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Points of Business Interest

- *How Private Is Private?*

As to the use of e-mail, Washington State Appellate Court found earlier this year that even though they were private communications protected by Washington State's statute, a defendant's use of e-mail, known that the messages will be recorded by the recipient's computer, implicitly consented to the recording of the messages, so their use by the police did not violate the privacy law. Similarly, a Pennsylvania federal District Court judge ruled that reviewing e-mail messages that the employers search through employee stored e-mails is not a violation of wire-tap laws, as the wire-tap laws in Pennsylvania were violated only when an e-mail is intercepted from an intermediate storage or back up protection storage, both which automatically occur during the course of transmission. The lesson is to understand that privacy is being interpreted more and more narrowly all the time in our electronic communications.

- *Be Careful Who's Bluff You Call*

Covenants not to compete, whereby an employee agrees that he or she will not work for or start a competitive business, are traditionally not favored by the law, though they are enforced in proper circumstances. Two recent cases highlight that covenants not to compete should be carefully considered and drafted. In a case decided this year by the U.S. Seventh Circuit Court of Appeals, an employer became involved in a dispute with a competing business. The employer decided to require all managers to sign an employment agreement that included a "draconian" non-compete provision. The employer refused to negotiate the terms of the agreement and terminated for cause employees who refused to sign it. The Plaintiff employee, on the advice of her attorney, refused and was terminated. Although she was forty-seven year old female, and was replaced by a thirty-two year old male, she presented no direct evidence of discrimination, and her termination was upheld.

- *More on Covenants Not to Compete*

In a case that did not break new ground, an insurance agent who had relationships with friends and family prior to his employment, whether he sold them insurance before his employment or not, was entitled to continue to sell to them in spite of the not to compete agreement after he left work for a different employer. The court held at law that the former employer had no protectable interest in customers known to the former employee before his employment.

- *There's a reason we send you those letters on annual reports.*

Shareholder/officer of a corporation signed a promissory note as officer of the corporation. The corporation was thereafter dissolved but the shareholder who signed the note as officer was held personally liable under the note, even though the corporation was subsequently reinstated. When annual reports are not filed, and the corporation is involuntarily dissolved by the Secretary of State, it creates personal liability for those officers who signed obligations. It is essential that the corporate formalities, including the annual reports, annual meetings/informal actions in lieu of meetings, and the like be followed to protect the corporate insulation from liability.