

# 2016 Corporate Counsel Institute Lessons Learned From Trial

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## Juries Hate “Bad” E-mails

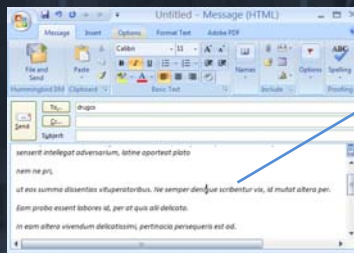
(Opposing Lawyers Love Them)

- If you are willing to have it blown-up in a courtroom, *then by all means*, hit:



## E-mail Often Hurts

An e-mail from an administrator within a pharmaceutical company regarding side-effects of a diet drug:



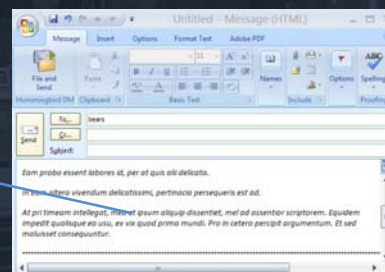
*"... Can I look forward to my waning years signing checks for fat people who are a little afraid of a silly lung problem?"*

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## E-mail Often Hurts

Bear Stearns executive's frank observation came while he and his boss were assuring investors that the subprime funds they ran were still sound

*"... The entire subprime market is toast"*



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## E-mail Education

- Inappropriate comments in e-mail will be grounds for discipline
- Follow Through – a few examples will spread the word
- Train employees on what to say and what not to say
  - Treat as official letter
  - 4-Letter words, sarcasm, and name calling don't play well
  - Don't spread rumors
  - Assume e-mail will be seen by upper management
  - Use personal e-mail accounts for personal matters

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## Containing E-mail: Catch 22

- 100 Billion E-mails sent each Day
  - Est. 132 Billion by the end of 2017
- Containment:
  - Set data quotas on e-mail
  - Eliminate ability to archive e-mail
  - Sweep and delete e-mail on regular basis
- Preservation:
  - Document an official document retention policy

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38<sup>th</sup> Annual Corporate Counsel Institute session

"Lessons Learned from Trial"