

## Case Summary

### In re Lernout & Hauspie Sec. Litigation

222 F.R.D. 29 (Mass. 2004)

#### **A Party Who Voluntarily Discloses an Email Message Cannot Claim Attorney-Client Privilege When Refusing to Turn Over Other Emails Regarding the Same Subject**

Investors who held equity in the software firm Lernout & Hauspie brought a class action suit for securities fraud against the software firm as well as its accounting firm, KPMG. One of the issues in dispute was whether emails sent from an audit partner at KPMG to his legal counsel were protected by attorney-client privilege. The accounting firm had received anonymous calls from a sales rep that worked for Lernout & Hauspie. The sales rep did not identify the firm he worked for to the audit partner. The sales rep asked a partner in the audit department about certain sales procedures that the software firm had been engaging in, and whether they were illegal. The partner at the accounting firm told him that the procedures were indeed illegal.

The sales rep did not reveal his identity, but rather gave the partner clues as to who his employer was. In response to the conversations that the partner had with the client company's sales rep, the partner contacted the accounting firm's legal counsel via email to seek advice. In all, there were 15 emails that discussed the situation. In discovery, one of the emails was accidentally released by KPMG to the class plaintiffs. The class plaintiffs requested the rest of the emails during discovery, and KPMG claimed that they were protected by attorney-client privilege.

#### **Decision**

The court ruled that the "accidental" disclosure of the first email acted as a waiver of the attorney-client privilege with respect to that email and all others relating to the same subject.

Privileged Electronic Documents