

GE Suffers a Redaction Disaster

General Electric's sensitive information easy to access behind black veil

By Douglas S. Malan
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Lawyers involved in the class action sex discrimination case against Fairfield, Conn.-based General Electric in 2007 would rather you not read passages from various filings.

After all, the plaintiffs' firm, Sanford, Wittels & Heisler in Washington, D.C., took the time and effort to black out reams of pages in numerous briefs to make them inaccessible to the public -- or so they thought.

But as of late last week, you could download several documents through [PACER](#)'s federal court filing system, copy the black bars that cover the text on the screen and paste them into a Word document.

Voilà. Information about the inner-workings of GE's white, male-dominated management and their alleged discriminatory practices against women, which is supposed to be sealed by court order, appears with little technical savvy required.

"I didn't know that," plaintiffs' lead counsel David W. Sanford said from his office early last week.

Neither did Patrick W. Shea of Paul, Hastings, Janofsky & Walker in New York, which serves as GE's outside counsel in the case.

Shea said the two sides are in mediation after Judge Peter C. Dorsey in New Haven, Conn., denied GE's motion to dismiss on May 8.

Now, the game may have changed with revelations that there's a large leak of information in the case, though Shea never said as much. He referred all questions to GE, whose spokesman, Gary Sheffer, wouldn't comment on how the course of the case might be altered.

"All parties agreed that the documents would be filed under seal," Sheffer said. "We acted under belief that they were filed under seal, and we're concerned."

When asked what GE's legal reaction might be, Sheffer said: "We're considering our options."

Late last week, Shea contacted Sanford to discuss the matter. Sanford, the plaintiff's lawyer, then called the *Law Tribune* to shed more light on the matter.

"I wasn't aware of the severity of this problem," he said. "Certain documents have been filed improperly by us. If this redacted material is in the public domain, it becomes a problem for GE and for us.

"We're going to try to take steps to correct that error. We're doing everything we can today (last Thursday)" to make emergency, corrected filings with federal court clerks who are aware of the problem, Sanford said.

PACER account representative Shawn Robledo, who works in PACER's service center in San Antonio, also was unaware of the problem until she was guided through the process of downloading, copying and pasting.

"We need to report this to the court," she said. "We've never had this problem come up. I've been here for years and have never seen [a redaction] done like this."

The PACER service center is operated by the Administrative Office of the U.S. Courts in Washington, D.C.

Spokesman Richard Carelli said PACER employees do not check filings to make certain that redacted information actually is inaccessible. "The total responsibility rests with the lawyers" to redact properly, he said.

Lorene F. Schaefer, a lawyer in the company's Erie, Pa.-based GE Transportation, accused company officials in her lawsuit of giving unfair preference to men in promotions to top-paying legal jobs.

The class action lawsuit potentially seeks damages of \$500 million. It also seeks an injunction to halt GE's pay and promotion policies and practices, and names Chairman and Chief Executive Officer Jeffrey R. Immelt, General Counsel Brackett B. Denniston III and numerous other executives as defendants.

Schaefer filed the lawsuit last April after learning that she was to be demoted from her job as GE Transportation's top legal officer. She was placed on paid administrative leave last May after complaining about her demotion.

Schaefer had been an entry-level executive since 1997, and a GE employee since 1994. In 2007, she was paid \$380,000, including bonuses.

METADATA

The security breach in her case underscores a hot issue in the legal profession involving uncovered trails of electronic data, known as metadata. Where once a black marker strike on a piece of paper was sufficient, redaction in the digital world requires special software and the know-how to delete the words behind the shield.

Sloppy information management "has been a huge problem" for lawyers, said Connecticut Chief Disciplinary Counsel Mark Dubois. "Metadata is a fascinating area of developing law. It is much discussed in the fields of risk aversion and risk management."

Dubois said a lawyer or law firm who has insufficiently redacted information in a case could be in violation of a host of ethical rules and an easy target for a malpractice lawsuit.

Redaction problems often arise when people use old versions of Adobe software, which turns paper documents into an easy-to-read electronic Portable Document Format, the format of choice for PACER and many other web sites with multiple documents.

There are ways to hide the text in older versions of Adobe, but the process is "cumbersome" and requires multiple programming steps, said Glastonbury attorney N. Kane Bennett, a member of the Connecticut Bar Association's Legal Technology Committee.

"With the newest version of Adobe, it is pretty simple to hide the text with a black box and then scrub the hidden text behind it," said Bennett, who was unfamiliar with problems in the *Schaefer* case. "This prevents people from copying and pasting into a Word document."

There's also a popular software program called [Redax](#), manufactured by Appligent Inc., which is a plug-in application for Adobe Acrobat Standard or Professional 6, 7 and 8, according to its web site. It promises to "permanently" remove sensitive information from PDF documents at a starting price of \$249.

In 2005, the Department of Defense suffered through a similar dispersion of classified information. Redacted segments of an investigative report on the shooting death of an Italian journalist by U.S. soldiers in Iraq could be copied and pasted from a PDF into a Word document.

Plaintiff's attorney Sanford couldn't say what process or software his law firm used to redact the information in the *Schaefer* case. "Quite frankly, I'm not involved in the mechanics," he said.

Paralegals were responsible for redacting the information properly before filing the briefs electronically, but they were out of the office and unavailable for comment last Thursday, Sanford said.

He said the firm is not considering any disciplinary action against them.

"Anything that happened here was an innocent mistake," he noted. In terms of electronic filing, "people are learning as they go."

<http://www.law.com/jsp/legaltechnology/pubArticleLT.jsp?id=1202421717785>