MANAGING DATA IN A LITIGIOUS WORLD

Almost 99% of today's information created by businesses is generated and stored electronically. The ability to easily and conveniently store large amounts of data has created a hidden liability that did not exist in the age of when companies maintained its information primarily in paper format. This hidden liability is twofold. First, companies create more information then they know what to do with. Second, companies sometimes delete or destroy data and information that they actually do need.

For the unwary, these hidden liabilities may become exposed when your company is faced with a lawsuit.

In today's litigation, the age of electronic data has generated a paradigm shift away from traditional paper documents to digital information. This shift has changed the discovery process in litigation by changing what attorneys are looking for; how they are looking; and where they are looking for relevant information. Companies can expect in today's litigation that the way it stores and preserves electronic information will be a central topic during the discovery process that will involve not only your record custodians, but also your information technology department. How well a company manages and preserves its electronic information may be an outcome determinative factor for it in litigation.

Today, companies that find themselves involved in a lawsuit oftentimes are faced with attacks through the discovery process as to how they typically store and delete electronic information. The purpose of this inquiry is to set the expectation as to what electronic information, such as e-mails, the company should or should not reasonable have at its disposable for discovery purposes. Companies that do not have a well-drafted and followed record retention plan that addresses electronic information and which incorporates a comprehensive litigation hold policy may find itself at a significant disadvantage in trying to defend what might otherwise be a winnable case. That is why it is more important than ever for all companies, both large and small, to effectively manage their electronic information. This means that companies must be litigation ready by taking affirmative actions that effectively manages and retains electronic information. It is simply too late to start thinking about the manner and method of retention and destruction of electronic data after you have been served with a lawsuit.

The best tools to avoid these hidden liabilities is a record retention policy that addresses electronic information as well as a litigation hold policy that is designed to preserve electronic data once litigation is reasonably anticipated. A record retention policy should be designed so that your company does not destroy information that it is obligated to maintain and at the same time the policy should be designed to destroy or delete information that the company no longer needs and/or is no longer mandated to maintain. Most companies have

some sort of document retention policy. These retention policies were originally implemented to manage the volume and space occupied by paper documents. Companies have been less diligent, however, in applying their retention policies to the electronic information that they store on their servers and individual computer hard drives. This lack of diligence in managing electronic data has created a treasure trove for plaintiffs' lawyers looking for the proverbial "smoking gun," such as that e-mail that explains exactly what motivated the company's decision to terminate that troublesome employee.

A litigation hold policy has long been an important concept in litigation. In simple terms, it means that once you are sued, you have to stop destroying documents. It is an easy concept to understand when applied to paper documents, but it becomes a much more complicated task when dealing with electronic information. Electronic evidence can easily disappear, be altered or destroyed if not properly preserved. For example, some companies' computer systems provide for automatic deletion of e-mails and documents, so stopping that process takes an affirmative effort on behalf of management. When implementing a legal hold, a company needs to address the hold requirement from a team effort. Business units, IT, records management and custodial personnel, and either in-house or outside counsel need to be involved and work together in the process of implementing the hold.

How your company routinely stores or destroys electronic data has become an increasingly important subject during a lawsuit. As more lawyers become sophisticated in this topic, companies can expect, as routine, that there electronic records management policies and practices will be warily scrutinized. Consequently, it will be too late to start thinking about electronic data, the method and manner of retention as well as the deletion of such data after you have been served with a lawsuit. The failure to have a properly drafted record retention policy as well as a litigation hold policy may result in serious and adverse consequences for your company and may compromise your company's ability to defend itself in a lawsuit. For example, failure to have these policies in place can result in court-imposed sanctions, adverse jury instructions and significant monetary awards. Thinking ahead and addressing the hidden liabilities created by your electronic information can save your company time and money, and, more importantly, potentially prevent your company from having to incur an unnecessary judgment as the result of electronic information being inadvertently deleted.

