

# LEGAL EASE

Fall 2005

## MONITORING AND REGULATING EMPLOYEE INTERNET AND E-MAIL USE

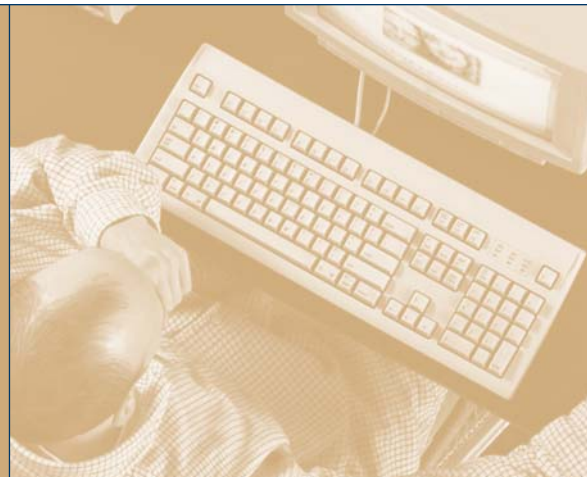
*By T. J. Ackert, Attorney*

Most businesses today rely heavily on e-mail for communication between employees, vendors, suppliers, and customers. Similarly, employee Internet access is critical to a business' competitive research, marketing and business development, and for obtaining general knowledge of current events and their effect on business and economic development.

Employers must develop clear policies to monitor and regulate employee use of these information systems in order to avoid inadvertent disclosure of trade secrets, transmittal of corrupting viruses, copyright violations, liability arising from harassment and hostile work environment claims, and lost productivity.

Many businesses are installing Internet content management tools that can monitor every website an employee browses and review all incoming and out-going e-mail communications. Business owners provide a variety of reasons for installing such software, but most are simply trying to eliminate abuses by employees who may gamble online, shop, browse pornography, share "office gossip" or even run

*What rights and responsibilities do employers and employees have when it comes to company information systems?*



private businesses on company time.

Whatever the reason, once a company begins monitoring the information system, the company must develop an Internet usage policy. The most effective Internet usage policies define the employee's rights of privacy, acknowledge that some level of recreational use is acceptable, and define the type of conduct that

*Continued on back page*

### SPOTLIGHT:

## BANKRUPTCY

*By Keri Suszek,  
Marketing Assistant*

On October 17, the new bankruptcy code passed by Congress and signed into law by President Bush will go into effect. The new code will require individuals with incomes above a certain level to pay some or all of their debt under a court-ordered bankruptcy. I spoke with Smith Haughey bankruptcy attorney, **Mike Donovan**, about the new bankruptcy code, as well as bankruptcy law in general.

**Keri: What is the most notable change with this new bankruptcy code?**

**Mike:** The new code will make filing for

bankruptcy more difficult. In the past, debtors who may have had the ability to repay a portion of their debts would simply erase them by declaring Chapter 7 Bankruptcy. The new bankruptcy code will make that more difficult, and require many debtors to work out repayment plans.

**Keri: What is the biggest challenge that you foresee with the new bankruptcy code?**

**Mike:** This is the biggest revision of the bankruptcy code since 1978, so I think that the general public will have a lot of uncertainty about what the new law really means and how the Bankruptcy Court will interpret it.

*Continued on page 3*

# PLEASE STEP AWAY FROM THE DELETE KEY:

## YOU MAY BE ABOUT TO OBSTRUCT JUSTICE

By Michael R. Bartish, Attorney

An employee of a large corporation receives an e-mail from her department manager reminding the employee that, due to the server capabilities of the firm's computer network, she should delete old e-mails from her mailbox inbox folder.

She recently has heard about a government investigation into a division of her company, and – although she works in a separate division – she fears that the investigation may be expanding to include some of the matters on which she has worked. She knows that an investigation would uncover potentially problematic e-mails in her inbox and suspects that that the reminder may actually be an effort to encourage her to delete documents in anticipation of a broadening investigation.

