

FAMILY COURT ENDORSES ELECTRONIC ACCESS TO DOCUMENTS

- 1 In what appears to be a first for an Australian Court, the Family Court of Western Australia has endorsed the use of the Internet as a permissible way for a law firm to provide its client and experts with access to electronic copies of commercially sensitive or confidential documents of the other party or third parties. The Court was satisfied that the electronic litigation system used by the law firm created no greater risk of unauthorised access or disclosure than traditional methods that used paper copies.
- 2 In the case, the wife sought maintenance and property settlement from her husband. The level of the husband's net worth was an issue in the claim. The wife lived overseas. She possessed thousands of documents about her husband's financial affairs. The wife required help from accountants to determine what conclusions could be drawn from the documents.
- 3 The wife gave copies to her solicitor in Perth. However she had great difficulty providing her solicitor with instructions on the documents.
- 4 She changed law firms. The new law firm suggested that the documents be copied into electronic form and that computer hardware and specialised software be used to allow the wife and her experts to access the documents using a computer terminal and the Internet.
- 5 The husband and third party entities associated with the husband, were advised that the documents had been copied and that the copies could be viewed by to the wife, her lawyers and her experts via the Internet. They sought an injunction restraining the wife and her lawyers from posting documents on a web site.
- 6 The Family Court of Western Australia refused the injunction and held that there was not a real, rather than theoretical, risk of unauthorised access or disclosure. The Court was satisfied that a number of steps had been taken to reduce the risk of unauthorised access or disclosure.

7. The precautions were:
 - 7.1 The electronic copies of the documents were stored on a server (computer) that was dedicated to the purpose of storing documents;
 - 7.2 The system used software that had been specifically designed and created for use in litigation;
 - 7.3 The dedicated server was in a secure location at the offices of the wife's law firm;
 - 7.4 In order to obtain access to documents a person needed to know a web side address (URL-Uniform Resource Locator) which was not linked to the law firm's web site;
 - 7.5 User names and passwords were required and these were defined by a system administrator and not by the user;
 - 7.6 A password was 8 digits or more and comprised digits and letters, and it was case sensitive;
 - 7.7 User names and passwords were changed regularly;
 - 7.8 Once the user located the web site, the user was required to type in a unique user name and password;
 - 7.9 After the user typed in a unique user name and password, the user was presented with a web page containing the case to which that user had access. In order to access the documents for a case, the user was required to type in a second unique user name and password;
 - 7.10 The communications between the user's computer and the server were protected by 128 bit Secure Sockets Layer (SSL) protocol. This protocol encoded the communications between the server and the user's computer and vice versa;
 - 7.11 There was a limited number of users who had access to the server (knowledge of the URL and each having two sets of unique user name and password);
 - 7.12 The system incorporated software to prevent unauthorised access to the server including firewall software, virus monitoring software, software to prevent spying

or back door entry, and security recommendations of all providers of software used in the system were implemented.

7.13 Once copied, the documents could then be stored safely off site.

The Family Court of Australia has now published Guidelines for Exchange of Documents by Electronic Communication that details the protocols to be adopted in this area.

Electronic file management and exchange of documents is now on course to become a useful litigation tool in future Family Law cases.

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