retention decision-making. In particular, this panel will examine:

- The impact of *Sarbanes-Oxley* on records retention compliance and reporting
- Obligations and potential sanctions under *Sarbanes-Oxley*
- Potential liability under federal obstruction of justice statutes for faulty records retention
- How to handle internal investigations without waiving attorney-client privilege
- Attorney professional liability for in-house and outside counsel under the under the *Sarbanes-Oxley* Whistleblower provision
- Proper handling and response to DOJ records subpoenas
- Records Management and the DOJ to ensure electronic records retention

Moderator:

Michael Koon, Partner

Shook, Hardy & Bacon LLP

Panelists:

David Baker, Global Compliance Leader

General Electric-Employers Reinsurance Corporation

James Gallegos, Vice President, Corporate General Counsel

The Burlington and Northern Sante Fe Railroad Company

Michael Jones, General Counsel

Miller Brewing Company

5:35

Closing Remarks from the Chair

5:40

Cocktail Reception

Sponsored by:

Sills Cummis Epstein & Gross

A Professional Corporation

Business Opportunities

A limited amount of exhibition space is available at the conference. Sponsorship opportunities covering luncheon, evening functions, and documentation also exist. For further details, contact 246 417 5326 or finance&legal@marcusevansbb.com.

www.marcusevansbb.com/ediscovery

Day Two

Friday, November 12, 2004

8:00 Continental Breakfast

8:30 Opening Remarks from the Chair

8:40 Panel Discussion

Developing an Effective Litigation Response Strategy, Part I: Successfully Defending Against E-Discovery Requests and Fishing Expeditions

The manner in which E-Discovery demands are handled has a direct impact on the fate of a company in litigation. When responding to requests for electronic data, expertise is needed to make the correct decisions about how to collect information and to ensure that expeditious systems are established to deal with the request. Equip yourself with the tools to implement the most cost-effective corporate strategies to quickly and efficiently comply with E-Discovery requests.

- Defense tactics every corporate counsel should know
- Avoiding messy situations: how to prepare yourself
- Effective policies and programs you should implement when litigation starts
- Getting the timing right: the benefits of preparation and timely actions
- Early disclosure: how to limit the effects of E-Discovery
- Tips on defending an E-Discovery request:
 - How to ensure that a ridiculous E-Discovery request does not turn into a ridiculous E-Discovery order
 - How to defend against "fishing expeditions"
 - Cost-shifting techniques as a defense
- Making valid objections to document requests: "overbreadth" and "undue burden"
- How to successfully draft requests for documents and subpoenas
- Effectively dealing with deleted documents and electronic footprints
- Meta data: a valid source of evidence
- Arguing sanction motions: insight for corporate counsel
- How to effectively craft preservation agreements
- Advanced tips on dealing with class action suits
- How opposing parties operate and what they need

Heather Greenberg, Assistant Vice President, IP Counsel

Martha Stewart Living Omnimedia, Inc.

William Herr, Counsel - Global Legal Office

The Dow Chemical Company

Louann Van der Wiele, Associate General Counsel

DaimlerChrysler Corporation

9:30 Case Study

Developing an Effective Litigation Response Strategy, Part II: Using E-Discovery as an Offensive Tactic

Courts are now demanding that corporate counsel be held responsible for knowing what documents are discoverable and where to find them. Counsel who have implemented pro-active strategies are able to turn their preparedness into an offensive tactic which can determine the outcome of litigation. Understanding what the court requires and knowing what to request during E-Discovery can be the difference between winning and losing a case.

A. The Key to a Great Offense is a Great Defense

- How to use E-Discovery to your advantage
 - Reducing costs
 - Improving accuracy
 - Reducing cycle time
- Tailoring a response to the opponents
- E-Discovery tools and tactics
 - How to limit the search
 - Exposing your opponent
- Finding a level playing field: what to do when facing a technically savvy opponent
- How to demonstrate that your corporation took affirmative reasonable steps to preserve information

B. Winning Offensive Strategies

- Properly framing a discovery request: writing a properly targeted and effective request
- Effective deposition strategies
- Weapons of mass discovery

Julie Mazza, Senior Counsel

Dupont

Jim Michalowicz, Litigation Program Manager

Tyco International (US), Inc.

10:30 Refreshment and Networking Break

10:45 Case Study

The Obligations to Preserve and Produce E-data in Discovery: Duty to Preserve and Spoliation Issues

The preservation of new and emerging sources of electronic evidence is not an easy task. Electronic evidence, susceptible to alteration and destruction, demands that strict and reliable standards are enforced by the courts. Understanding the current legal obligations associated with electronic data and the duties which ensue once litigation hits, will protect companies from legal sanctions and court orders resulting from negligent document preservation.