Based upon her suspicions about the purpose of the e-mail, she shreds several documents and deletes hundreds of e-mails. An hour later, she receives an e-mail from one of the company's in-house attorneys informing her that an internal investigation into certain irregularities in her department is underway. Although the internal investigation is unrelated to any current

government investigation, the company's policy is to inform and involve governmental authorities in the case of wrongdoing.

Can this employee be criminally charged with obstruction of justice?

The answer is "maybe."

In 2002, the United States Congress passed the Sarbanes-Oxley Act, making it easier for the government to prosecute wrongful document destruction. The act provides:

*Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.*

Prior to this Act, criminally prosecuting the employee would have proved difficult – as the government had to prove that the

defendant had knowledge of the proceeding or investigation obstructed in order for that defendant to be found guilty of obstructing justice.

**Under the new act, however, the government does not need to demonstrate that a defendant charged was even aware of a pending investigation, or even that a pending investigation existed.** A defendant needs only to knowingly obstruct justice, regardless of the status of a government investigation, inquiry, or proceeding, and regardless of the particular authority conducting it.

In the hypothetical situation above, the employee suspected that her e-mail destruction might obstruct an investigation, although she had no knowledge of the particular proceeding she was obstructing ... or even whether one was underway at the time.

However, the broad language of the Sarbanese-Oxley Act suggests that it may be enough that the employee knew she was deleting e-mails that may be relevant to a government investigation to constitute a criminal violation.

In light of the Sarbanese-Oxley Act, corporations and employees must take great care when deleting or purging sensitive e-mails and electronic data from their computers and network. While many companies initially back up information stored on computer servers, they may also routinely purge old information, often with little ability to sort which materials are saved and which are deleted.

If a company becomes aware of a possible investigation, it must identify and save e-mail related to the particular issue regardless of whether the investigation has officially begun or not. Failure to preserve such e-mails may constitute obstruction of justice under this new act.

Contact Mike for more information at 616.458.1477 or [mbartish@shrr.com](mailto:mbartish@shrr.com).

# ELECTRONIC HEALTH RECORDS: THE CLOCK IS TICKING

*Planning a move to electronic health records? Here are the issues you'll have to contend with.*

The Federal government has recently set a goal of assuring that most Americans will have electronic health records within 10 years. However, there are currently no statutes or regulations in place which directly address electronic health records.

In pursuit of this national goal, on April 27, 2004, President Bush signed an Executive Order establishing the position of National Information Technology Coordinator. On May 6, 2004, then-Secretary of the Department of Health and Human Services Tommy G. Thompson appointed David J. Brailer, M.D., Ph.D., to serve in this new position. On July 21, 2004, Dr. Brailer published his Strategic Action Plan for delivering always-current, always-available electronic health records for Americans.

The first goal of the Strategic Action Plan is to assist the clinical practice by bringing information tools to the point of care, especially by investing in electronic health record systems in physician offices and hospitals. The Plan hopes to reduce the risk of electronic health record investment and promote electronic health record adoption in rural and underserved areas.

The second goal of the Strategic Action Plan is to interconnect clinicians to foster regional collaborations, develop a national health information network, and coordinate federal health information systems.

Other goals include personalizing care and improving the overall health of our population.

Most industry observers believe the government will eventually promulgate regulations directly pertaining to electronic health records, but no timetable for legislation or regulation has been established.

The United States Government Accountability Office (GAO), on August 13, 2004, published a report entitled: *HHS's Efforts to Promote Health Care Information Technology and Legal Barriers to its Adoption*. This report identifies several existing laws

*By R. Jay Hardin, Attorney*

that may present challenges to the adoption of health information technology, including:

- HIPAA Privacy and Security Regulations and state laws relating to the use and disclosure of health information (such as the "consent" requirements for mental health and dental records in Michigan);
- fraud and abuse laws including Stark and anti-kickback and parallel state law;
- Antitrust laws, federal income tax laws, intellectual property laws, medical malpractice laws, and state licensing laws.