Register for Managing Data in a Litigious World Webinar on July 22

THE LAW FIRM OF OCHD WELCOMES ATTORNEY

TIMOTHY CAPREZ

O’Neil Cannon recently added Attorney Timothy Caprez as part of the law firm’s expansion of its litigation and corporate law practices. Mr. Caprez brings to OCHD significant experience in counseling and representing clients with respect to compliance and dispute resolution efforts in heavily-regulated industries and occupations, with a particular emphasis in complex healthcare and labor and employment issues. Licensed in Wisconsin and Illinois, Mr. Caprez advises and litigates on behalf of entities and individuals in relation to a wide variety of corporate governance, transactional and employment and personnel management matters.

O’Neil Cannon, founded in Milwaukee in 1973, is a full-service legal practice that primarily focuses on providing business law and civil litigation services to closely-held businesses and their owners. The firm represents corporations, institutions and partnerships at all stages of the business life cycle, helping them start, grow and transition from one generation to the next. We also assist business owners with their personal legal needs including tax and estate planning, family law and litigation – including personal injury litigation.

ATTORNEY CANNON AMONG MILWAUKEE’S FIVE STAR WEALTH MANAGERS

Tom Cannon of O’Neil Cannon is among the 7 percent of the wealth managers in the Milwaukee area, to be chosen as a FIVE STAR: Best in Client Satisfaction Wealth Manager. Cresendo Business Services, an independent third party, presents this award to assist consumers in selecting a wealth manager who provides exceptional client satisfaction. Wealth managers were evaluated based upon nine criteria, reviewed by regulatory agencies and a blue-ribbon panel which was comprised of knowledgeable individuals from within the financial services industry.

Attorney Cannon and other members of OCHD represented the majority of directors of the De Rance Foundation, the world’s largest Catholic charity from 1984-1999. In 1992, Cannon helped establish the Archdiocese of Milwaukee Supporting Fund with an initial gift of $70 million. This entity continues to be a major philanthropic presence in Milwaukee today.

OCHD is a full-service legal practice with offices in Milwaukee and Port Washington. Founded in 1973, the firm focuses its practice on corporate law, tax, estate and succession planning, real estate and construction and civil litigation.

ATTORNEY JOSEPH M. MAIER JOINS THE OCHD TEAM

O'Neil Cannon is pleased to announce that Attorney Joseph M. Maier has joined the firm. Joe assists businesses, their owners and investors with employee benefit design and ERISA issues and executive compensation planning, income tax planning surrounding the creation, operation and liquidation of business entities and the creation, formation, merger and acquisition of businesses. He also assists business owners and families with multi-generational succession planning and estate planning to include wealth management.

Joe graduated #1 in his class from the University of Wisconsin-Madison and is the editor of the *UW Law Review*. He is a member of the Society of Financial Services Professionals and the Wisconsin State Bar.

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"MANAGING AND EMBRACING WORKPLACE DIVERSITY" WEBINAR – JUNE 30, 2009

Today's workplace is becoming significantly more diverse. It is predicted by 2020, the number of African-Americans, Hispanics, and Asians in the U.S. labor force will increase by 42 million while at the same time the number of Caucasians will only increase by 10 million. This demographic change in the U.S. labor force will create interesting challenges for employers especially as to how your company defines and addresses diversity in the workplace.

Oftentimes, employers confuse the concepts of affirmative action and diversity. These concepts are not same. Diversity is a business management concept under which an employer promotes an inclusive workplace by recognizing that employees bring to the workplace unique perspectives that provide a competitive advantage in an increasingly global economy. The U.S. Supreme Court has recognized that the benefits of diversity "are not theoretical but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas and viewpoints."

However, in trying to achieve diversity, there are many traps for the unwary. The EEOC will continue to focus its enforcement resources more closely on how employers' policies and practices affect the hiring and advancement of individuals within protected demographic groups. Given the EEOC's enforcement initiatives, employers must take a closer look at its hiring and advancement policies and practices to make sure that they are achieving their diversity objectives and have not created unintended barriers to individuals based upon any protected characteristic.
The Illinois Chamber of Commerce together with O'Neil Cannon will present this important webinar regarding workplace diversity and what employers need to understand about diversity to achieve competitive success.