- What steps you must take when preserving electronic documents
- Avoiding the spoliation trap: new approaches to data preservation
- Solid document management strategies which help companies avoid corporate disruption during litigation
- How to manage the flood of electronic information in light of spoliation
- Back up tape issues
 - What you need to do now
 - How to handle back up tapes when you are hit with litigation
- Defining timing and scope:
 - When does the duty to preserve arise?
 - What are the duties
 - What is permissible - what is not
 - What must be retained - what may be destroyed
- Chain of custody issues - who is handling the evidence?
- Sanctions: the consequences of failure to preserve and spoliation

Lori A. Martin, First Vice President and Assistant General Counsel

Merrill Lynch Investment Managers, L.P.

David J. Onorato, Deputy General Counsel

Bank of America

Martha Solinger, Managing Director & Co-Head of Global Litigation
Lehman Brothers, Inc.

11:35 Panel Discussion

Bringing it All Together: Leveraging E-Discovery Technology, Minimizing Risk and Reducing Exposure

Take advantage of this opportunity to hear directly from leading technology and forensics companies. This session will be highly interactive; allowing you to have your specific questions and concerns responded to by E-Discovery experts. Key topics to be addressed include:

- Minimizing your technology costs
- Choosing technological solutions which meet your business needs
- Understanding the details: how it all works

Quintin Gregor, Vice President

eMag Solutions

12:35

Luncheon Address

Tom O'Connor, Director

Legal Electronic Document Institute

Sponsored by:



1:35

Judges' Panel

Judicial Approaches to E-Discovery: Tips and Traps for Records Management and Litigation Strategy

Judges on the cutting edge of E-Discovery cases are defining the parameters of E-Discovery litigation and resulting document retention policies. Successful motions are dependant on what judges determine to be discoverable information and what they decide is reasonable conduct on the part of corporate counsel. Putting into place sound corporate policies and effectively conducting E-Discovery motions in court can result in a reduction in costs and time needed to deal with these complex electronic information challenges.

- Effective techniques which will ensure a successful motion
- Conducting an E-Discovery hearing: What every corporate counsel needs to know
 - What kinds of evidence should be filed in court
 - What a respondent must provide in order to rebut an applicant's case
- Strengths and weaknesses in the presentation of plaintiff and defense cases
- 'Do's and Don'ts' for corporate counsel

Moderator:

A. Ross Pearson, Member

Sills Cummis Epstein & Gross P.C.

Judicial Perspectives From:

Honorable John J. Hughes, United States Magistrate Judge

District of New Jersey

Honorable Andrew J. Peck, Chief United States Magistrate Judge

Southern District of New York

Honorable Charles J. Walsh, Superior Court Judge

Superior Court of New Jersey

Who Should Attend:

2:35 Refreshment and Networking Break

2:50 Case Study

Non-Party Discovery – What to Do When the Subpoena Hits

Although E-Discovery between litigating parties has garnered significant attention, E-Discovery involving non-parties has largely not been addressed. Current methods of communication and data retention suggest that litigants should routinely seek electronic discovery from non-parties as this information can prove to be as valuable as any other source of evidence. Courts, however, are considerably more protective of non-parties and will attempt to protect non-parties involved in discovery orders from significant expense. Corporate counsel need to be versed in how to obtain E-Discovery from non-parties in order to collect the most relevant and valuable evidence in support of their case.

- Tasks in obtaining electronic discovery from non-parties
- Harvesting the required information: what corporate counsel need to know
- Non-parties' rights and duties when served with a discovery demand
- How to handle non-party cost issues

Michael Freese, Managing Attorney

Simon Property Group, Inc.

Jason Tucker, Director of Litigation

Putnam Investments

3:40 Case Study

Advanced Strategies for Managing the Newest Technological Communications: Emails, Databases, Instant Messaging, Voicemail and Beyond

New powerful communication tools allow users to divulge corporate information and subsequently risk corporate liability. Corporate counsel must know how to handle burgeoning new technologies in light of E-Discovery standards and legal obligations. Pro-active strategies, which deal with new forms of digital information, will be important for future cost-saving and litigation readiness.

- The evolving role of email – how the extensive use of email is being used to establish elements of a commercial action: jurisdiction, notice, and limitation periods
- Instant Messaging: what you need to take into account
- Unified Message Systems: how to deal with the next frontier in E-Discovery
- Technological developments: what the future holds for electronic document management and discovery
- Planning for the future in light of recent developments

Ronald Dolan, Senior Counsel

The May Department Stores Co.