The report also acknowledges and discusses certain financial, technological, and cultural barriers.

The GAO's use of the term "barrier" is perhaps too harsh. With careful planning, an electronic community health record may be designed and implemented in a manner which is mindful of the existing statutory and regulatory framework. Because the majority of these existing laws do not directly address health or information technology, there will be some uncertainty about what may constitute a violation of these laws or create a risk of litigation. Careful planning and clear documentation of the rationale or the selected course of action will help to mitigate these potential risks.

Proper design of an electronic community health record must include an analysis of technical and legal issues. Privacy and security concerns flow from the technical architecture of the planned system.

The legal architecture of such a system requires the clear designation of ownership and management responsibilities for the system. An electronic community health record may be managed by a separate legal entity, by the host or hospital, or by a third party pursuant to contract. The record may also create an Organized Health Care Arrangement pursuant to the HIPAA Privacy Regulations, triggering additional concerns. Mechanisms to produce requested information pursuant to authorizations or subpoenas would also need to be considered.

*Continued on page 7*

BANKRUPTCY *from page 1*

**Keri:** Now I would like to discuss bankruptcy law in general. What sets bankruptcy law apart in the legal spectrum?

**Mike:** The most notable difference is that bankruptcy law has its own court system and is code based, with rules and regulations. As a result, bankruptcy law is relatively specialized and there are a limited number of attorneys who concentrate their practice in bankruptcy.

**Keri:** What should clients look for in selecting a bankruptcy attorney?

**Mike:** It is important to select an attorney who is experienced and concentrates his or her practice in bankruptcy, especially now that we are facing uncertainties with the new bankruptcy code. In addition, it is helpful if the attorney represents all types of clients – debtors, creditors, and trustees – like we do at Smith Haughey. By representing all of these parties, we are able to understand all of the issues and anticipate the other side's positions and strategies.

**Keri:** Under what circumstances should individuals or companies hire a bankruptcy attorney?

**Mike:** You need to hire a bankruptcy attorney whenever you or your employees have financial difficulties, or when your suppliers or customers appear to be having financial issues. It is important to hire a bankruptcy attorney before bankruptcy is filed so that you are aware of all of your options. Bankruptcy is the last resort.

**Smith Haughey is pleased expand our bankruptcy services by welcoming Mike to our team. If you would like more information about the new bankruptcy code, or our bankruptcy practice, please contact Mike at [mdonovan@shrr.com](mailto:mdonovan@shrr.com) or 616.458.8290.**

## BANKRUPTCY AND CREDITOR'S RIGHTS



**Mike Donovan** served as local counsel for Armor Holdings, Inc. in one of the largest bankruptcy court transactions in recent years.

Armor Holdings was the highest bidder for the assets of Second Chance Body Armor, a company in Chapter 11 headquartered in Central Lake, Michigan. Mike was contacted to represent Armor Holding the night before the sale approval hearing. He reviewed the documents that night and went to the hearing the next day, where he made arguments in support of the sale, which the court approved.

## EMPLOYMENT AND LABOR LAW

A former employee of our client's company filed a Complaint against our client with the Michigan Dept. of Civil Rights, alleging Sexual Harassment and Constructive Discharge. The Department, based on the former employee's allegations, then brought a formal charge against our client. **Matt Wikander** and



**Bob Stone** wrote the "Position Statement" of our client to the Michigan

Dept. of Civil Rights explaining why plaintiff's claims were not cognizable under the law and should be dismissed. Based exclusively on our strong Position Statement, the MDCR dismissed all claims for lack of sufficient evidence.

## GOVERNMENTAL LAW



**Chip Behler, Tom TerMaat and Bill Henn** received a favorable published opinion from the Court of Appeals holding that plaintiffs in bodily injury cases based on the highway exception to governmental immunity are not entitled to recover from a governmental agency for loss of consortium or other "derivative" injuries.



