

Defensible E-Discovery Processes

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Session LIT1
August 23, 2010

What is Defensible?

de·fen·si·ble

— di'fɛn sə bəl/ — [dih-fen-suh-buh l]

1. capable of being defended against assault or injury: *The troops were bivouacked in a defensible position.*
2. that can be defended in argument; justifiable.

Source: <http://dictionary.reference.com/browse/defensible>

Part 1

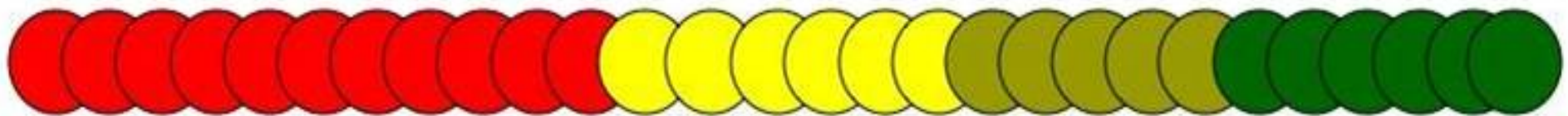
Meets a Legal Evidentiary Standard

Criminal

Civil Litigation

Jury Trial

Court Trial



Felony Prosecution

Quasi-criminal

Civil Court

Arbitration & Mediation

Regulatory

Clear & convincing evidence,
beyond a reasonable doubt.

Preponderance of the evidence,
more likely than not

Part 2



Accurate and Effective

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 OCT_TEXT : From: REDACTED
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 Subject: ***Early Look At The Market 9/19

Early Look At The Market

In this issue: |

- Focus
- Upcoming events
- Macro/liquidity/Politics stories
- Top Stock stories
- M&A
- Money Raising
- Corporate news by sector
- International Wrap

REDACTED

- Focus at 7AM: SPZ up 45-- the uncertainty that erased \$3.1 trillion from global stocks in the first four days of this week reverses on gov't moves, per BBG data. while the Dow industrials may be off 16.9% this year, that's better than most major international stock indexes, including Japan's Nikkei average and Brazil's Bovespa -- among the world's best performers, WSJ notes
- ***Treasury officially announces Temporary Program For US Money Mkt Funds....extending FDIC-like guarantee to money market funds
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- **DXY at 78.8 (up .8)...The dollar's first increase against the euro** in three days...much stronger vs the yen today
- **Rates up a lot:** 10 Yr - 3.64 - ; 2 Yr - 1.93 - bond dn 14/32
- **Gold** futures for December dropped as much as \$68.50, or 7.6% percent, to \$828.50/oz in electronic trading, the biggest percentage decline since Nov. 7, 1980; has now seen a bounce back to \$838/oz.
- **Crude** has climbed back above the \$100/bbl level, up nearly three bucks on the day..
- **EUROPE'S DOW JONES STOXX 600 INDEX RISES 6.4%, MOST EVER**
- **London FTSE** up 8%
- **The MSCI Emerging Markets Index** of stocks jumped 5.6 percent to 810.60.
- **The yield curve flattens dramatically** with the front end bearing the brunt of the selling pressure as recent flight-to-quality flows are reversed. The 2-year/10-year benchmark yield spread tightens to +172.0 bps from +185.0 bps Thursday.
- **Emerging Market Credit Spreads Tighten Sharply On Rescue Plan** - Russia, Ukraine and Turkey were among the top gainers in sovereign credit derivatives markets
- All China Shares End Limit-Up On Gov't's Mkt-Support Measures
- **Financial worldwide have a vicious rally:** RBS up 40% , HBIS up 36% ; Macquarie Group Ltd., Australia's largest investment bank, soared a record 38 percent....note, Korea temporarily halts program trading after markets surges by more than 5%

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Part 3

Measurable and Validated
Did you perform the analysis?



A close-up photograph of a white plate containing five sausages, a slice of lemon, and a portion of sauerkraut. The sausages are arranged in a row, showing a golden-brown, slightly charred exterior. The lemon slice is on the left, and the sauerkraut is on the right. The background is a light-colored surface.