LEARN:

- About the Changing Demographics of the U.S. Labor Force
- About the Difference between Affirmative Action and Diversity
- A New Understanding for Diversity
- About the EEOC's E-RACE Initiative
- What is Cultural Competence
- Best Practices for Achieving Workplace Diversity

Register Here

"AN EMPLOYER'S GUIDE TO MANAGING ELECTRONIC DATA IN A LITIGIOUS WORLD" WEBINAR – JULY 22, 2009

In today's fast-paced world, e-mails and instant messaging are the most common way we communicate in the workplace. And unlike a spoken word, which might still be reverberating someplace in space and time but no longer can be replayed, the e-mail, if not already copied, is at least usually recorded, stored, and available for future discovery. Although we believe that our e-mail will soon be forgotten after we send it, our failure as employers to manage this electronic data can create risks of unanticipated magnitude if the subject matter of the e-mail becomes the subject matter of our next employee-initiated lawsuit.

With recent changes to the federal rules of civil procedure, it is no longer an option for employers to have a plan to manage its electronic data. Learn what you need to know as an employer in today's litigious world about what steps you can take now to manage your electronic data and avoid the hidden liabilities that such data creates for every employer.

Well drafted policies that are uniformly enforced and understood by your employees can reduce the fear of expensive litigation and provide your company a framework in which to effectively manage its electronic information.

This webinar is designed to provide practical information for HR management, in-house counsel, and IT professionals.

Register Here

"SUPERVISOR TRAINING: SUCCESSFULLY MANAGING A 21ST CENTURY WORKFORCE" SEMINAR – MAY 15, MAY 22, 2009

The Illinois Chamber of Commerce and the law firm of O'Neil Cannon have developed an all-day seminar to educate and prepare your supervisors for challenges from complying with confusing laws to effectively managing a diverse workforce. Many supervisors have been promoted to their roles with no formal training or experience in supervising. we can educate business leaders on how to manage individuals of wide-ranging abilities, skill sets, personalities and cultures. We can help supervisors develop the skills and tools they need to handle all HR challenges of the job so they can achieve the desired performance from their employees.

This program would be equally valuable for new supervisors and owners or managers who must ensure their supervisors are properly trained.

Register Here

OCHD WELCOMES GRANT KILLORAN AS SHAREHOLDER

The Milwaukee law firm of O'Neil Cannon recently expanded its litigation practice group to include Grant C. Killoran. Grant, formerly with Michael Best and Friedrich LLP, brings with him significant litigation experience representing clients in Wisconsin and nationwide.

Grant concentrates his practice on complex business and health care disputes and devotes a portion of his practice to arts and entertainment law. He serves as one of the State Bar of Wisconsin's five Delegates to the American Bar Association's House of Delegates and as Co-Chair of the ABA Section of Litigation Health Law Litigation Committee. He also is a Fellow of the American Bar Foundation, membership of which is limited to one-third of a percent of the lawyers in America.

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O'NEIL CANNON PROMOTES DIZARD TO SHAREHOLDER

Seth E. Dizard has been named a shareholder with the Milwaukee law office of O'Neil Cannon He will continue to represent financial institutions, corporate or individual creditors and financially troubled corporations in both state and federal courts. As a Marquette University graduate, Seth has extensive experience guiding business owners with structuring financial transactions, acquisitions and dispositions in insolvency proceedings and complex post-judgment collection matters.

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WALSH JOINS O'NEIL CANNON

Milwaukee, WI (December) – Peter J. Walsh joins the Tax, Estate and Succession Planning practice group of OCHD. He will assist clients with estate and business planning, trust and probate administration, taxation and elder law issues. With a masters of law degree in taxation, he has litigated tax and non-tax issues for clients in Federal and State courts.

Peter is licensed to practice law in Wisconsin, Illinois and Florida and has prepared and implemented estate plans for over 500 distinct clients. In addition, he has represented taxpayers in multi-million dollar Income, Estate and Gift Tax Audits at the Federal and the State level, involving various legal issues and valuation disputes.

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