**Lance Mather and Craig Noland** represented Thornapple Township

in defense of a multi-count civil action filed on behalf of an aggressive Detroit based manufactured housing developer. The plaintiff sought to develop 600 manufactured home sites on 160 acres of farmland. When the township denied plaintiff's re-zoning request, plaintiff brought suit alleging a "takings" and violations of the due process and equal protection clauses of the Michigan Constitution. The trial court rendered a judgment in the Township's favor. Plaintiff appealed. The Court of Appeals affirmed the decision and issued an opinion that tracks Lance's arguments.



**Steve Stawski, Bill Henn and Craig Noland** obtained emergency relief from the Michigan Supreme Court dismissing

all claims filed against a county road commission and engineers employed by the road commission, premised on alleged violations of the Open Meetings Act, and other claims. The Supreme Court's decision negated plaintiffs' efforts to enjoin the road commission from expanding a public road.

## INSURANCE LITIGATION



**Jason Sebolt** recently secured dismissal of a "slip and fall" lawsuit filed against a gas station/convenience store client.

The plaintiff claimed that she slipped on a patch of "dirty ice" that she did not see prior to her fall. Upon investigating plaintiff's medical history, Jason learned that plaintiff was legally blind. Significantly, the plaintiff was not wearing her eyeglasses the day of her alleged fall. Despite her blindness on the day of the alleged fall, Jason argued to the judge that the ice was an "open and obvious" danger for which plaintiff could not recover. The judge agreed and dismissed the plaintiff's case.



**Paul Van Oostenburg and Steve Stawski** recently obtained

summary disposition on behalf of our client, a general contractor, who built a custom home for the Plaintiffs. The claimed damages arose in part out of alleged defects in application of an Exterior Insulation and Finishing System. In granting our Motion based on the Statue of Repose without discovery, the Court agreed that the statue extinguished the underlying cause of action, specifically held against Plaintiffs' estoppel-based arguments, and ruled to dismiss the action in its entirety.

## MEDICAL MALPRACTICE



**Brian Kilbane** obtained a no cause for action verdict on behalf of hospital and physician clients in a wrongful death action tried in Berrien County Circuit Court, arising from claims for failure to timely and accurately diagnose colon cancer. This case was successfully positioned for a defense verdict as the result of diligent team effort by **Brian Molde** and **Stephanie Neal**, as well as paralegal support from **Kathleen DeWildt** and **Rachel Krings**.



**Brian Kilbane** and **Cara Nieboer** obtained summary disposition

on grounds including lack of physician-patient relationship giving rise to a duty, lack of ostensible agency due to a physician-physician referral, a defective notice of intent, and a defective affidavit of merit. Brian Kilbane argued the motions at the hearing and after careful explanation and argument at a hearing that lasted over five hours, the judge ruled in the hospital's favor on all four motions.



**Brian Kilbane** and **Bill Henn** recently received the equivalent of

summary disposition in a medical malpractice case when the plaintiff's counsel read and agreed with our client's motion to dismiss the case based on a faulty notice of intent and the absence of any evidence to suggest vicarious liability.



**Kevin Lesperance** and **Bill Henn** successfully petitioned the

Michigan Court of Appeals to review on an interlocutory basis whether a medical malpractice plaintiff must sign a HIPAA-compliant release authorizing the defendant to conduct ex parte interviews with the plaintiff's treating health care providers.



**Paul Oleniczak**, **Bill Henn**, and **Brian Molde** recently received a favorable ruling from the Michigan Court of Appeals affirming an order granting summary disposition. Paul and Brian convinced the trial court that the statute of limitations had expired before the Complaint was filed. Bill Henn defended the ruling of the lower court in the Court of Appeals, and the appellate court agreed, ruling in a published opinion that the disability of insanity was not available to medical malpractice plaintiffs. The case is expected to be appealed to the Supreme Court.



**Jason Sebolt** recently secured dismissal of a claim against a physician who refused to turn over a child's medical records to a parent who had neither legal nor physical custody of that child. Jason successfully argued that the statute the parent relied upon to support his claim of access to the child's records was inapplicable under the scenario presented. Because plaintiff had neither legal nor physical custody over the child, the judge ruled that the physician properly denied the parent access to the medical records and plaintiff's claim was dismissed.

