

# WELCOME LAW

GRIESING LAW<sub>LLC</sub>

PERSONAL ATTENTION | PROVEN RESULTS



**Francine Friedman Griesing**  
215.618.3721  
fgriesing@griesinglaw.com

**Awards:** For 2010, Fran has been listed by CHAMBERS AND PARTNERS USA™ for leading litigation lawyers and by Pennsylvania SUPER LAWYERS.



**Kathryn Goldstein Legge**  
215.618.3722  
klegge@griesinglaw.com

**Awards:** Kate has been named a SUPER LAWYERS 2010 *Rising Star*, an honor bestowed on less than 2.5% of Pennsylvania attorneys

## E-Discovery: What Every Business Person Needs to Know Before Litigation

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Many businesses are not aware that if they are in a dispute they have a duty to preserve all relevant documents from the time they knew or should have known of impending litigation. The failure of businesses and their lawyers to take adequate precautions to preserve and collect information even before litigation ensues has led courts to impose serious sanctions. See e.g. *Pension Committee of the University of Montreal v. Banc of America Securities*, 2010 U.S. Dist. Lexis 1839 (S.D.N.Y. Jan. 15, 2010). For example, in a recent decision, *Pension Committee*, the court found that certain plaintiffs were grossly negligent in failing to meet their discovery obligations for their untimely issuance of “litigation hold letters.” *Id.* A “litigation hold” is a letter that directs a party to a dispute to segregate and protect from destruction certain paper and electronic documents and data that are, or arguably may be, relevant to a threatened or pending litigation, regulatory investigation or audit. A litigation hold letter should be circulated to the appropriate employees and board members once a business knows or should know about an impending dispute.

In *Pension Committee*, the court held that certain plaintiffs failed to preserve all paper and electronic information from the moment they realized there was a potential dispute, even though that realization occurred a few years before these plaintiffs actually filed the suit. *Id.* at \*56-81. As a sanction, the court ordered that at the upcoming trial it would instruct the jury that it could presume that the evidence that is no longer available (because it was not preserved by plaintiffs) would have been beneficial to the defendants and detrimental to the plaintiffs. *Id.* at \*103-06. These plaintiffs were also ordered to pay monetary sanctions. *Id.* at \*106-07.

In addition, the court found some of the other plaintiffs in the case were negligent in handling their discovery obligations for failing to supervise the collection and production of documents and for failing to search every possible location for responsive documents. While the court did not order an adverse jury instruction for these violations, these plaintiffs were also ordered to pay sanctions. *Id.* at \*82-103.

If you are unclear about what your obligations may be in a specific situation, please contact Kathryn Goldstein Legge.

Griesing Law represents public Fortune 1000 corporations and closely held companies in complex business transactions and high stakes litigation, as well as advises its clients on how to reduce risk and contain litigation costs. Our clients are predominately in the hospitality, travel and leisure, foodservice, technology and real estate industries. Prior to launching Griesing Law, LLC, we worked at top AmLaw 100 firms.

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