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04-CV-252

February 16, 2005

Mr. Peter McAbe
Administrative Office of U.S. Court
1 Columbus Circle NE
Washington, D.C. 20544

RE: Proposed Amendments to Federal Rules of Civil Procedure 26 and 37

Dear Mr. McAbe:

As a name partner practicing in federal courts throughout the country with regard to *inter alia* class action securities litigation, I write to express my opposition to the proposed changes to the above referenced Rules of Civil Procedure. As an active practitioner in federal courts, including multi-district litigation, I believe the present level of discretion provided the Court is sufficient to address the concerns that are addressed by the proposed amendments. Unintentionally, the proposed amendments provides the party in possession encouragement to hide or destroy data critical to ascertaining liability and the sequence of communication in complex litigation.

Routine document destruction goes on all the time. The proposed amendments simply facilitate the ease and lack of remedy for this form of evidence destruction. For instance, in one recent case we discovered that correspondence memorializing a key meeting with investment bankers involving hundreds of millions of dollars had simply "disappeared." This correspondence would have disclosed exactly when a company, about to be acquired, expected an offer and involved the contemporaneous issuance of an enormous quantity of stock options based on this information. The destruction of these documents leaves this question unanswered.

By changing the rules, the Federal Rules of Civil Procedure will be seen as approving the practice of hiding information from those outside the company – i.e., shareholders who own it. As electronic data formatting becomes the common rule for storing information, the proposed rule changes render the conduct of complex litigation more difficult by impeding discovering and learning what actually was known and who knew it.

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I would be happy to share specifics of my experiences. If you have any questions, please contact me at my office: 619.238.1333.

Sincerely,

FINKELSTEIN & KRINSK LLP



Jeffrey R. Krinsk

JRK/jar