MOCK MEET AND CONFER AND RULE 16(B) CONFERENCE: WHO IS AT THE TABLE AND WHAT HAPPENS WHEN COUNSEL CAN'T AGREE? ASK THE JUDGE!

ARMA Northern New Jersey Chapter
Your Gateway to Records & Information Management

ARMA Central New Jersey Chapter

ARMA International
ARMA Connecticut Chapter
In the Heart of New England

ARMA METRO NYC CHAPTER

The Honorable Ronald J. Hedges

Principal, Ronald J. Hedges LLC

Ronald J. Hedges is the principal of Ronald J. Hedges LLC. He has extensive experience in e-discovery and in the management of complex litigation and has served as a special master, arbitrator and mediator. He also consults on management and discovery of electronically stored information ("ESI").

Mr. Hedges was a United States Magistrate Judge in the United States District Court for the District of New Jersey from 1986 to 2007. While a magistrate judge, he was the Compliance Judge for the Court Mediation Program, a member of the Lawyers Advisory Committee, and both a member of, and reporter for, the Civil Justice Reform Act Advisory Committee. From 2001 to 2005 he was a member of the Advisory Group of Magistrate Judges.

Mr. Hedges was an adjunct professor at Seton Hall University School, where he taught mediation skills. He was an adjunct professor at Georgetown University Law Center and remains an adjunct professor at Rutgers School of Law—Newark. He taught courses on electronic discovery and evidence at both these schools. He was a Fellow at the Center for Information Technology of Princeton University for 2010-11 and 2011-12. Mr. Hedges is also a member of the College of the State Bar of Texas.

Mr. Hedges is admitted to the bars of the District of Columbia, New Jersey, New York and Texas. He is also admitted to the bars of various federal courts.

ARMA Northern New Jersey Chapter
Your Gateway to Records & Information Management

ARMA Central New Jersey Chapter

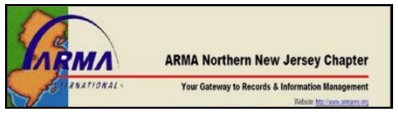
ARMA International — ARMA Connecticut Chapter — In the Heart of New England

ARMA METRO NYC CHAPTER

Mr. Hedges' many publications include *The Sedona Conference Cooperation Proclamation: Resources for the Judiciary* (coeditor) (three editions) (The Sedona Conference: 2014, 2012 & 2011), *Managing Discovery of Electronic Information; A Pocket Guide for Judges* (co-author) (second and first editions) (Federal Judicial Center: 2012 & 2007), *Discovery of Electronically Stored Information: Surveying the Legal Landscape* (author) (BNA: 2007), *The Sedona Guidelines: Best Practices Addressing Protective Orders, Confidentiality & Public Access in Civil Cases* (The Sedona Conference: 2007) (editing team member), "Case Management and E-Discovery: Perfect Together," *DDEE* (July 1, 2009), "Rule 26(f): The Most Important E-Discovery Rule," *New Jersey Law Journal* (May 18, 2009), and "A View from the Bench and the Trenches: A Critical Appraisal of Some Proposed Amendments to the Federal Rules of Civil Procedure," 227 F.R.D. 123 (2005).

Among other things, Mr. Hedges is a member of the American Law Institute, the American Bar Association and the Federal Bar Association. He is a member of the Historical Society and the Lawyers Advisory Committee of the United States District Court for the District of New Jersey. Mr. Hedges is a member of The Sedona Conference Advisory Board, The Sedona Conference Working Group on Protective Orders, Confidentiality, and Public Access, and The Sedona Conference Working Group on Best Practices for Electronic Document Retention & Production. He is also a member of the advisory board of the Advanced E-Discovery Institute of Georgetown University Law Center.

Mr. Hedges may be reached at 201-341-3635 and r_hedges@live.com.



Dawson Horn

Associate General Counsel, Vice President at AIG

Mr. Horn is an experienced attorney with a corporate in house and law firm background. He is well versed in a range of litigation matters including product liability, mass torts, ediscovery, RICO, insurance, franchise, antitrust and procurement/contracting . He also has a significant transactional background as he has lead acquisitions and divestitures.

Phillip J. Duffy, Esq.
Director, E-Discovery Task Force, Gibbons P.C.

Phillip J. Duffy is a member of the Gibbons Products Liability Department and a founding member of the firm's E-Discovery Task Force. As a Task Force member, Mr. Duffy frequently advises clients, publishes, and lectures on information governance, legal hold, and e-discovery and records management best practices. He is a member of the Defense Research Institute's (DRI) Electronic Discovery Committee, where he has served as Annual Meeting Liaison and Membership Chair.

