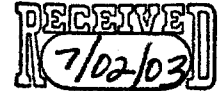


02-ED-030



Via E-mail

Date sent: Tue, 01 Jul 2003 16:39:12 -0400  
From: Mark Lynch <LYNCHM@wyeth.com>  
Subject: Electronic Evidence Issues  
To: marcusr@uchastings.edu

Please consider the attached comments relating to the discovery of electronic evidence.

I am Senior Corporate Counsel-Litigation for Wyeth, one of the country's largest pharmaceutical companies. I am writing to urge you to encourage the Committee to move forward with the project to draft possible rule changes to address the special challenges presented by electronic discovery.

Our company is increasingly faced with significant electronic evidence issues. Like all pharmaceutical companies, Wyeth is often simultaneously defending hundreds or thousands of product liability cases in state and federal courts around the country. At any time several of the company's products may be the subject of one or (many) more suits. In any one of these matters an order requiring the preservation of "all electronic evidence, including back up tapes", relating to the product may be entered. These orders can and have been entered on an ex parte basis. They are often so broad and nebulous that they require the company to take extremely costly and time consuming measures to comply or be accused of improper destruction of documents. The prohibition of the recycling of back-up tapes in particular is an issue that causes extraordinary expense and seems more calculated to punish than to preserve potentially relevant information. A rule provision that would provide some guidance on electronic document retention issues in the form of a "safe harbor" is of critical concern to our company.

Of equal concern is a possible rule that would deal with the issue of cost-shifting in electronic evidence discovery. There seems to be a general assumption that the collection of electronic evidence is quicker, cheaper and easier than hard copy document collections. As a result, courts seem willing to order the production of "every and all" e-documents without any balancing of the costs of such production against the production's potential relevance. In fact, the burden of such requests is often extremely onerous in both employee time and actual expense. Often, these broad requests are employed as a bludgeon to induce settlement rather than as a tool to discover relevant evidence. Some type of cost-shifting procedure might help ensure that e-document requests are tailored to produce all relevant information on an efficient, cost-effective basis.

I urge your committee to take up these issues.