

# BUSINESS LAWYER

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NORTH CAROLINA  
BAR ASSOCIATION  
SEEKING LIBERTY & JUSTICE

## The Chair's Comments

Our section has assisted NCBA President Mike Colombo with accomplishing several of his objectives for his administration. We have partnered with our colleagues in other sections and have explored ways for in-house attorneys to provide pro bono services. We



Teresa  
Brenner

had a joint CLE program with the Business Law Section in February and a joint CLE program with the International Law Section in May. Thanks to John Orgain of Alex Lee who served as CLE chair of your section for two relevant, worthwhile programs.

The Business Law Section has invited us to participate on its steering committee to implement NC LEAP, which is a program that would provide pro bono legal services to low-income entrepreneurs. We have appointed Timika Shafeek-Horton with Duke Energy to be our representative on the steering committee. One of the issues unique to in-house counsel section is the need to obtain and pay for malpractice insurance when providing pro bono legal services to third parties. This program will serve a real need in communities across the state of North Carolina, and we are honored the Business Law Section has included us.

Rick Hobish, the speaker at our Annual Meeting, shared with us a successful pro bono model where in-house corporate counsel provide legal services to non-profit organizations. Rick serves as the executive director of the Pro Bono Partnership operating in New York, New Jersey, and Connecticut. Rick's speech generated much excitement and interest. Amy Reynolds with Meineke Mufflers will continue

See **COMMENTS** page 2

## Practical Tips for Corporate Counsel for Effective Responses to Patent Trolls

BY DANIELLE WILLIAMS AND STEVEN GARDNER

### I. Introduction

It is becoming more and more common for in-house counsel to receive letters from patent holders that allege patent infringement and demand a license fee or that "invite discussions about a license fee." Ignoring such letters, or giving them short shrift, is dangerous. When a company gains knowledge of a patent, certain duties arise, including the duty of due care. The duty of due care is an affirmative duty to avoid infringing the valid patent rights of others when the company knows of those patent rights. Failure to meet the duty of due care can result in a finding of willful infringement, which can in turn result in an award of triple damages and attorneys' fees. Knowledge of a patent also gives rise to opportunities. These opportunities include the opportunity to make alterations to your client's products or processes that avoid the patent.

Such letters often come from companies that have become known as "patent trolls." The term "patent troll" generally refers to companies whose sole business is the enforcement of a patent or patents in order to collect license fees. Often, but not always, the patent enforced by a patent troll is one purchased from a third party solely for the opportunity to threaten others with suit using the patent and to collect license fees in settlement of such threats.

This article introduces a framework for formulating effective responses to patent trolls. Section II discusses differences between patent trolls and typical patent enforcers and how those differences influence strategies for responding to an accusation of patent infringement by a patent troll. Section III identifies the objective of the patent troll and the importance of knowing where a patent troll is on the timeline of its business model. Section IV outlines some sub-objectives and concerns of patent

trolls. Section V provides examples of effective strategic responses to patent trolls. While much of the discussion in this article is focused on patent trolls, much of the strategy applies to all types of patent assertions.

### II. Patent Trolls: Single-Minded

Patent trolls lack many of the concerns of other types of patent holders that can be exploited in responding to an allegation of patent infringement. For example, patent trolls are rarely concerned with their own exposure to liability. Indeed, patent trolls often have no or few assets besides patents, and normally carry out no business activity besides litigation. Thus, patent trolls typically do not fear counterclaims for patent infringement or unfair trade practices that other types of patent holders may worry about. As another example, a patent troll usually does not have to be concerned about how statements it makes might impact other patents in its portfolio. Moreover, companies

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## Comments *from page 1*

to explore this idea for implementation in the in-  
house bar in North Carolina.

I am pleased to report that your section's chair  
for 2006-07 will be Joe Ritter with Fidelity Title in  
Greensboro and your vice-chair will be John  
Loughrider with Wachovia in Charlotte. D. Clark  
Smith Jr., who is the North Carolina Bar  
Association's president-elect, has appointed your  
leadership team. Joe and John will serve you well.  
Please give them your ideas, support and involve-  
ment.