## PRODUCT LIABILITY LAW



**Shawn Worden** represented a national roofing materials manufacturer in its defenses against claims alleging (1) Negligent Manufacture, (2) Breach of Implied

Warranty of Fitness for a Particular Purpose, (3) Breach of Implied Warranty of Merchantability, and (4) violation of the Michigan Consumer Protection Act. At trial, the judge granted a directed verdict as to Counts 2-4 because of evidence presented that the Implied Warranties had been appropriately, conspicuously excluded on the shingles' wrappers and in the manufacturer's Limited Warranty. After Shawn presented expert testimony that the cause of the shingles lifting was most likely improper application, the jury deliberated for only about 20 minutes before finding in favor of the manufacturer in the negligent manufacturing count as well.

## PROFESSIONAL LIABILITY LAW



**Richard Kraus** and **John Oostema** recently received an

opinion from the United States Court of Appeals for the Sixth Circuit which affirmed a jury verdict in favor of the Director of Professional Standards for the State Bar of Michigan. A law school graduate alleged that his First Amendment rights were violated because he picketed to protest the review of his application for admission to practice law. SHRR was also trial counsel on the case. Richard and John have also successfully obtained the dismissal of two other federal lawsuits against the State Bar and are handling the appeals in the Sixth Circuit.

# Have You Heard The News?



**T.J. Ackert**, who chairs the Legislative Committee and PAC for the West Michigan chapter of the Associated Builders and Contractors, represented the organization at the national legislative conference and board meeting in Washington, D.C. in June. T.J. met with members of Congress from Michigan and also regulatory aides.



**Chip Behler** was elected to the Board of Directors of the Grand Rapids Civic Theater.



**Kristen Campbell** won two tennis championships at the Hall of Fame Tennis Classic in Grand Rapids.



Pat Geary has been selected to participate in Leadership Grand Rapids for the 2005 – 2006 class.



**Ben Hammond** has been elected to serve as a deacon at Kentwood Community Church.

In June, our client **Jennifer Hughes** of Stylease was featured on the "Today Show" on NBC. She showcased her new children's line of clothing



**Paul Jarboe** has been elected to serve as President of Good News Media, Inc., in Traverse City. GNMI is a community non-profit organization that owns and operates Christian radio

stations in both Traverse City and Cadillac.



**Ann-Mary Petroskey** has received a Certificate of Completion in the areas of probate and estate planning issued by the Institute of Continuing Legal Education and the Probate and Estate

Planning Section of the State Bar of Michigan.



**Al and Brenda Quick** have been invited to teach American Jurisprudence

in an LL.M. program at the Jilin University in Changchun, China. This is considered one of the most esteemed universities in the country – one of only two that survived the revolution. The Quicks will be there for five weeks this fall.



**Garrett TenHave-Chapman** presented a Worker's Compensation case law update seminar to the Michigan Public Risk Management Association at its Educational Conference in Kalamazoo in July.



**Marilyn Tyree's** Beltline Big Band played its annual charitable event for Camp Bluebird of West Michigan in spring. In May, the members of the band also donated time to play for the annual American Red Cross fundraiser in Kalamazoo. Each event raised thousands of dollars for their respective good causes.

## Introductions Are in Order



**Andrew J. Blodgett** has joined the Traverse City office of Smith Haughey Rice & Roegge, where he practices general civil litigation. Andy is a graduate of Cedarville University in

Ohio and Indiana University – Bloomington, where he received his J.D., was a Moot Court Octofinalist, Moot Court External Team Coordinator, and taught Legal Research and Writing to international law students.

Prior to coming to Smith Haughey, Andy was a summer associate at Fletcher & Niemann in Fort Wayne, Indiana, and a summer clerk for the U.S. District Court, Southern District of Indiana. He is a member of the State Bar of Michigan. In his spare time, Andy enjoys skiing, hiking, and cheering for the Chicago Cubs. He lives in Traverse City with his wife, Jenni, and son, Carter.



