Avoiding Traps of Electronic Discovery and the Email Nightmare

Fact Situation

- Bank is trustee of a trust created by the late D, who was a good customer of Bank. As a result of D's death, an apartment building which he owned became a trust asset.

- Bank held a mortgage on the apartment building.

- Bank as trustee listed the building for sale after T, the Bank's trust relationship officer, determined that it would not be in the trust's best interests to hold the building as an investment. An independent real estate broker recommended the asking price.

- The building was sold to B, who happened to be a commercial lending officer of Bank stationed in the United Kingdom. He did not know D or T. B's employment was subsequently terminated by Bank.

- The sole current beneficiary of the trust, D's child named C, brings an action against Bank for breach of trust alleging that Bank had assured D that it would not sell the building; that the price realized was inadequate; that selling to B was an act of self-dealing; and that paying back Bank's mortgage at the time of the sale was an act of self-dealing.

- C's attorney seeks to discover all communications by and among Bank employees related to this building and all communications between Bank and D.

- Bank's in-house counsel realizes that in addition to corporate email, B and T may have used their personally-owned computers, text messaging and instant messaging as part of their routine communications. It also is possible that communications concerning the building were deleted in these various communications media. Help!