At your section's annual meeting you elected  
for the 2006-07 year Peggy Watts with Belk Store  
Services in Charlotte as secretary and Guy Brooks  
of Martin Marietta in Raleigh as treasurer. You  
also elected as council members, with terms of  
office ending in 2009, Meredith Stone, Corie  
Pauling, Carter Cook, Harold Lloyd and Jake  
Modla and as a council member, with a term of  
office ending in 2008, Howard Browne. They join  
returning council members Lisa McDougald, John  
Orgain, Tammy Stringer, Calley Gerber, Nancy

Mason, Eric Montgomery and Andrew Spainhour.  
Amy Reynolds will continue serving as the Young  
Lawyers Division liaison.

I would like to thank Gene Pridgen of Kennedy  
Covington who served as the NCBA's Board of  
Governors' liaison with our section. His communi-  
cation with our section was invaluable. Thanks  
also to Jane Weathers of the staff of the NCBA for  
her many years of service to our section. Jane will  
continue her duties at the NCBA, but responsibili-  
ties for our section will be transitioned to Deidre  
Lewis. I have had the pleasure of working with  
both of them this year and know Deidre will sup-  
port us well. Finally, thanks to Mardy Watson with  
Duke Energy for her nine years of service as the  
liaison to our section from the Legal Assistants  
Division.

My term of office as chair ends in mid-June. It  
has been an honor and a privilege to serve you. I  
look forward to seeing you at a future NCBA func-  
tion. ■

## UPCOMING CLE PROGRAMS

### June 14

Ethics TeleSeminar Series -  
"Practical Ethics - How to Use Legal  
Ethics Every Day"  
Telephone Seminar  
Credit Hours: 1.00  
<https://www.ncbar.org/cle/programs/index.aspx?id=236LE3>

### June 15

Sometimes It's All About Losses:  
Understanding the "Passive Activity" and  
"At Risk" Limitations, 1:00 p.m.  
Telephone Seminar  
Credit Hours: 1.00  
<https://www.ncbar.org/cle/programs/index.aspx?id=194TW5>

### June 20

Presenting Evidence with PowerPoint,  
1:00 p.m.  
N.C. Bar Center, Cary  
Credit Hours: 3.00  
<https://www.ncbar.org/cle/programs/index.aspx?id=178BR2>

### June 27

Practical Ethics for Lawyers: 2006  
Update - Part 1, 1:00 p.m.  
Telephone Seminar  
Credit Hours: 1.00  
<https://www.ncbar.org/cle/programs/index.aspx?id=194TW8>

### June 28

Practical Ethics for Lawyers: 2006  
Update - Part 2, 1:00 p.m.  
Telephone Seminar  
Credit Hours: 1.00  
<https://www.ncbar.org/cle/programs/index.aspx?id=194TW9>

### July 13

2006 UCC Article 9 (Secured  
Transactions) Update, 1:00 p.m.  
Telephone Seminar  
Credit Hours: 1.00  
<https://www.ncbar.org/cle/programs/index.aspx?id=195TW2>

### July 18

2006 UCC Article 2 (Sales) Update,  
1:00 p.m.  
Telephone Seminar  
Credit Hours: 1.00  
<https://www.ncbar.org/cle/programs/index.aspx?id=195TW3>

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## Patent Trolls *from page 1*

engaged in usual business pursuits typically consider litigation a significant distraction from their business. Conversely, litigation is often the only business of a patent troll. As a result, a patent troll is more likely to be more aggressive and/or take greater risks in its litigation strategy.

