The Legal and Strategic Guide to E-Discovery: Best Practices for Corporate Counsel

The Millennium Broadway Hotel
New York, NY

September 29-30, 2005

Pre-Conference Workshops:
September 28, 2005

Conference Faculty:
Jason R. Baron, Director, Litigation National Archives and Records Administration
Linda Blackwell Williams, Managing Counsel, IT and Real Estate Chevron Corporation
Gerard Boccuti, Consulting Attorney, Litigation Support Manager Wyeth
Ian Campbell, President iCONECT Development, LLC
Honorable Robert Collings, United States Magistrate Judge District of Massachusetts
M. James Daley, Chair, Technology Law & E-Discovery Group Shook, Hardy & Bacon LLP
Fred Egler, Jr., Chief Counsel-Litigation The PNC Financial Services Group, Inc.
Joel Feliciano Esq., E-Discovery Specialist LexisNexis Applied Discovery
Michael R. Gordon, Partner Kirkpatrick & Lockhart Nicholson Graham LLP
Daniel Greenstone, Director, Litigation, U.S. Region and Vice President CIBC World Markets Corporation, Inc.
William Herr, Counsel, Global Legal The Dow Chemical Company
Clayton James, Associate General Counsel Sun Microsystems, Inc.
David Jarvis, Senior Vice President, Senior Litigation Counsel Wachovia Securities

Gain valuable insight at this leading E-Discovery conference developed by taught by specifically for CORPORATE COUNSEL.

Understanding and managing the ever changing docket of E-Discovery challenges.

Conference Co-Chairs:
David R. Cohen
Co-Chair, Records Management & E-Discovery Practice Group
Kirkpatrick & Lockhart Nicholson Graham LLP

Thomas E. Stevens
Vice President
ACT Litigation Services, Inc.

Conference Faculty:

Pre-Conference Workshops:

Workshop A: The Complete Guide to Understanding the Nuts and Bolts of E-Discovery

Workshop B: Best Practices and Strategic Solutions for Effectively Managing the Discovery Process in Complex Litigation

Workshop C: Scenes From an E-Discovery Case – The Dos and Don’ts for In-House Counsel and Litigation Managers

Get Valuable Insight From:

- Nationwide Mutual Insurance and Chevron Corporation on maximizing the capabilities of your IT department
- Wachovia Securities on E-Discovery duties in the context of corporate liability under Sarbanes-Oxley
- Tyco on effective litigation strategies
- Coca-Cola on monitoring and auditing your data life-cycle management policy and ensuring employee compliance

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### Pre-Conference Workshops: Wednesday, September 28, 2005

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<tr>
<th>Time</th>
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<tbody>
<tr>
<td>8:00</td>
<td>Registration begins</td>
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<tr>
<td>8:30</td>
<td>Workshop A Begins</td>
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<tr>
<td>11:30</td>
<td>Workshop A Ends</td>
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<tr>
<td>12:00</td>
<td>Workshop B Begins</td>
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<td>3:30</td>
<td>Workshop C Begins</td>
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**The Complete Guide to Understanding the Nuts and Bolts of E-Discovery**

Even the most competent corporate counsel can fall prey to the pitfalls that the world of electronic evidence and computer forensics is filled with. With alarming frequency, pivotal evidence in cases is electronic, with the potential to show up in unexpected areas. E-Discovery has brought a realm of existence beyond the traditional frontiers of expertise that the skilled attorney is required to master into the courtroom. Achieving a strategic advantage in a case with E-Discovery issues demands that all parties concerned – especially corporate counsel who bear the brunt of the litigating corporation’s burden – proceed with an effective and strategic e-discovery response plan. To achieve this goal, corporate counsel today must master the requisite technological knowledge subject matter when putting forward their case.

This E-Discovery workshop will equip corporate counsel with the technological insight needed to master the e-Discovery world.

Foremost experts from LexisNexis Applied Discovery will advise on:
- The distinctions between electronic evidence and computer forensics
- The various locations where data can be found
- The process of imaging
- Data collection best practices
- Tips for maintaining a proper chain of custody
- Overcoming data restoration challenges and effectively utilizing back-up tapes

**Facilitated By:**

**LexisNexis Applied Discovery**

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<thead>
<tr>
<th>Time</th>
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<tbody>
<tr>
<td>10:10</td>
<td>Scenarios from an E-Discovery Case: The Dos and Don’ts for In-House Counsel and Litigation Managers: Wednesday, September 28, 2005</td>
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<th>Time</th>
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<tr>
<td>3:00</td>
<td>Workshop B Ends</td>
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<td>3:30</td>
<td>Workshop C Begins</td>
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### Day One: Thursday, September 29, 2005

