

RSA CONFERENCE 2014

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Mock Trial Using Actual Case on Misrepresentation of Cloud Based Evidence

SESSION ID: LAW-T08



“Mock Trial Using Actual Case on Misrepresentation of Cloud Based Data”

LAW-T08

The "transient" nature of the "cloud" service provider and their vendors; preservation of “cloud” data; digital data forensics and eDiscovery performed relative to “cloud” data; defining repositories and custodians of “cloud” data; all provides for a different set of interpreted conditions, rules and chain-of-custody responsibilities than is normally considered during the litigation and eDiscovery process.

There are other evidentiary issues to include: how do you go about "verifying" cloud data; who owns the data being stored in the “cloud”; when is the data you stored in the cloud no longer “your” data and becomes the service provider’s data; what responsibilities and liabilities exist for protecting, using and deleting “cloud” data?

HYPOTHETICAL FOR MOCK TRIAL

The hypothetical combines two actual cases in which Sylint provided Forensic Expert services. The goal is to illustrate the difficult issues that face the litigator, expert and the court when dealing with evidence, repositories and custodians in the “cloud”.



Case Participants

- ◆ Presiding Judges: Honorable Andrew J. Peck, US Magistrate Judge (NY)
Honorable Frank Maas, US Magistrate Judge (NY)
- ◆ Plaintiff's Lawyer: Steven Teppler, Esq., Abbott Law Firm, Jacksonville, Florida
- ◆ Plaintiff's Expert: Serge Jorgensen, CTO, The Sylint Group, Inc.
- ◆ Defense Lawyer: Lucy Thomson, Esq., Livingston PLLC, Washington DC
- ◆ Defense Expert: John Jorgensen, CEO, The Sylint Group, Inc.
- ◆ Greek Chorus: Judge Andrew Peck & Judge Frank Maas

Parties to the Case

- ◆ LNB – Plaintiff; a Large National Business (LNB).
- ◆ NC – National Competitor to LNB
- ◆ D1 – Defendant #1; former LNB National Sales Manager who joined NC in June 2012
- ◆ D2 – Defendant #2; Customer Relations employee who joined NC in June 2012
- ◆ AP – Additional Party; former LNB employee who joined NC in November 2011.

Case History

- ◆ The Plaintiff is a Large National Business (LNB). Employees resigned from LNB over a period of 8 months. The AP left in November 2011 and took a management position at National Competitor (NC). His position did not threaten LNB which took no legal action.
- ◆ D1, the National Sales Manager and D2, a senior Customer Relations employee, leave LNB for NC. In June 2012 LNB's hires a Forensic Expert Firm to analyze D1's and D2's LNB company computers to determine if Intellectual Property (IP) has been stolen.
- ◆ TRO issued; Hearing scheduled

Mock Trial – Two Part

- ◆ **Mock Trial 1st Part – TRO Hearing Activity and Findings**
- ◆ **Mock Trial 2nd Part – Discovery Conference Relative to Case**



Mock Trial 1st Part – TRO Hearing Activity and Findings

- ◆ Define the Cloud Storage and its characteristics
- ◆ Evidence presented to the Court about what was stored in Cloud was misrepresented.
- ◆ Who is responsible for not explaining the technology and who knew?

Mock Trial 2nd Part – Discovery Conference Relative to Case

- ◆ Background Information – It becomes Complicated
- ◆ Capturing Data and Moving to the Cloud
- ◆ Resolving Cloud Ownership and Responsibility Issues
- ◆ Where to Find the Information