Patent trolls generally do not have the same concerns related to litigation costs, employees, customers, and shareholders that other patent holders might have. A patent troll typically employs attorneys on a contingent fee basis, whereas most other patent plaintiffs incur monthly attorneys' fees. A patent troll normally is not concerned that the invalidation of its patent may result in the loss of dozens or even hundreds of jobs for its employees, as are many producing companies that assert patents. Because a patent troll typically has no customers, it normally does not face pressure from customers to settle litigation. In contrast, a major customer who purchases from both the plaintiff and defendant in a non-troll patent case sometimes pressures the parties to resolve the dispute to preserve its multiple-supplier structure. In addition, a patent troll does not face board members and shareholders who may take a skeptical or contrary view of patent enforcement and litigation in general. There are many other such concerns that the typical patent plaintiff possesses that the patent troll does not.

Often, an effective response to a patent troll is one that increases its uncertainty, doubt, and fear such that the patent troll concludes that the best business decision is to end the accusation or to resolve the accusation with terms favorable to the accused company. Such a goal is not very different from the goal of many defense strategies. However, because of the differences between patent trolls and typical patent enforcers, developing an effective response to patent trolls requires special consideration.

### III. The Patent Troll Objectives

The differences outlined in Section II result in less pressure on the patent troll to cease its accusations than the pressure on other types of patent plaintiffs. In some ways, then, avoiding or ending litigation with patent trolls is more difficult. In many ways, though, negotiation or litigation with a patent troll is simpler than it is with other types of patent plaintiffs. The patent troll has fewer concerns and fewer objectives than most other types of patent owners. This reduction in complexity allows focus. Responses that focus on the unique business model of the patent troll and the corresponding reduced set of objectives and concerns are the most effective.

The typical patent troll has only one objective—receiving as much money as possible, as soon as

possible, for a license of the asserted patent while spending as little time and money as possible on enforcement. The specific monetary goal of a patent troll depends on its business model. Thus, it is important first to understand the business model of the threatening patent troll. Example of such models are:

- ♦A licensing program that seeks licensing fees of \$30,000 - \$100,000 from each of hundreds of targets.

- ♦A licensing program that seeks licensing fees of \$200,000 - \$750,000 from a smaller number of companies, essentially seeking a fee below the cost of defense.

- ♦Seeking a “big pay day”—seeking \$10 million or more from each of a relatively small number of targets.

While a licensee fee demand of \$1 million - \$5 million is not unheard of in patent troll situations, such demands tend to be outside this range. Demands inside this range are more likely to result in a decision by the target to fight the allegation because the cost of defense is much closer to the demand, resulting in a more difficult economic decision regarding a license.

Each model presents its own challenges and opportunities to defense counsel. The first model, for example, presents a challenge in that the cost of analyzing and defending against the accusation can exceed the license fee requested relatively quickly. It also presents a challenge in that plaintiff's representatives often wish to minimize the time they spend with defense counsel. The first model presents an opportunity, though, in that other defendants are less likely to pay much attention to the dismissal or failure to pursue one particular defendant. On the other end of the spectrum, the third model presents a challenge in that the plaintiff often wishes only to push to trial, regardless of mounting evidence of clear invalidity. In this case, the plaintiff hopes that the defendant will feel pressure to settle to avoid even a relatively small possibility of an adverse jury verdict or that the jury will be persuaded otherwise.

Likewise, it is important to know the current position of the business model with respect to the model's time line. In other words, did the patent troll recently begin to enforce the patent at issue, or are there already fifty licensees, for example? If patent enforcement has just begun, the target has a much better opportunity to impact the patent troll's view of the strength of its licensing program and a much better opportunity to threaten the program with invalidating prior art than if 50 big-name licensees are already under contract.

### IV. Sub-Objectives and Concerns of Patent Trolls

There are several situations that patent trolls often seek in pursuit of the revenue side of the objective cited in Section III. These situations, or sub-objectives, include:

- ♦A patent claim that is directed to the use of a critical system whose enjoinder would cause significant harm.

- ♦A patent claim that is directed to high-volume items or production.

- ♦A patent claim that is directed to products or services with profit margins that can withstand a license fee.

- ♦Well-known licensees whose names the patent troll can use to bolster the credibility of its patent.

