

## Partners Notes

### Kroll Lists Top Discovery Cases

As the one year anniversary of the amended Federal Rules of Civil Procedure (FRCP) approaches, Kroll Ontrack® has announced a list of the year's top five most significant discovery cases. Focusing primarily on interpreting the new FRCP, common topics recurring in judicial opinions issued in 2007 included: the importance of early case conferences, the accessibility of electronically stored information, and what to do when parties fail to play by the new rules.

From Kroll's perspective, the top five most significant cases from 2007 that encapsulate these issues included:

- Court Orders Defendant to Preserve and Produce Server Log Data Stored in RAM; *Columbia Pictures Industries v. Justin Bunnell*, No. 06-1093 FMC (JCx) (C.D.Cal. May 29, 2007), aff'd. 2007 WL 2702062 (C.D.Cal. Aug. 24, 2007). In a suit alleging copyright infringement, the plaintiff sought preservation and production of user IP addresses along with dates and times of user requests. The defendant argued that this data was temporarily stored in random access memory (RAM) and did not constitute electronically stored information (ESI.) The court held RAM data constituted ESI and was discoverable.

- Magistrate Finds E-mail Exhibits Inadmissible and Outlines Standards for Electronic Evidence Admissibility; *Lorraine v. Markel Am. Ins. Co.*, 2007 WL 1300739 (D. Md. May 4, 2007). Plaintiff's brought suit to enforce an arbitrator's award. The judge dismissed both parties' dispositive motions without prejudice to allow resubmission with evidentiary support. The court held there is a five-point test in determining the admissibility of electronic evidence. ESI must be 1) relevant, 2) authentic, 3) not hearsay or admissible hearsay, 4) the "best evidence," and 5) not unduly prejudicial. The court stated, "it can be expected that electronic evidence will constitute much, if not most, of the evidence used in future motions practice or at trial, [and] counsel should know how

to get it right on the first try."

- Court Orders E-Mail Search and Production at Producing Party's Own Cost; *Peskoff v. Faber*, 2007 WL 530096, (D.D.C. Feb. 28, 2007). In a suit alleging fraud, breach of fiduciary duty, breach of contract, and conversion inter alia, the plaintiff argued that a previous electronic document production contained unexplained time gaps, suggesting problems with the original production. As a result, the plaintiff moved to compel discovery of additional e-mail. The court found in favor of the plaintiff, holding that accessible data must be produced at the cost of the producing party, unless the producing party can prove the documents are inaccessible.

- Court Considers Sanctioning Attorneys for Discovery Abuses; *Qualcomm, Inc. v. Broadcom Corp.*, 2007 WL 2900537 (S.D.Cal Sept. 28, 2007). During one of the last days of a patent infringement trial, cross-examination of the plaintiff's witness revealed the existence of relevant e-mails that the court later held were "the tip of the iceberg" in an attempt to conceal over 200,000 pages of relevant e-mails. The judge characterized the discovery abuses as, "an organized program of litigation misconduct" and ordered the plaintiff's attorneys to demonstrate why they should not be sanctioned, without use of documents protected by the attorney-client privilege.

- Court Denies Motion to Compel Deleted E-mail Stored on Backup Tapes; *Oxford House, Inc. v. City of Topeka*, 2007 WL 1246200 (D. Kan. Apr. 27, 2007). The plaintiff brought suit alleging that the defendant improperly denied several conditional housing permits. In responding to the plaintiff's motion to compel, the court determined there was no obligation to preserve overwritten e-mails before the likelihood of litigation. Moreover, the court used a cost-benefit balancing test to find that the production of the requested ESI would be unduly burdensome given the cost and likelihood of retrieval.

### Proskauer Attorney Inducted Into Leaders Group

Proskauer Rose LLP has announced that Elise M. Bloom, a partner in the firm's Labor & Employment Law Department, has been inducted into the YWCA of New York City's Academy of Women Leaders (AWL), a network of more than 3,000 women professionals noted for their professional achievement, civic commitment, and demonstrated leadership.

Ms. Bloom represents and advises clients in a wide range of general employment, disability and wage and

hour issues. She has tried employment law cases in federal and state courts involving allegations of discrimination and state law contract and tort claims and has represented employers in class actions brought under the federal and state anti-discrimination laws as well as collective and class actions involving allegations of wage and hour violations under federal and state law. She has been recognized as a leading employment lawyer in *Chambers USA* and *US Legal 500*.

### Chadbourne Attorney Named President Of Venezuelan American Association

The international law firm of Chadbourne & Parke LLP has announced that Clara Krivoy, a Latin America counsel based in the New York office, has been named president of the Venezuelan American Association of the United States (VAAUS). She will be the first

woman to serve as the president of the association, which was founded in 1936.