**Michael W. Donovan** is a new shareholder with Smith Haughey. He practices bankruptcy and commercial law in the Grand Rapids office.

Mike received his Bachelor degree from the University of Notre Dame and J.D. from DePaul University College of Law. He has practiced law for more than 20 years, and came to Smith Haughey from the law firm of Varnum, Riddering, Schmidt & Howlett.

Professionally, Mike is a member of the American, Federal, and Grand Rapids Bar Associations, the State Bar of Michigan, the American Bankruptcy Institute, the National Association of Credit Management, the National Bankruptcy and Insolvency Group, and the National Association of Chapter Thirteen Trustees. A native of West Michigan, Mike lives in Holland with his wife, Jackie.



**Mary R. Pigorsh** has joined the Grand Rapids office of Smith Haughey. Mary practices family law and specializes in divorce, separate maintenance, custody, parenting time, and child support.

Mary previously practiced family law and commercial collection at Day & Sawdey, PC. Mary worked as a law clerk in the law office of Thomas J. Heiden in 1998 and as a full time extern in the Kent County Public Defender's office in 1997, while completing her legal studies. Mary received her Bachelor of Business Administration from Western Michigan University and her J.D., cum laude, from Thomas M. Cooley Law School, where she was the recipient of several book awards in contracts, advocacy and family law. Mary is a member of the State Bar of Michigan. In her spare time, Mary enjoys reading and outdoor activities. She lives in Newaygo with her husband Steve Dunlap.

# You Heard the News Have You Heard



**Jon Vander Ploeg** has been asked to speak about recent developments in the appellate courts at the State Bar of Michigan Legal Assistants Section Annual Meeting.



**Patrick Wilson** has been selected as a Michigan State University Distinguished Alumni for 2005, and will be feted on campus on October 22. The award is given to those who have distinguished the school in their careers, service to the University, and their community.



**Shawn Worden** recently became licensed to practice in the state of Maine.



In May, **Steve Stawski** spoke at the Home and Building Association of Greater Grand Rapids' panel seminar on remodeling. Steve focused on contract issues and the various legal relationships that arise during residential remodeling projects.



**Maurice E. Schoenberger** now serves as Of Counsel in the East Lansing office of Smith Haughey, where he practices family law and alternative dispute resolution. Maurice received his B.A. and J.D. from the University of Michigan.

Since 1974, Maurice has maintained his private practice with emphasis on family law and alternative dispute resolution. His prominence in family law has been recognized by inclusion in "The Best Lawyers of America." Before entering private practice, Maurice was a district court judge and deputy director of the Michigan Department of Commerce. In 2002, Maurice was selected by the Ingham County Bar Association as the recipient of the Theodore W. Swift Civility Award. He is a member of the State Bar of Michigan.



**Steve Stawski and Paul Van Oostenburg** spoke to a national insurance company



about recent developments in case law concerning open and obvious, as well as contribution and indemnification in the construction industry.

**Steve and Aileen**

**Leipprandt** spoke at a Lorman-sponsored seminar about bid protests, sureties, and conflicts of interest and ethics in public contracting.



Congratulations to our client, **Vern Ohlman** of Design Plus, on his nomination for the Ernst & Young Entrepreneur of the Year award.

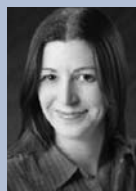
## HEALTH RECORDS *from page 3*

General compliance issues are also important to the design of an electronic health record. Many of the concerns under the fraud and abuse heading flow from obligations to pay for hardware, software, support, education, training, and monitoring.

As an example of the uncertainty created by existing statutes and regulations, recent Stark regulations created a limited exception for "community-wide health information systems." It remains unclear, however, which health information systems are covered and what community-wide means. Additionally, there is no parallel exception under the anti-kickback laws.