- ♦Maintenance of a licensing program that allows the patent troll to take a “high” reasonable royalty position.

Objectives patent trolls often seek in pursuit of the cost minimization side of the objective described above include:

- ♦An early trial date.

- ♦A single, favorable venue (litigation in one district that schedules cases for trial relatively early, and not litigation in multiple districts that may delay trial).

- ♦Clustering multiple defendants in a single venue.

- ♦Providing defendants with a set of documents early in the case and maintaining the position that there are no further documents to be had.

- ♦Avoiding motions practice and discovery proceedings to the extent possible.

Flowing from these sub-objectives, significant concerns of patent trolls often are:

- ♦The location and publication of prior art early in the time line of the patent troll's licensing program that clearly and unambiguously anticipates the patent at issue.

- ♦Continuing to invest time and money in a case when it becomes apparent that it is much less likely to succeed than the patent troll initially thought.

- ♦Situations that require that the patent troll expend time and money—for example, target defendant whose position is very different than co-defendant (e.g., with respect to accused products), litigation in multiple jurisdictions, and motions practice (necessary party disputes, etc.).

### V. Responding to a Patent Troll (with Examples)

Thus, in responding to a patent troll, it is important to: (a) know the business model and the patent troll's current position on the time line of that

See **PATENT TROLLS** page 4

model; (b) recognize the unique objectives of the patent troll; (c) identify the unique concerns of the patent troll; and (d) know your client (including its objectives, exposure, tolerance for risk, and view of litigation). A strategic response to the patent troll can be formulated from these considerations.

Of course, underlying all of these considerations is the critical component of understanding the merits of the situation. One must understand the likely scope of the patent claims, possible positions on invalidity, the possible damages exposure to your client, and other aspects of the merits.

Described below are a few actual scenarios and strategic responses with patent trolls. Some of the scenarios have been slightly modified for simplicity. To illustrate a broader framework for responding to patent trolls that can be applied in most situations, only factors (a) - (c) identified above are discussed in relation to these scenarios. Although (d)—know your client—is probably the most important consideration, it tends to be specific to the client and is not discussed in detail here.

**Viva La Difference.** One patent troll sued six defendants in a venue favorable to the patent troll. It was very early in the patent troll's enforcement program. The accused systems of five of the defendants were very similar. The systems of one defendant—our client—were clearly distinct from the accused systems of the other five defendants. We identified prior art that was the same or very similar to our client's systems. We then met with the plaintiff's counsel to point out in clear terms that to reach our client's systems, the plaintiff would need to stretch claim construction beyond that which was needed for the other five defendants, and this would put their position at risk relative to the other five defendants. The patent troll was rightly concerned with stretching its arguments for the sake of a single defendant while also increasing the risk of invalidating its patent. Because the patent troll was more concerned with maintaining its licensing program than with keeping our client out of the marketplace, the matter settled on terms very favorable to our client very soon afterward.

**Present Strong Prior Art Early.** A patent troll sued our client and multiple other companies. It was very early in the patent troll's planned enforcement program. We identified anticipating prior art that had not been cited in any of the substantive letters sent to the plaintiff alleging invalidity and that had not been cited in the other defendants' discovery responses. We met with counsel for the plaintiff and set out in clear terms why the prior art we identified would invalidate the asserted patent. We presented the prior art in a slide show. The plaintiff was concerned that publication of the prior art to the other defendants would result in a refusal by the other defendants to pay any substantial amount in

licensing fees. The plaintiff recognized that it would be better off to resolve the matter with our client immediately and to seek settlement with the other defendants for payment of some amount of money before the others identified the same prior art. We settled the matter on very favorable terms for our client.

**Seek Another Venue; Explore a Stand Still Agreement.** Another patent troll sued our client and several other companies in a venue favorable to the patent troll. The patent troll named as defendant a holding company that had no contacts at all with the venue. The patent troll's enforcement program had been operating for some time. The patent troll had sued and licensed many companies. We filed a declaratory judgment action in a venue favorable to the holding company. Plaintiff then agreed to dismiss its action without prejudice in exchange for our client dismissing its declaratory judgment action without prejudice and for our client agreeing to engage in face-to-face settlement discussions. It is likely that the plaintiff felt very good about its success with other companies in its favored venue and simply did not want to be distracted with a unique lawsuit in a different venue. The matter settled on terms favorable to our client.

