

## LITIGATION UPDATE

### **Amended Federal Rules of Civil Procedure Extend Work Product Privilege to Draft Expert Reports and Other Communications**

Clients who retain expert witnesses are often frustrated by the elaborate steps their attorneys must take to protect expert communications from disclosure. A recent amendment to the Federal Rules of Civil Procedure, however, addresses that frustration by extending the work product privilege to protect from disclosure draft expert reports and most communications between experts and attorneys.

On December 1, 2010, important amendments to Federal Rule of Civil Procedure 26 (and other rules) take effect. Rule 26 addresses required disclosures by retained expert witnesses. The amendment to Rule 26(b) will now protect drafts of expert reports and communications between a party's experts and attorneys from discovery pursuant to the work product privilege.

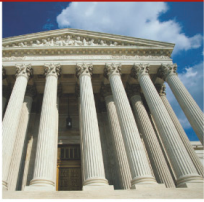
Prior to this amendment, Rule 26 provided for broad disclosure of draft opinions and communications between experts and attorneys. The protection of draft opinions and communications between experts and attorneys will provide litigants with significant cost savings. Experts and attorneys may now communicate freely via electronic mail instead of engaging in time-consuming exercises designed to avoid creating potentially discoverable communications. The amendment allows attorneys and experts to exchange draft opinions for review and discussion without fear of the consequence of the production of such communications. It also eliminates attorney time spent negotiating stipulations with opposing parties in order to avoid disclosure of this type of discovery.

Experts and attorneys must still be mindful, however, that facts, data and assumptions provided by the attorney to the expert for consideration in forming an opinion are, and will remain, discoverable. Thus it remains important for experts to conduct their own research and for attorneys to provide a balanced universe of facts and data to avoid the appearance of bias or unreliability in the expert's opinions.

#### **FOR MORE INFORMATION**

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