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**POSTMARK DEADLINE: FEBRUARY 22, 2013**

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**TOPIC**

**This year's contest hypothetical involves an international law firm and ethics questions concerning how the firm handles engagement letters, office restructuring, and taking on new matters in a cross-jurisdictional scenario.**

**FOR THE ESSAY CONTEST HYPOTHETICAL AND RULES VISIT**

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## 2013 ABA LPL Bert W. Levit Essay Contest - Hypothetical

Sponsored by: ABA Standing Committee on Lawyers' Professional Liability and Long & Levit, LLP

You are the general counsel of Snap Crackle & Pop LLP ("SCP"), a law firm located in the State of New Oz. New Oz has adopted the ABA Model Rules of Professional Conduct.

SCP has been retained by Mork, a major pharmaceutical company headquartered in New Oz, to represent it in connection with a federal government investigation under the False Claims Act. In connection with that investigation, Mork has received government subpoenas calling for the production of a wide range of documents and electronic records.

From the 182 custodians identified by Mork as possessing potentially responsive material, SCP collected well over one million documents. Mork emphasized SCP that many of these custodians were privy to non-public information regarding the development of new drugs, pricing, and competitive marketing strategies that was highly sensitive for the company. Thus, the documents might reflect this sensitive information.

SCP does not have adequate legal staff to process document productions of this size. Accordingly, in cases of this magnitude, SCP normally contracts directly with a third-party electronic discovery vendor, Global Consulting ("Global"), where the project is handled by Global's staff of attorneys and specially trained non-lawyers. Global is headquartered in the country of Reviewistan and its attorneys are licensed to practice law only in that nation. Nevertheless, all Global employees are required to attend a week-long seminar on New Oz document discovery law. After Global employees review the documents in the first instance with an eye toward relevance and privilege issues, a more substantive review is performed by Brooklyn Industries ("Brooklyn"), a third-party vendor based in New Oz. This process has saved SCP and its clients millions of dollars. No client has ever complained.

SCP informed Mork's general counsel that they were working with a third-party vendor to run searches in the database and create batches of documents for production. SCP did not offer any more specifics than that.

A mid-level associate at SCP has given the Global and Brooklyn reviewers a summary of the Mork investigation and a checklist of responsive terms. A Vice President at Global, who holds a law degree from the University of Reviewistan, drafted search terms based on the names of the attorneys involved in the matter, that were run in the database in an effort to minimize the number of privileged documents produced.

Working under a tight deadline, Global and Brooklyn reviewed the documents and marked approximately 200,000 of them "responsive" and "non-privileged." SCP promptly produced those documents to the government.

After its initial review, the government realized that the production included thousands of apparently privileged and non-responsive documents. The government immediately notified the lead partner on the Mork investigation, William Crackle, and asked that SCP review the documents again and send an updated set and a revised privilege log.

In the meantime, a private party has filed suit against Mork in the New Oz federal court and has requested production of all documents that Mork has turned over to the government.

Crackle has contacted you in a panic. He has asked for your advice on several issues: (1) How should SCP manage any further rounds of document review? (2) What should Crackle tell Mork, if anything, about the production's failure and about next steps? (3) Does SCP have any potential malpractice liability to Mork in connection with the botched production?

Updated: 11/16/2012