**Look For Ways Around the Most-Favored-Licensee Clause.** A patent troll made multiple, credible threats of a lawsuit against our client. It had signed many companies to patent licenses and was nearing the end of its patent enforcement program. The patent troll took the position that unless it received \$X, it would have to file a lawsuit against our client in light of a most-favored-licensee clause in a license it previously signed with other companies. We discovered that the patent troll took this position with multiple other companies besides our client. After exploring options with plaintiff's counsel, plaintiff's counsel became convinced that a "volume discount" would not violate the most-favored-licensee clause, and that if four or five companies agreed to a license at \$X with a group discount of forty percent of \$X, then a resolution could be had. Our client agreed to a license, paying sixty percent of \$X. We do not know whether the patent troll was particularly concerned with the risk that a judge or jury would disagree with its apparent assessment that a "volume discount" would satisfy any most-favored-licensee clause. Since the patent troll's enforcement program was nearing its end, the limited liability company that carried out the enforcement program would likely soon have no assets to satisfy any judgment of a license breach.

**Use the Threat of a Very Interested Indemnitor.** A patent troll sued our client for patent infringement. It was in the middle of its enforcement program (it had signed many licenses, but also had many lawsuits pending and threat let-

ters outstanding). The patent troll had sued many others for patent infringement in relation to the same patent and similar systems. Because of the changing nature of our client's business, the damages exposure was limited to alleged past damages and the threat of a permanent injunction did not concern our client. For the other defendants, a permanent injunction risk was of significant concern and damages exposure was ongoing and potentially substantial. Many of the defendants, including our client, alleged that a particular large company which had provided the systems at issue to the defendants was required to indemnify and defend. The large company refused to defend any of the companies, however, and argued that an indemnity was not required in the particular situation. The large company became convinced, however, that defending our client would give it an opportunity to take one of the cases to trial in an attempt to invalidate the patents while having a limited and defined damages risk. In this way, it could attack the merits of the patents without having to accept indemnification of multiple defendants. The patent troll was concerned with our client's providing an opportunity to this very interested party willing to spend significant resources to seek invalidation of the patent at trial. This possibility influenced the patent troll to resolve the matter with our client on very favorable terms.

**Fight Tooth and Nail.** A patent troll sued our client for patent infringement. It was very early in its enforcement program. Our client had experienced patent trolls previously and decided to take a hard line with patent trolls—no license payment when our client believed that it did not infringe or the patent was invalid. After several years of litigation, the patent troll offered to settle the matter shortly before trial for a very, very low settlement figure that could not be turned down. The patent troll had obtained a verdict against another company and was concerned that invalidation of the patent in trial with our client would impact that verdict.

There are many other possible strategic responses. Other examples include:

- ♦Search for and raise issues that better due diligence on the part of the patent troll's attorneys would have revealed—examples include similar patents or articles by the same inventor, company, or law firm that was not disclosed to the patent office and antecedent basis or other prosecution errors. These issues likely will not, by themselves, cause the patent troll to cease its allegations, but they can cause the patent troll's team to begin to question the strength of its case.

- ♦Change the product or process at issue to design around the patent to cut off damages exposure going forward and to have a clearly defined economic case.

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♦Consider seeking reexamination of the patent at issue by the Patent Office, but carefully consider the risk of having the Patent Office issue a reexamination certificate with all claims intact after having considered the prior art.

♦Consider whether your client is willing to agree to a license at a lower fee in exchange for allowing the patent troll publicize your client's name as a licensee.

♦Consider counterclaims (patent infringement, inducement of patent infringement, unfair trade practices, antitrust, etc.), but realize that counterclaims are usually not influential with a patent troll that has no assets besides the patent at issue.

