



message from partner-in-charge

It is my pleasure to introduce Pepper Hamilton LLP's ***Detroit Office Update***. Our clients and friends often ask Pepper attorneys for advice and education on subjects of interest. This newsletter, and its future editions, will not only focus on timely topics relevant to our clients' business needs, but also will discuss industry challenges, changes and innovations – and of course, the many legal issues that arise from such changes.

Our first two articles focus on the basics of the National Flood Insurance Program and e-discovery. More information about these topics can be found on Pepper's Web site, www.pepperlaw.com.

I hope that you enjoy the ***Detroit Office Update*** and welcome your suggestions for topics to include in future editions. As always, if you have any questions about any of the information contained in this newsletter, just give us a call and we'll do our best to help.

Enjoy!

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National Flood Insurance Program: The Basics

The stark images of New Orleans underwater in the aftermath of Hurricane Katrina served as a reminder that flood risks are a required consideration in most decisions to build or to rebuild.

Federal flood control activities have evolved as the government continues to seek ways to mitigate the consequences of flooding. In 1994, the National Flood Insurance Act of 1968 and the Flood and Disaster Protection Act of 1973 were amended by the National Flood Insurance Reform Act, which imposed new requirements on mortgage originators and servicers (including mandatory escrows for flood insurance and mandatory provisions for forced placement of insurance); codified the Community Rating System of the National Flood Insurance Program (NFIP), which provides flood insurance premium discounts for communities that establish programs that go beyond NFIP minimum requirements; and provided added emphasis on activities designed to further mitigation of future flood damage.

National Flood Insurance

Flood insurance covers damage and loss to real and personal property caused by floods. Under the NFIP, policies are issued both by state licensed property and casualty insurance brokers and agents who deal with the Federal Emergency Management Agency (FEMA), and by private insurance companies who issue policies and adjust claims under the "Write Your Own" program. Generally, there is a 30-day waiting period before a policy becomes effective, which is designed to prevent the opportunistic purchase of flood insurance in connection with progressive river flooding.

There are three policy forms: (1) Dwelling Form for 1-4 family buildings and individual condominium owners, (2) General Property Form for more than four-family residential and non-residential buildings, and (3)

Residential Condominium Building Association Policy Form for condominium associations. Residential buildings under the first two forms are eligible for up to \$250,000 building coverage and \$100,000 contents coverage. Non-residential buildings are eligible for up to \$500,000 building coverage and \$500,000 contents coverage. Under the third form, a condominium association can purchase building coverage that includes all of the units and improvements in the units for up to \$250,000 building coverage per unit and \$100,000 contents per building. Certain other types of coverage are also available, depending on the form.

The Problem of Repetitive Losses

Recent efforts by Congress to refine and extend the flood legislation have included a focus on the problem of repetitive losses. For example, the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 established a pilot program for mitigation of repetitive loss properties (*i.e.* currently insured properties that have experienced two or more flood losses of more than \$1,000 each within a 10-year period).

The devastation caused by the 2005 hurricane season has led to further examination of the difficult questions surrounding decisions to rebuild in flood-prone areas. Is it appropriate to continue to rely on New Orleans levees to protect against future flooding? If the answer is yes, but only if sufficient funding is available to properly

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maintain the levees, what happens when promised funding is not made available? What are the consequences of writing off an entire city? Can we afford to rebuild New Orleans? Can we afford *not* to? The answers to questions such as these will inevitably have a profound effect on future development of our national policy on flood hazards.

To read the full text version of this article, please visit http://www.pepperlaw.com/pepper/publications_update.cfm?rid=951.0.

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Peppercast: A Conversation with Spence Abraham

Spencer Abraham, former Energy Secretary and U.S. Senator, currently heads The Abraham Group, an international strategic consulting firm. Pepper Hamilton and The Abraham Group have recently formed an alliance to provide a comprehensive range of legal and business consulting services, focusing primarily, but not exclusively, on the energy sector.

Listen to this short podcast where Spence shares his views on a variety of issues affecting organizations in the United States and throughout the world. During this podcast, Spence discusses the volatile gas prices in the U.S., the global forces that continue to shape the supply and cost of energy, the business implications for organizations that rely on having an ample supply of energy at stable prices, the opportunities where businesses should currently be considering and the trend of private equity firms investing in companies that offer alternative energy options.