Based in New York, VAAUS is a non-profit organization that promotes investment and commerce between Venezuela and the United States, with a membership of international business

### Norris McLaughlin Attorney Listed In Who's Who In American Law

Norris McLaughlin & Marcus, P.A. has announced that Edward G. Sponzilli, a member of the firm, has been selected for inclusion in the 30th Anniversary Edition of *Marquis' Who's Who in American Law*. His biography has appeared in previous editions of this publication, as well as *Who's Who in America* and *Who's Who in the East*.

Mr. Sponzilli is a New Jersey Supreme Court certified civil trial attorney with more than 30 years experience in complex corporate and commercial litigation.

The Real Estate & Land Use Group of the Norris McLaughlin & Marcus, P.A. was recognized as a Golden Hammer Supporter for their pro bono work for the Raritan Valley Chapter of Habitat for Humanity (RVHFH).

The NMM Real Estate & Land Use Group worked against objections to obtain variances and site plan approval for RVHFH's Somerset County Franklin Township project. The project, which includes four homes for low-income families on Girard Avenue, is the first in a series of projects for which the Real Estate & Land Use Group is offering their services. The Norris McLaughlin attorneys involved in the pro bono effort included Michael Ligorano, who accepted the award on the firm's behalf, Chris Stevenson, Christine Socha and

Pat Mottola.

Norris McLaughlin was recognized for participating in the Anti-Defamation League's inaugural Summer Associate Research Program at the Justice Society Reception held recently. The Summer Associate Research Program provides law firm summer associates the opportunity to complete pro bono legal research projects on cutting edge civil rights issues. Summer associates are supervised by partners within their firms and consult with ADL's staff attorney, and their work product is a critical source for ADL's advocacy year-round.

The Response to Electronic Discovery and Information (REDI) Group of Norris McLaughlin, Margaret Raymond-Flood and Fernando M. Pinguelo, presented Electronically Stored Information: Where Technology Meets the Law - If it Hasn't Been in Your Court Room Yet, It WILL! at the afternoon session of the New Jersey Judicial College recently. The presentation gave the judges a basic understanding of the technology involved, the expectations and obligations imposed by the amended e-discovery court rules, how to manage and balance e-discovery issues that will inevitably arise in their courtroom and the legal and practical ramifications their rulings will have on litigants.

### Ballard Spahr Attorneys Selected For Stakeholder 100 Class Of 2007

Lucretia C. Clemons and Benita Collier, associates in the Litigation Department at Ballard Spahr Andrews & Ingersoll, LLP, have been selected to the Stakeholder 100 Class of 2007.

Stakeholder 100 works with industry leaders to identify top performing associates of color. As members of Stakeholder 100, Ms. Clemons and Ms. Collier will receive career management training through the Stakeholder Academy. The Academy is a two-and-a-half-day seminar focused on professional development, performance and leadership. Stake 100's goal is to invest in top performing associates to maximize their career.

Ms. Clemons is a member of the Labor, Employment & Immigration Group and a member of the Corporate Diversity Practice. Ms. Clemons' practice includes a broad range of labor and employment litigation and counseling.

Ms. Collier is a member of the Intellectual Property Group. Her practice involves all aspects of domestic and international trademark enforcement, prosecution, counseling, litigation and domain name enforcement.

Kenya Mann, a partner in the Litigation Department and a member of the White Collar Litigation Group at Ballard Spahr, has been nominated for the City of Philadelphia Board of Ethics by Mayor-Elect Michael Nutter.

The five-member, independent Philadelphia Board of Ethics provides ethics training for all city employees and enforces city campaign finance, financial disclosure and conflict of interest laws and has the authority to render advice, investigate complaints and issue fines. The Board also responds to ethical questions raised by city officials and employees. The members are also responsible for recommending improvements, laws and policies that would help reinforce and strengthen the public's trust and confidence in the government.

Beverly R. Budin, a partner in the Family Wealth Management Group at Ballard Spahr, was named one of the "Top 100 Attorneys" in *Worth Magazine's* December 2007 edition for the second consecutive year.

executives, financiers and professionals. A native of Venezuela, Ms. Krivoy focuses her practice on corporate and securities law. She has represented domestic and foreign clients in various public debt and equity offerings, debt and equity offerings pursuant to Regula-

tion 144A and Regulation S, mergers and acquisitions, debt and capital restructuring, bank lending, joint ventures, venture capital investments, structuring and organizing start-up companies, financings by early stage companies and private placements.