Hospital communities and physician groups who are considering electronic community health records are in line with the federal government's recent push to apply technology to health care records. Smith Haughey Rice & Roegge's health care team is experienced in analyzing issues related to electronic health records and in assisting clients in developing and implementing health information systems that provide an advantage to their patients and creates efficiencies.

**Please feel free to contact a member of Smith Haughey Rice & Roegge's health law team if you would like any additional information.**



**Melissa E. Whitman** practices domestic relations and commercial litigation in the firm's Traverse City office. Melissa comes to Smith Haughey from the Traverse City firm of Blakeslee & Chambers, PC. She previously worked as an associate in Denver, Colorado and has experience in commercial litigation, mergers and acquisitions, and securities law. Prior to practicing family law, Melissa acted as a Court Appointed Special Advocate for abused and neglected children. Professionally, Melissa is a member of the State Bar of Michigan and the Grand Traverse/Leelanau/Antrim Bar Association and an inactive member of the State Bar of Colorado.

She received her B.A. from the University of Pennsylvania, and her J.D. from Washington and Lee School of Law. Personally, Melissa volunteers on behalf of injured and neglected animals and enjoys skiing, sewing, and Bikram yoga.



**Billee Lightvoet Ward** has joined the firm as an associate in the health law department. Billee comes to Smith Haughey from Borgess Health Alliance, Inc. in Kalamazoo, Michigan, where she served as Corporate Attorney. In that role, her responsibilities included corporate compliance, contracts, policies and procedures, and supervision of medical malpractice claims. Previously, she worked as a midlevel associate in the Chicago-based law firm Segal, McCambridge, Singer & Mahoney, Ltd. where she practiced product liability and toxic tort litigation. While completing law school, she worked as a law clerk for Anesi, Osmon, Rodin, Novak & Kohen, Ltd., also in Chicago. Billee received her B.A. in Political Science from Kalamazoo College and her J.D. from DePaul University College of Law. She is admitted to practice in the state and federal courts of Michigan and Illinois. She is a member of the American Health Lawyers Association and the Healthcare Law Section of the State Bar of Michigan. Her primary areas of practice include long-term care, release of health information, reimbursement, human subject and animal research, general healthcare compliance, and contracts.



is not permitted and the consequences of an employee violating the policy.

When a company provides Internet and e-mail service to its employees, it has the right under the Electronic Communications Privacy Act of 1986 to view any of the e-mails sent by employees or to monitor their use of the system. An effective usage policy advises the employee that although the company respects the employee's privacy, the employee should recognize that their privacy rights will not extend to work-related conduct or the use of the equipment or information systems provided by the company.

In short, the employees should understand from the policy that their use of the company information systems shall be monitored as permitted by law.

Prohibited uses under the Internet usage policy should be broad enough to address all anticipated use with sufficient examples to educate the employees. For example, broadcast messages of a personal nature should be prohibited along with "spoofing" in which someone sends mail that "appears" to be from another employee within the company. Likewise, employees should not be allowed to utilize the information systems to create, send, store or knowingly receive material that is defamatory, discriminating, obscene, offensive, libelous, or harassing.

Employees should also be prohibited from visiting gambling sites, browsing pornography or utilizing copyrighted materials without permission. If a company will tolerate

shopping on-line, the policy should limit the time (lunch or specified breaks) and the types of URL sites.

As employees utilize their employer's information system in more of their day-to-day activities, the opportunities for abuse and legal claims arising from such abuse increase. Employers who revise their employee conduct policies to include Internet usage are best situated to protect themselves from potential liability that may arise from employee abuses.

*T.J. Ackert is a shareholder and chair of the Technology Law practice group of Smith Haughey Rice & Roegge. He can be reached directly at 616-458-3638 or [tackert@shrr.com](mailto:tackert@shrr.com).*

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Grand Rapids, MI 49503  
3497 Coolidge Road  
East Lansing, MI 48823  
213 South Ashley  
Suite 400  
Ann Arbor, MI 48104  
202 East State Street, P.O. Box 848  
Traverse City, MI 49685