Listen today at www.pepperpodcasts.com

Understanding the Changes to the Rules of Civil Procedure: Amendments Move E-Discovery to the Forefront of Civil Litigation

The following excerpt first appeared in a December 2006 Litigation Special Report. To read the entire article, visit http://www.pepperlaw.com/pepper/publications_update.cfm?rid=1016.0.

Not long ago, the retention, photocopying and production of the available paper pertinent to a dispute not only was the norm, but rarely was challenged by litigants or questioned by reviewing courts. E-mails, to the extent they were available, were printed out and included as a small part of the document production.

Times have changed. In today's business environment, e-mail, computer databases and other electronic media have surpassed yesterday's "paper" sources of communication. The majority of businesses use e-mail to negotiate contracts, and an estimated 90 percent of all business records are created and stored electronically.

This overwhelming use of electronic communication has moved issues of "electronic discovery" to the forefront in civil litigation.

To provide guidance and, perhaps, stem disputes before they arise, the Federal Rules of Civil Procedure have been amended to address e-discovery issues. The new rules are applicable to all federal cases filed after December 1, 2006, as well as all pending federal cases "insofar as just and practicable."

The amendments generally address five related areas:

- a) early attention to issues relating to electronic discovery, including the form of production, preservation of electronically stored information and issues of privilege
- b) discovery of electronically stored information that is not reasonably accessible
- c) assertion of privilege after production
- d) application of Rules 33 (interrogatories) and 34 (requests for production) to electronically stored information
- e) guidance on sanctions available under Rule 37 for a party's failure to produce electronically stored information that was lost as a result of routine computer system operations.

Future Issues

The implementation of the amendments is certain to give rise to a new breed of disagreements. While the amendments clarify many of the issues faced by litigants, they also create new questions. For example, the definition of what electronically stored information is "reasonably accessible," and so subject to discovery, necessarily will be decided on a case-by-case basis. What is reasonably accessible to a party in one case may not be reasonably accessible to a party in another case.

The extent to which courts may shift costs of producing electronically stored information to the requesting party is also an open issue. The default rule remains that the producing party must bear the cost of production, but courts in recent years have shown some inclination toward cost-shifting in the retrieval and production of electronically stored information, especially when a party requests information that is difficult and expensive to produce, such as information stored on back-up tapes. Cost-shifting considerations may include the relevancy of the requested information, the availability of the information from other sources and a comparison of the cost to the amount at issue in the lawsuit.

While there certainly will be future issues of dispute, the Rules appear to provide a workable framework to guide counsel and their clients through the increasingly complex and ever-changing challenges of electronic discovery. The rule amendments underscore the importance of an understanding – by the litigant and its counsel – of the role played by electronic media in today's business environment.

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boston au poivre

Pepper opened its newest office on October 23, 2006, at 101 Federal Street in downtown Boston. The Boston office will focus initially on private equity, tax and general corporate work, and the firm plans to build the office systematically with Boston-based lawyers who will practice in the Pepper tradition of providing sophisticated, personalized service to sophisticated clients. The first addition to the Boston office is a distinguished, internationally recognized tax practitioner, Leonard Schneidman. Len, who is well known for his experience in U.S. and international tax planning and the tax aspects of corporate transactions, joined Pepper in September from Foley Hoag in Boston.

new york au poivre

Pepper expanded and relocated its New York office on October 17, 2006, to 420 Lexington Avenue, Suite 2320. The office will serve as the center of Pepper's international practice, and will focus on international work, cross-border transactions, private equity, corporate restructuring and other corporate work. Pepper partner James D. Rosener, head of the firm's international practice is taking the lead on the expansion. Robert S. Hertzberg, co-chair of Pepper's Corporate Restructuring and Bankruptcy Practice Group will lead the expansion of the corporate restructuring practice there. Pepper's International Practice Group is a multidisciplinary group of lawyers serving non-U.S. companies as they enter or expand operations in the United States, U.S. companies as they expand and grow overseas, and U.S. and non-U.S. companies in cross-border transactions, joint ventures and technology transfer. Lawyers in the New York office are proficient in several foreign languages, including Arabic, French and Mandarin.

Pepper Hamilton LLP

Attorneys at Law

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