<table>
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<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>8:00</td>
<td>Registration and Coffee</td>
</tr>
<tr>
<td>8:30</td>
<td>Conference Welcome and Opening Remarks from Chairs</td>
</tr>
<tr>
<td>8:40</td>
<td>The Dynamics of E-Discovery: The Changing Global Landscape for the Legal Management of Electronic Records</td>
</tr>
<tr>
<td>10:10</td>
<td>Sedona Update: An In-Depth Analysis of the Development of the Sedona Guidelines, Their Limitations and Relevance</td>
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<tr>
<th>Time</th>
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<tbody>
<tr>
<td>11:10</td>
<td>Refreshment and Networking Break</td>
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Day One: Continued

11:25

Defining the Duty to Preserve and Collect Electronic Evidence in the Context of Corporate Liability Under Sarbanes-Oxley and Criminal Obstruction of Justice Statutes

• Managing the life-cycle of corporate documents
• Document destruction principles: what corporate counsel need to know
• Establishing liability for document destruction
• Activities which give rise to obstruction of justice charges
• The role of IT in complying with Sarbanes-Oxley Act
• Document retention obligation imposed by Sarbanes-Oxley Act
• Understanding the business consequences of improper destruction of evidence

David Jarvis, Senior Vice President, Senior Litigation Counsel

Wachovia Securities

12:15 Luncheon

1:15

Your 12-Step Program for Avoiding E-Discovery Disasters:
The “To Do List” for Your In-House Record Management and E-Discovery Task Force / Response Teams

• Assembling an e-Discovery and records management response team
  – Developing information systems
  – Implementing records management
  – Reviewing and optimizing document retention policies and enforcement strategies
  – Dealing with the ‘hidden’ documents including e-mail folders, jump drives, home computers and PDAs
  – Putting into place records retention education programs
  – Sensitizing employees to the dangers of e-mail
  – Launching automated e-mail protection systems
  – Reviewing and optimizing disaster recovery policies
  – Reviewing and optimizing internet policies
  – Achieving employee education and approval of information systems rights and procedures
  – Developing your litigation response policy now
  – Dealing with scrapped computers and media
  – Monitoring and enforcing compliance

David R. Cohen, Co-Chair, Records Management and e-Discovery Practice Group

Kirkpatrick & Lockhart Nicholson Graham LLP

J. Henry Walker, Chief Litigation Counsel

BellSouth Corporation

2:05

Taming the e-Discovery Beast: Creating and Implementing a Data Life-Cycle Management Policy

• Developing a policy for your organization on employees’ use of certain technologies: email, instant messaging, PDAs, text messaging and beyond:
  – Identifying the objectives of your organization
  – Practicing minimalism to streamline your data life-cycle management policy
  – Successfully demanding information security
  – Developing an effective records authenticity system
  – Requiring distribution controls
  – Preparing for retrievability
• Managing e-communications during litigation holds:
  – Determining when a litigation hold notice should be issued
  – Guidelines for distributing the litigation hold notice
  – What should be included in the litigation hold notice?
  – Best practices in issuing reminder notices and monitoring compliance
  – What level of involvement should IT have?
  – Effectively handling technology issues
  – How to continue doing business around the litigation hold
  – At what point should the litigation hold notice be terminated?
  – Developing a procedure for rescinding a litigation hold

Gerard Boccuti, Consulting Attorney, Litigation Support Manager

Wyeth

3:25 Refreshment and Networking Break

3:40

Superb Housekeeping: Maximizing the Capabilities of Your IT Department and Legal Support Staff

• Obtaining comprehensive support from your IT department and legal staff in creating and implementing a data life-cycle management policy
• Building a relationship between the technical and legal staff
• Technical requirements for in-house hosting of databases
• Utilizing the IT department in the early stages of e-discovery
• The role of the IT department and legal staff in planning and executing courtroom presentations
• The pros and cons of in-house e-discovery expertise usage

Linda Blackwell Williams, Managing Counsel, IT and Real Estate

Chevron Corporation

4:40

Decisional Guidance for Creating a Winning E-Discovery Team

A. Strategies for Finding, Assembling and Integrating a Legal Team

• The pros and cons of wholesale delegation of litigation tasks versus taking on a project in-house
• Adopting a project management approach
• Identifying the set of document discovery services that you need
• Embracing a body shop mentality versus achieving project success
• Defense tactics every corporate counsel should know
• Staffing mistakes corporate counsel should never make

B. Selecting and Working with an E-Discovery Vendor

• Utilizing vendors to fine tune your corporate policies
• Effectively distinguishing between the services of different vendors and the products they offer
• Finding a vendor that suits your organization’s goals and objectives
• Understanding the industry’s pricing
• Managing your vendor: creating a synergy that will work
• Dealing with privacy issues raised by using third-party products and services

Fred Egler Jr, Chief Counsel-Litigation

The PNC Financial Services Group, Inc.