♦Commission an opinion of non-infringement or invalidity to cut off any allegation of willful infringement.

♦Consider acknowledging validity in exchange for a reduced license fee.

♦On occasion, the patent troll will be interested in the right to enforce your client's patents.

## VI. Conclusion

When faced with a patent troll threat, information regarding (a) the business model and the patent troll's current position on the time line of that

model; (b) the unique objectives of the patent troll; (c) the unique concerns of the patent troll; and (d) your client (including its objectives, exposure, tolerance for risk, and view of litigation) provides the foundation for an effective response. There are a variety of specific responses to a patent troll, some of which are outlined in Section V above. Comparing potential responses with these factors provides a framework that can help identify the response most likely to yield the desired result in the particular situation.

Some basic steps to take when receiving a letter or complaint from a patent holder are:

(1) Limit internal communication to in-house counsel, those in charge of the technology, and outside patent counsel at the beginning, preferably in person or by telephone, as e-mails and uninformed comments regarding the patent can have a significant, negative impact on the risk presented;

(2) Gather information, including (1) whether outside suppliers provide the technology accused of infringement; (2) the names of employees in charge of the accused technology and employees who understand its details; (3) the volume or extent of use of the accused technology; and (4) near-term plans for the technology; and (3) Contact a patent litigation attorney to discuss the patent, the merits,

and strategy in responding (most likely, the patent litigation attorney will wish to (1) examine the patent at issue and its prosecution history; (2) discuss the technology, the patent, and information noted in (2) above with in-house counsel and those in charge of the technology and who understand the details of the technology; and (3) discuss strategy, potential responses, costs, benefits, and risks with in-house counsel and/or another executive of the company). ■

WILLIAMS AND GARDNER ARE PARTNERS IN KILPATRICK STOCKTON LLP, WINSTON-SALEM, WHERE BOTH PRACTICE PATENT LITIGATION. THEY CAN BE REACHED AT [DTWILLIAMS@KILPATRICKSTOCKTON.COM](mailto:DTWILLIAMS@KILPATRICKSTOCKTON.COM) AND [SGARDNER@KILPATRICKSTOCKTON.COM](mailto:SGARDNER@KILPATRICKSTOCKTON.COM). EARLIER VERSIONS OF THIS ARTICLE WERE PUBLISHED IN *INTELLECTUAL PROPERTY LITIGATION* AND IN *IP LINKS*.

# Deleting That E-mail May Cost You Big Bucks

## New “Must Know” Rules of Document Preservation

BY DEBORAH SPERATI

There once was a time businesses relied upon their attorneys, in-house legal departments, and a few select employees to manage the preservation of documents that might be needed in litigation. That time is long gone, and all businesses must immediately address their issues of document preservation, particularly with regard to electronic documents and e-mail correspondence, in order to comply with the increasingly stringent guidelines restricting the destruction of documents. The most challenging aspect of the new rules is the implicit reliance on all employees to understand and comply with the rules. Businesses are no longer allowed to educate only a select few, but now must develop a comprehensive system to enforce rules that require preservation of any document that may be relevant to any current or future litigation.

These policies are commonly referred to as “litigation holds,” whereby all documents related to an account or a particular party are preserved for so long as any litigation may arise with relation to that account or party. The guidelines for litigation holds were brought to the forefront of emerging legal issues when the U.S. District Court for the Southern District of New York issued its opinion in **Zubulake v. UBS Warburg LLC**, 229 F.R.D. 422 (S.D.N.Y. July 20, 2004) (“Zubulake V”). In **Zubulake V**, the Court held that once a party reasonably anticipates litigation, it must suspend its routine document retention/destruction policy and put in place a litigation hold to ensure the preservation of relevant documents. When a party fails to meet these obligations and that failure results in the destruction of evidence, sanctions may be warranted. Although the nature of the sanction depends in part on the state of mind of the destroyer, some remedy may be appropriate even where the destruction is merely negligent.