In his role in the Products Liability Department, Mr. Duffy has defended clinical laboratories and healthcare providers in medical negligence matters involving the disciplines of cytology, pathology and cytogenetics, as well as general laboratory testing in the areas of chemistry, hematology, and toxicology for nearly two decades. He has been recognized among New Jersey's leading lawyers in the area of medical malpractice defense litigation by New Jersey Super Lawyers and is a frequent speaker on medico-legal risk management issues, having delivered live presentations to clinicians and laboratory professionals in almost every state.

Education

- Seton Hall University Law School (J.D., cum laude, 1992)
- Editorial Board Member, Seton Hall Constitutional Law Journal
- Rutgers College (B.A., 1989)

ARMA Northern New Jersey Chapter
Your Gateway to Records & Information Management

ARMA Central New Jersey Chapter

ARMA International ARMA Connecticut Chapter In the Heart of New England

ARMA METRO NYC CHAPTER

Gail L. Gottehrer

Partner, Axinn Veltrop & Harkrider, LLP

Gail's practice focuses on class action litigation, labor and employment litigation and other complex commercial matters. She is one of the few defense lawyers to have been involved in the trial of a class action to verdict before a jury.

As an experienced commercial litigator, Gail recognizes the significant and widespread effects technology has on business operations, employee-employer relationships and the practice of law. By understanding and leveraging technology, she assists her clients in maximizing the opportunities and facing the challenges created by advances in technology.

Gail is a member of the Board of Directors of the Greater Hartford Legal Aid Foundation and the Director of the Connecticut Chapter of Women in eDiscovery. She is a member of The Sedona Conference Working Group on Electronic Document Retention & Production and the drafting team selected to update The Sedona Conference Commentary on Legal Holds.

Gail is a graduate of the University of Pennsylvania Law School and a former Law Clerk to the Honorable Murray C. Goldman, Commonwealth of Pennsylvania Court of Common Pleas, Philadelphia County.

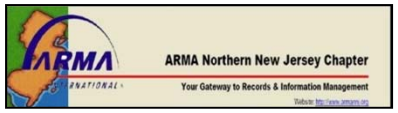
ARMA Northern New Jersey Chapter
Your Gateway to Records & Information Management

ARMA Central New Jersey Chapter

ARMA International
ARMA Connecticut Chapter
In the Heart of New England

ARMA
METRO NYC CHAPTER

Federal Rule of Civil Procedure 26(f): Conference of the Parties; Planning for Discovery.



(1) *Conference Timing.* Except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B) or when the court orders otherwise, the parties must confer as soon as practicable—and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b).

(2) Conference Content; Parties' Responsibilities:

- In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26(a)(1); discuss any issues about preserving discoverable information; and develop a proposed discovery plan.

- The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan. The court may order the parties or attorneys to attend the conference in person.

(3) *Discovery Plan.* A discovery plan must state the parties' views and proposals on:

(A) what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement of when initial disclosures were made or will be made;

(B) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

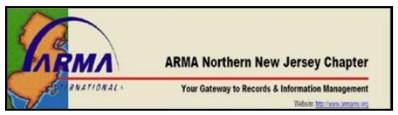
(C) any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

(D) any issues about claims of privilege or of protection as trial-preparation materials, including -if the parties agree on a procedure to assert these claims after production - whether to ask the court to include their agreement in an order;

(E) what changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed; and

(F) any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c).

Federal Rule of Civil Procedure 16(f): Pretrial Conferences; Scheduling; Management



(b) Scheduling.

(1) *Scheduling Order.* Except in categories of actions exempted by local rule, the district judge—or a magistrate judge when authorized by local rule—must issue a scheduling order:

(A) after receiving the parties' report under Rule 26(f); or

(B) after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference or by telephone, mail, or other means.

(2) *Time to Issue.* The judge must issue the scheduling order as soon as practicable, but in any event within the earlier of 120 days after any defendant has been served with the complaint or 90 days after any defendant has appeared.

(3) *Contents of the Order.*

(A) *Required Contents.* The scheduling order must limit the time to join other parties, amend the pleadings, complete discovery, and file motions.

(B) *Permitted Contents.* The scheduling order may:

(i) modify the timing of disclosures under Rules 26(a) and 26(e)(1);

(ii) modify the extent of discovery;

(iii) provide for disclosure or discovery of electronically stored information;

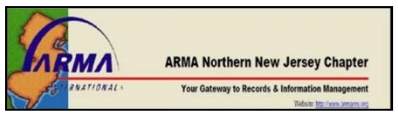
(iv) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced;

(v) set dates for pretrial conferences and for trial; and

(vi) include other appropriate matters.

(4) Modifying a Schedule. A schedule may be modified only for good cause and with the judge's consent.

Federal Rule of Evidence 502: Attorney-Client Privilege and Work Product; Limitations on Waiver



The following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the attorney-client privilege or work-product protection.

(a) Disclosure Made in a Federal Proceeding or to a Federal Office or Agency; Scope of a Waiver. When the disclosure is made in a federal proceeding or to a federal office or agency and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in a federal or state proceeding only if:

(1) the waiver is intentional;
(2) the disclosed and undisclosed communications or information concern the same subject matter; and
(3) they ought in fairness to be considered together.