Paul Robinson, General Counsel

Converse Technologies, Inc.

4:30 Case Study

A Corporate Counsel Guide to Confidentiality and Privacy Issues Involved in E-Discovery – The Company, the Employee and Counsel

The need to protect confidential corporate communications and privacy during the production of electronic documents has been a major challenge for companies facing E-Discovery. It has become imperative that corporate counsel implement special procedures and safeguards in order to guard against inadvertent disclosure during the discovery of masses of electronic documentation. Understanding how to effectively preserve the integrity of privileged, private and confidential information through innovative legal strategies will diminish the costs of E-Discovery and reduce the risks of legal entanglements.

A. Protecting Corporate Information – The Law of Information Security

- Information security as a corporate legal obligation
- The developing legal standard for information security
- Who is responsible for information security?
- Addressing security in outsourcing contracts
- Developing a corporate information security program

B. Privacy and Confidentiality Issues

- How to successfully deal with inadvertent privilege waiver in the context of voluminous responses to E-Discovery requests
- The cost of protecting privilege and confidentiality: how to deal with confidential documents when producing masses of e-docs
- Accounting for confidentiality agreements in document retention policies and production requests
- Privacy issues: how personal communications and employee privacy can be protected
- Ethical legal limitations: what you need to consider
- How far can an opposing party dig?
- Expert tips on 'Clawback' and 'Quick Peek' production
- The expanding legal duty to protect security and privacy of corporate information
- Dealing with privacy issues raised by outsourcing
- International privacy standards: coping with strict global standards

Thomas Smedinghoff, Counsel

Baker & McKenzie

5:20 Closing Remarks from the Chair and End of the Conference

- General Counsel
- Vice President Legal
- Chief Legal Officer
- Chief Litigation Counsel
- Chief Compliance Officer
- Chief Knowledge Officer
- Chief Information Officer
- Director Legal Affairs
- Deputy Attorney General

Lead Sponsor:

Sills Cummis Epstein & Gross
A Professional Corporation

Sills Cummis Epstein & Gross P.C. is a full service law firm with a sophisticated litigation practice that has developed a specialized niche in the area of E-Discovery. Our experience and knowledge base in this area of law range from guiding clients through the maze of E-Discovery as efficiently and effectively as possible in large stakes litigation to advising clients on how to take the necessary steps to meet required retention periods, comply with newly enacted rules and regulations, and avoid allegations of spoliation. From our offices in New Jersey and New York, we represent Fortune 500 to emerging growth companies throughout the world.

Co-Sponsors:

Forensics Consulting Solutions, LLC

Forensics Consulting Solutions is a professional consultancy that serves world-class clients including Fortune 100 corporations and AmLaw 100 law firms. Major services include computer forensics, electronic discovery for complex litigation, internal investigations for mergers and acquisitions and KOJ second requests, and consulting on records retention programs.

Shook, Hardy & Bacon L.L.P.

Shook, Hardy & Bacon L.L.P. is an international law firm with a strong focus on technology law, e-discovery, and corporate compliance. At Shook, Hardy & Bacon L.L.P., a multi-disciplinary team of attorneys and technical analysts provide clients with cost-effective, proactive solutions to e-discovery, records retention and corporate compliance challenges. Established in 1889, Shook, Hardy & Bacon L.L.P. has over 500 attorneys in eleven offices worldwide including: Geneva; Houston; Kansas City, Missouri; London; Miami; New Orleans; Orange County, California; Overland Park, Kansas; San Francisco; Tampa, Florida; and Washington, D.C.

eMag Solutions

eMag Solutions is an international corporation with over thirty years of data production skills. Our team of experts possess unparalleled knowledge of storage media, its capabilities, utilization and potential. eMag provides you access to your data, past, present and future, through core competencies of electronic discovery, data conversion, recovery and migration.

Related Events:

CORPORATE COUNSEL SUMMIT

January 23-25, 2005
The Ritz-Carlton, Sarasota, FL
www.corporatecounselsummit.com

LEGAL TECHNOLOGY SUMMIT

May 15-17, 2005
Hyatt Regency Huntington Beach Resort & Spa,
Orange County, CA
www.legaltechnologysummit.com

The Legal and Strategic Guide to E-Discovery

BBC87/INT

Please write in **BLOCK CAPITALS**

Registration Contract

Please complete this form immediately and fax back to:

FAX: 888 844 4901 (TOLL FREE)

For further information call 246 417 5326

Registration Details

Name: _____

Position: _____

Email: _____

Name: _____

Position: _____

Email: _____

Name: _____

Position: _____

Email: _____

Company: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Company Size: _____

Nature of Business: _____

Website: _____

CLE Accreditation

I wish to receive CLE credits in _____ State.