The preservation requirement discussed in **Zubulake V** becomes extremely arduous when applied to electronic documents. Since the ruling, the issue of document preservation and the scope of electronic discovery has been the subject of proposed amendments to the civil procedure rules on both the federal and state levels. Depending on the jurisdiction of the case, a party’s failure to comply with document preservation rules may result in various

penalties, including adverse instructions to the jury, dismissal of the case by the court, or even monetary sanctions.

In order to avoid sanctions by the court, you should consider implementing the following three-step process: Establish, Educate, and Enforce.

*“In turn, employees must also be aware that the content of an e-mail may later be discoverable and all e-mails should be written with the anticipation that they may one day be used as evidence in a trial.”*

### 1. Establish

You must first establish a document preservation policy that protects any and all documents which may become relevant in any civil action, whether it be bankruptcy, collection on an account, defending lender liability claims, or disputing contract terms. Counsel can assist you in developing a system that will comply with the rules of discovery and protect you from sanctions by reflecting your efforts to preserve documents in compliance with the rules. A well-demonstrated effort to comply with the rules goes a long way in protecting a company from sanctions.

### 2. Educate

Each and every employee who comes into contact with documents related to any contract or account must be educated in order to prevent the inadvertent destruction of documents or deletion of e-mails. Businesses can work with their IT department to coordinate an archiving policy that

will protect aging e-mail correspondence. In turn, employees must also be aware that the content of an e-mail may later be discoverable and all e-mails should be written with the anticipation that they may one day be used as evidence in a trial.

### 3. Enforce

Enforcement of litigation holds and document production during litigation is a collaborative effort. Large corporations often face the additional challenge of multiple departments and office locations handling one account or contract. For example, both consumer and business credit card and creditline accounts often begin at the local branch with a local loan officer setting up the account. If the account holder makes a specific request to the creditor for changes on the account or an increase of credit limit, there will be an additional layer of communication and some documentation of the communication on file with the company’s risk management department. Communications with the creditor may also create notes with the “bank card department” or a general customer service officer. Upon default, the account is then transferred to a recovery department that often has little or no contact with the initial loan officer or the risk management department. These various layers of communication are obvious pitfalls for enforcing a clear documentation preservation policy. Enforcement should be consistent and widespread, which requires frequent communication among departments, management, and counsel.

The ever-changing landscape of electronic storage and document preservation creates many challenges for both large and small companies. Establishing a clear policy, educating employees, and enforcing the policy at all levels are critical steps in protecting yourself and preserving your rights in litigation. ■

SPERATI IS AN ATTORNEY WITH POYNER & SPRUILL LLP, LOCATED IN ROCKY MOUNT.

# CLE: Come, Learn Electronically

BY RAY RUPPERT

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## Telephone Seminar

The third means of obtaining CLE credit

remotely is to participate in a **telephone seminar**. Your CLE Department usually offers one of these programs weekly.

To participate in a telephone seminar, simply register in advance for the seminar. You are given a telephone number and a Web site to download the materials and at the appropriate time, dial in to the telephone seminar and listen to a live speaker. Each program is designed to allow for a question-and-answer period. Since this is a live

*“Webcasting is the broadcasting of a live CLE program over the Internet. Since the program is live, there is no four-hour limit on earning CLE credit.”*

program, it also does not count against the four-hour limit on earning CLE online.

## CLEonTheGo

As of February, your CLE Department is now offering you a fourth means of obtaining CLE electronically. You may now download an audio track of a CLE program to your MP3 player or iPod. This new means of downloading CLE, called **CLEonTheGo**, enables you to actually take the CLE program with you as you travel. You can now listen to a CLE program in your car or while traveling on a plane or train. Like CyberCLE, downloadable manuscripts are included for you to follow the program and to retain for future use. Like CyberCLE, CLEonTheGo is considered online CLE, and you are limited to a maximum of four hours of credit per year, regardless of the online method used to obtain those four hours.

## CeLEStacks

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## Choose Your Service

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