(b) Inadvertent Disclosure. When made in a federal proceeding or to a federal office or agency, the disclosure does not operate as a waiver in a federal or state proceeding if:

(1) the disclosure is inadvertent;

(2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and

(3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following Federal Rule of Civil Procedure 26(b)(5)(B).

(c) Disclosure Made in a State Proceeding. When the disclosure is made in a state proceeding and is not the subject of a state-court order concerning waiver, the disclosure does not operate as a waiver in a federal proceeding if the disclosure:

(1) would not be a waiver under this rule if it had been made in a federal proceeding; or

(2) is not a waiver under the law of the state where the disclosure occurred.

(d) Controlling Effect of a Court Order. A federal court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court — in which event the disclosure is also not a waiver in any other federal or state proceeding.

(e) Controlling Effect of a Party Agreement. An agreement on the effect of disclosure in a federal proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

(f) Controlling Effect of this Rule. Notwithstanding Rules 101 and 1101, this rule applies to state proceedings and to federal court-annexed and federal court-mandated arbitration proceedings, in the circumstances set out in the rule. And notwithstanding Rule 501, this rule applies even if state law provides the rule of decision.

(g) Definitions. In this rule:

(1) “attorney-client privilege” means the protection that applicable law provides for confidential attorney-client communications; and

(2) “work-product protection” means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.

Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things.

(a) In General. A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) any designated documents or electronically stored information--including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations--stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form;

(b) Procedure.

(1) Contents of the Request. The request:

(A) must describe with reasonable particularity each item or category of items to be inspected;

(B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(C) may specify the form or forms in which electronically stored information is to be produced.

(D) Responding to a Request for Production of Electronically Stored Information. The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form--or if no form was specified in the request--the party must state the form or forms it intends to use.

(E) Producing the Documents or Electronically Stored Information. Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(iii) A party need not produce the same electronically stored information in more than one form.

Facts:

2008: Hone v. BIPI, No. 3-08-cv-1002 (M.D. Fla.) - Lawsuit on behalf of who died while on Pradaxa and participating in the RE-LY Clinical Trial filed and litigation hold put in place

February 2009: Hone v. BIPI, No. 3–08–cv–1002 (M.D. Fla.) LITIGATION HOLD LIFTED

<u>January 8, 2010</u>:

• Academic Health Professionals Insurance Association v. BIPI, No. 2657–10 (N.Y. Sup. Ct., Westchester Cnty.) FILED

•Seeking indemnification for malpractice suit arising out of the RECOVER clinical trial

•In the underlying case, administrators of the RECOVER trial were accused of malpractice and failure to obtain informed consent in relation to a deceased patient

•Later determined that the patient did not take Pradaxa

October 2010:	Pradaxa approved by the FDA
Fourth Quarter 2010:	FDA receives adverse event reports involving Pradaxa
First Quarter 2011:	FDA receives adverse event reports involving Pradaxa
August 12, 2011:	Japanese regulators issue warning about potentially fatal bleeding in some Pradaxa patients
September 2011:	New Zealand Investigation into Pradaxa Deaths
October 2011:	Various Internet discussions regarding Adverse Event Reports related to Pradaxa and plaintiffs pharmaceutical blogs relating to serious bleeds associated with Pradaxa

ARMA Northern New Jersey Chapter
Your Gateway to Records & Information Management

ARMA Central New Jersey Chapter

ARMA International ARMA Connecticut Chapter In the Heart of New England

ARMA METRO NYC CHAPTER

November 2, 2011: Boehringer reports 50 bleeding related deaths

November 16, 2011: Blog states that Boehringer now reports that there have actually been 260 bleeding related deaths

November 21, 2011: Academic Health Litigation Hold LIFTED

February 1, 2012: Demand Letter re: first Pradaxa post-launch product liability case

February 15, 2012: Litigation Hold Issued in relation to Feb. 1, 2012 Demand Letter

March 2012: First post-launch product liability case filed

ARMA Northern New Jersey Chapter
Your Gateway to Records & Information Management

ARMA Central New Jersey Chapter

ARMA International ARMA Connecticut Chapter In the Heart of New England

ARMA METRO NYC CHAPTER

Please feel free to contact us with any questions

Ronald J. Hedges
201-341-3635
r_hedges@live.com

Phillip J. Duffy
973-596-4821
pjduffy@gibbonslaw.com

Dawson Horn
dawson.horn@att.net

Gail Gottehrer
860-275-8195
ggottehrer@axinn.com

ARMA Northern New Jersey Chapter
Your Gateway to Records & Information Management

ARMA Central New Jersey Chapter

ARMA International ARMA Connecticut Chapter In the Heart of New England

ARMA METRO NYC CHAPTER