Karl Scheineman, Esq/MBA, Vice President

Special Counsel

5:40 Closing Remarks from Chairs and Close of Day One

Cocktail Reception Hosted by

www.marcusevansbb.com/ediscoveryyeast
• Intellectual property and technology litigation
  – The spectrum of e-discovery in patent, copyright, trademark, trade secret
  and other technology litigation
  – Privilege waiver, non-infringement opinions, fraud claims, willfulness claims and other unique issues
• Labor and employment claims
  – Protecting your company from e-mail discovery blackmail in wrongful
  termination and disgruntled employee cases
  – Strategic steps to help ensure that proprietary company data and records
  are protected
• Product liability and toxic tort defense
  – Protecting your company from the plaintiffs bar’s repetitive or class action claims
  – Meeting the challenges of nationwide e-discovery exposure

Michael R. Gordon, Partner
Kirkpatrick & Lockhart Nicholson Graham LLP

Keith W. Miller, Partner
Kirkpatrick & Lockhart Nicholson Graham LLP

Thomas F. Holt Jr., Partner
Kirkpatrick & Lockhart Nicholson Graham LLP

Rosemary Alito, Partner
Kirkpatrick & Lockhart Nicholson Graham LLP

Jeffrey S. King, Partner
Kirkpatrick & Lockhart Nicholson Graham LLP

Tactical Tools for Monitoring and Auditing Your Data Life-Cycle

Management Policy: Ensuring Employee Compliance

• Building in ‘auditability’ in your data life-cycle management system
• Implementing effective and comprehensive training and simple procedures
• Sensitizing your employees to the risk of creating a ‘bad’ document
  – What is a ‘bad’ document, why are they created and where are they most
    often created?
  – Effectively communicating a ‘bad’ message without creating a ‘bad’ document
  – Practical tips for creating a culture of sale communication
• Requiring consistency and internal enforcement
• Overcoming the challenges of portable tools: laptops and PDAs
• Maintaining periodic reviews: ensuring that the practice reconciles with its goals and objectives
• Suspending/enforcing policy during the threat of litigation: what are the dangers?
  – What constitutes a threat?
  – What is the scope of supervision?
  – When NOT to suspend your policy?

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

Daniel Greenstone, Director of Litigation, U.S. Region and Vice President
CIBC World Markets Corporation, Inc.

Tom Johnson, Manager, Information Access
The Coca-Cola Company

9:45

10:00

10:35 Refreshment and Networking Break

10:50

The Lawyer’s Burden: Critical Insights from the Bench on the Role and Obligations of Counsel

• Obligations of counsel in advising clients on their retention and production responsibilities
• Developing the prerequisite technical expertise how much do corporate counsel need to know?
• Communicating your e-discovery dispute to the court promptly and effectively
• The affirmative obligation of counsel to monitor compliance with a litigation hold
• Strategically responding to outstanding discovery requests

• Other sanctionable behavior recently identified by the courts
  Honorable James Larson, United States District Court
District of Northern California

Honorable Andrew J. Peck, Chief United States Magistrates Judge
Southern District of New York

Honorable Robert Collings, US Magistrate Judge
District of Massachusetts

1:00

Cutting Edge E-Discovery Technology Advancements

• Harvesting of e-data: effective methods for identifying and collecting all documents responsive to the litigation process
• Native file review
• Integrating paper and electronic document production and review vs. document production
• Keyword vs. concept searching
• Alternatives to custodian ordered review
• Utilizing concept search, bucketizing, and other approaches in the discovery process
• Why size matters
• Precision and recall
• Blair and Maron (1985)
  Ian Campbell, President
iCONECT Development, LLC

Thomas E. Stevens, Vice President
ACT Litigation Services, Inc.

Shawn Strickler, Director of Forensic Solutions
eMag Solutions, LLC

2:20

Effective Litigation Strategies

A. Resisting Inappropriate Intrusions
• Employing communication as the first line of defense
• Defeating overly broad discovery requests
• Tips for successfully objecting on the basis of undue burden
• Asserting the claim of privilege

B. Devising the Offensive Defense
• Establishing the existence of a record and the inadequacy of a response
• How to forestall plaintiff lawyer’s most common requests
• Useful tips for writing targeted and effective e-discovery requests
• Using e-discovery to your advantage
• Avoiding the spoliation trap
• Tailoring your response to your opponent’s requests
• Effective deposition strategies

William Herr, Counsel, Global Legal
The Dow Chemical Company

Jim Michalowicz, Litigation Program Manager
Tyco International (US), Inc.

3:20

Cost and Quality Control From Collection Through Review:
Advanced E-Discovery Cost Containment Techniques Corporate Counsel Need to Know

• Best practices and emerging economic models in civil litigation
• Embracing information upstream and managing electronic documents as an information asset
• Electronic document conversion, document scanning and objective coding
• The DuPont and GE legal models as incubators for best practices
• All in cost vs. per item cost
• Integrating the cost of the discovery process
• Using metrics to control cost and quality

Thomas E. Stevens, Vice President
ACT Litigation Services, Inc.

4:00 Closing Remarks from Chairs and Close of Conference

Scholarships

Partial scholarships to attend Marcus Evans programs are available to government, academics, judges, law students and non-profit organizations. Email Natasha Lawson at legalevents@marcusevansbb.com.
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