Fees

- CONFERENCE FEE** @ **\$1,977.80**
- CONFERENCE FEE (WORKSHOP FEE)** @ **\$737.80**
- CONFERENCE DOCUMENTATION ONLY** @ **\$737.80**

Prices are inclusive of service charge.

Payment Method

Please charge my: Visa Mastercard Diners Club Amex

Card Billing Address: _____

City: _____ State: _____ Zip: _____

Card Holder's Name: _____

Signature: _____

Card Number:

Exp Date: /

Confirmation Details – If you do not receive a letter outlining the conference details two weeks prior to the event, please contact the Conference Coordinator at **marcus evans**.

Conference: The Legal and Strategic Guide to E-Discovery

Date(s): November 10-12, 2004

Location: Park Central New York
870 Seventh Ave. (at 56th)
New York, New York 10019
T: 212 247 8000

marcus evans: Marcus Evans Inc.

Terms & Conditions:

1. Fees are inclusive of program materials and refreshments.
2. Payment Terms: Following completion and return of the registration form, full payment is required within 5 days from receipt of invoice. PLEASE NOTE: payment must be received prior to the conference date. A receipt will be issued on payment. Due to limited conference space, we advise early registration to avoid disappointment. A 50% cancellation fee will be charged under the terms outlined below. We reserve the right to refuse admission if payment is not received on time.
3. Cancellation/Substitution: Provided the total fee has been paid, substitutions at no extra charge up to 14 days before the event are allowed. Substitutions between 14 days and the date of the event will be allowed subject to an administration fee of equal to 10% of the total fee that is to be transferred. Otherwise all bookings carry a 50% cancellation liability immediately after a signed sales contract has been received by **marcus evans** (as defined above). Cancellations must be received in writing by mail or fax six (6) weeks before the conference is to be held in order to obtain a full credit for any future **marcus evans** conference. Thereafter, the full conference fee is payable and is non-refundable. The service charge is completely non-refundable and non-creditable. Payment terms are five days and payment must be made prior to the start of the conference. Non-payment or non-attendance does not constitute cancellation. By signing this contract, the client agrees that in case of dispute or cancellation of this contract that **marcus evans** will not be able to mitigate its losses for any less than 50% of the total contract value. If, for any reason, **marcus evans** decides to cancel or postpone this conference, **marcus evans** is not responsible for covering airfare, hotel, or other travel costs incurred by clients. The conference fee will not be refunded, but can be credited to a future conference. Event program content is subject to change without notice.
4. Copyright etc: All intellectual property rights in all materials produced or distributed by **marcus evans** in connection with this event is expressly reserved and any unauthorized duplication, publication or distribution is prohibited.
5. Client information is kept on **marcus evans** group companies database and used by **marcus evans** group companies to assist in providing selected products and services which maybe of interest to the Client and which will be communicated by letter, phone, fax, (inc. automatic dialling) email or other electronic means. If you do not want **marcus evans** to do this please tick this box []. For training and security purposes telephone calls maybe recorded.
6. Important note: While every reasonable effort will be made to adhere to the advertised package, **marcus evans** reserves the right to change event dates, sites or location or omit event features, or merge the event with another event, as it deems necessary without penalty and in such situations no refunds, part refunds or alternative offers shall be made. In the event that **marcus evans** permanently cancels the event for any reason whatsoever, (including, but not limited to any force majeure occurrence) and provided that the event is not postponed to a later date nor is merged with another event, the Client shall receive a credit note for the amount that the Client has paid to such permanently cancelled event, valid for up to six months to be used at another **marcus evans** event. No refunds, part refunds or alternative offers shall be made.
7. Governing law: This Agreement shall be governed and construed in accordance with the law of Illinois and the parties submit to the exclusive jurisdiction of the Cook County Courts in Illinois. However, **marcus evans** only is entitled to waive this right and submit to the jurisdiction of the courts in which the Client's office is located.
8. Client hereby acknowledges that he/she specifically authorizes that **marcus evans** charge the credit card listed above for the amount provided herein; that this Contract is valid, binding and enforceable; and that he/she has no basis to claim that any payments required under this Contract at any time are improper, disputed or unauthorized in any way. Client acknowledges that they have read and understood all terms of this contract, including, without limitation, the provisions relating to cancellation.

Authorization

Signatory must be authorized to sign on behalf of contracting organization

Name: _____

Position: _____

Email: _____

Signature: _____ Date: _____