

**DELAWARE STATE BAR ASSOCIATION
E-DISCOVERY AND TECHNOLOGY LAW SECTION**

ANNUAL MEETING MINUTES – TUESDAY, APRIL 27, 2021

Attendance online via Zoom: Bill Denny, Sara Beth Kohut, James Levine, Bruce McCullough, Laura Readinger, Greg Strong

I. Old Business

A. Approval of Minutes

1. Moved by James, second by Laura, carried unanimously.

B. CLE program

1. Greg Strong is working on a spring CLE focusing on blockchain. It is scheduled for June 15, 2021. Greg is planning a one-hour session on banking and digital assets. The second hour would focus on non-fungible tokens.
2. James and Greg have been contacted by a cybersecurity expert witness Eric Cole, who is interested in presenting a CLE. Greg will follow up for details.

II. New Business

A. Election of Officers for 2021-2022. Nomination of last year's slate approved (Bill moved, Laura seconded, passed unanimously):

1. Chair: James Levine
2. Vice-Chair: Sara Beth Kohut & Greg Strong
3. Secretary: Bruce McCullough

B. DSBA Journal—Technology Tips column

1. James had a conversation with DSBA President-Elect Kathy Miller about participating in writing articles now that Richard Herrmann has retired. The suggestion is that the technology Inn of Court takes 4 months, our section takes 4 months, and the Young Lawyers section takes 3 months. James will follow up with Kathy. Laura will coordinate our section's participation.

C. Discussion of recent e-discovery and technology law developments

1. Bill reported on facial recognition technology. A company is scraping facial recognition from the internet. Many entities are using it, not always disclosing this. There is a Michigan ACLU lawsuit for a wrongfully arrested person. The facial data was obtained without probable cause. The software is more accurate for white people than others.
2. James reported on the *WeWork Litigation* decision on 12/22/2020 (Del. Court of Chancery, Civil Action No. 2020-0258-AGB). The issue was whether attorney-client privilege was breached by using work email. The court concluded there was no expectation of privacy with a company email account.
3. Bruce reported on U.S. Supreme Court 03/30/2021 arguments in *TransUnion LLC v. Ramirez*, a case in which Ramirez brought a class action lawsuit against TransUnion, alleging that it incorrectly placed a flag on his credit report; the flag suggested that Ramirez was on a list of potential terrorists and criminals maintained by the U.S. Department of the Treasury's Office of Foreign Assets Control (the "OFAC list") because his name was similar to two individuals whose name were on that list. There were issues of typicality in this class action but also whether there were damages if there was no disclosure to third parties or even the subject person.
4. Laura noted that issues of evidence preservation are arising. She is finding in practice that many people have an iPhone setting that automatically deletes messages after a certain period. When a litigation hold is in place, this becomes a problem if the setting is not updated.
5. Greg reported on the issue of whether a digital asset is a security. The SEC had filed an action against Ripple Labs. A purchaser Tetrakon filed a Court of Chancery action alleging that the SEC action triggered its rights to get its purchase price returned but the Court said a the SEC actions short of a final determination did not constitute a "Securities Default." (*Tetrakon Financial Group Limited v. Ripple Labs Inc.*, Del. Court of Chancery, C.A. No. 2021-0007-MTZ, 03/19/2021).

III. Adjournment: The business on the Agenda was completed and the meeting was adjourned. Our next meeting is July 27, 2021, and the following meetings will be October 26, 2021, January 25, 2022, and April 26, 2022, all at 12:00 noon.

Respectfully submitted,

Bruce McCullough