Part 4

Explainable

Knowing/understanding what you did
and being able to explain it

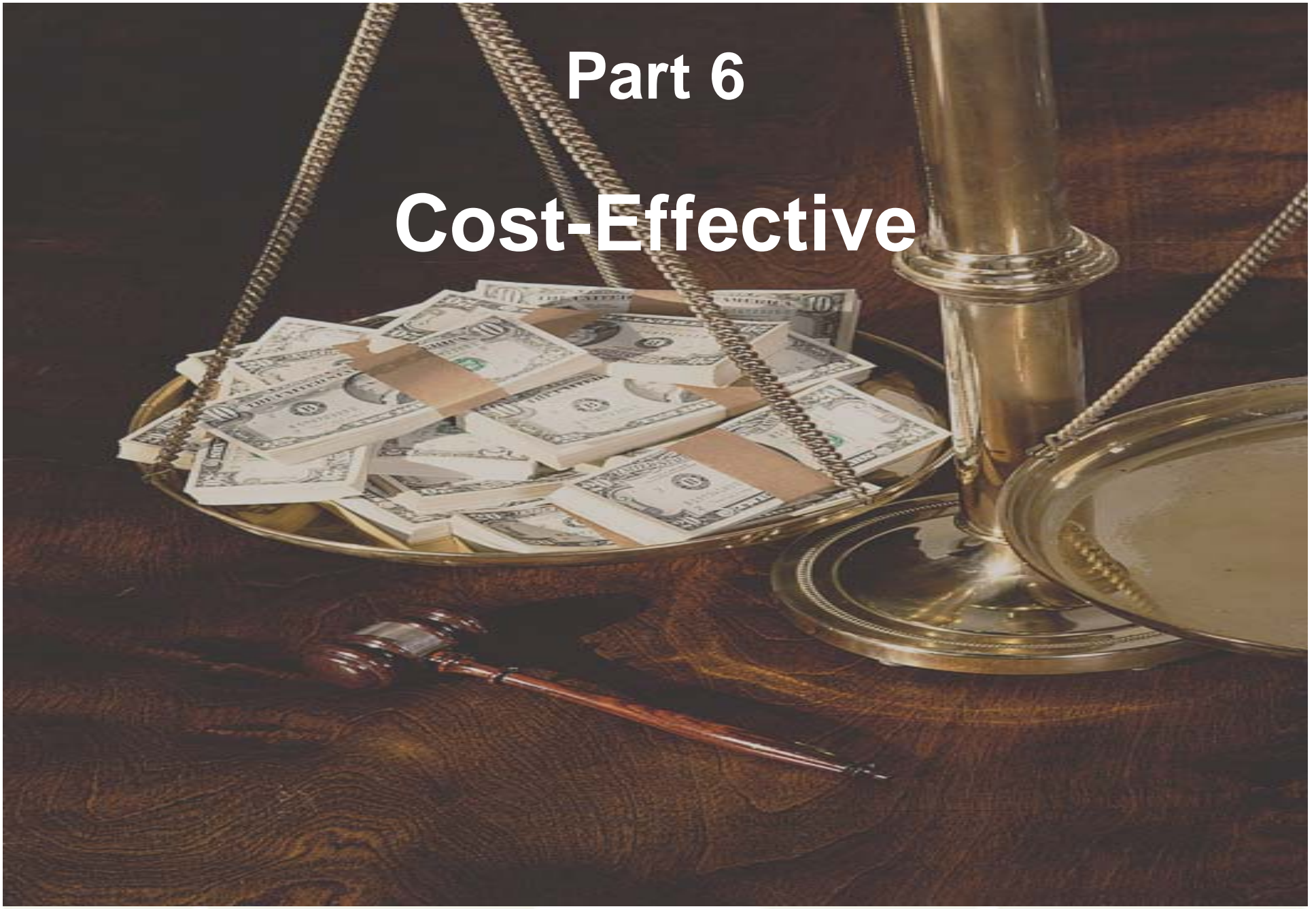
Part 5

Consistent and Repeatable but Appropriate to Context



Part 6

Cost-Effective



Part 7

**Reflects a Sense of Fairness and
Good Faith**



Referenced Citations

- Ford Motor Co. v. Edgewood Properties Inc., 2009 WL 1416223 (D.N.J. May 19, 2009)
- Mt. Hawley Ins. Co. v. Felman Production, Inc., 2010 WL 1990555 (S.D. W.Va. May 18, 2010)
- The Pension Committee of the University of Montreal Pension Plan, et al. v. Banc of America Securities, et al., 2010 WL 184312 (S.D.N.Y. Jan. 15, 2010) (Amended Order)
- Phillip M. Adams & Assoc., LLC v. Dell Inc., 2009 WL 910801 (D.Utah Mar. 30, 2009)
- Qualcomm Inc. v. Broadcom Corp., 2008 WL 4858685 (S.D. Cal. Nov. 7, 2008)
- Rimkus Consulting Group, Inc. v. Cammarata, 2010 WL 645253 (S.D. Tex. Feb. 19, 2010)
- Roffe v. Eagle Rock Energy GP, et al., C.A. No. 5258-VCL (Del. Ch. Apr. 8, 2010)
- Victor Stanley, Inc. v. Creative Pipe, Inc., 250 F.R.D. 251 (D. Md. 2008)

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