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## Talk Ain't Cheap

By: Julie R. Rubin, Esq.

My dear, dear husband, whom I love more than anything in the world (except occasionally not more than my Chihuahua, Bob) really needs to learn when to keep his mouth shut. It started as a fun game of one-up at a friend's dinner party. You know how it goes. One guy boasts he can bench press a ton and the other guy one-ups the first guy by saying he can bench press two tons. This game of one-up was a little different. Over a lovely meal of roast pork loin and creamed spinach cooked by our friend Bruce, my husband announced that I brine my pork roasts (which really does impart the best piggy flavor known to man); whereupon Bruce retorted, "I not only brine mine, I dry age it myself in the fridge"; to which my husband gleefully gloated, "Well, Julie makes her own sausage!" Somewhere amid the laughter and one-too-many-drinks that went along with that tit-for-tat, I was volunteered by my dear, dear husband to make Bruce a dinner of homemade, Italian-style sausage and all the fixings. So there I was standing before my workhorse Kitchen Aid meat grinder churning out ground pork mixed with fennel seed, sage and crushed red pepper into casings the size of fire hoses when the phone rang.

I recognized the caller's telephone number. "Margaret, hey there. How are you?" Margaret, at only 42, is the CEO and president of a very successful medical device manufacturer. She is laser sharp and equally kind. "Not so well. I have no earthly idea why, but my company has apparently been sued for defamation," she said. I told her to email me the complaint and that I would call her once I had read it closely.

The complaint read like pulp fiction, which is not a bad thing when you're a lawyer who's used to reading breach of contract actions that read like Tolstoy, only longer and more boring. This was about a tryst and a divorce. It seems Margaret's employee, Daniel, had been dating a woman who was going through a divorce. We'll call her Alexis Carrington. Alexis and her estranged husband, Mr. Carrington, had been entangled in a nasty custody battle (is there any other kind?) and were fighting about who was entitled to pick the children up from daycare on what days and some other such stuff. The daycare facility had apparently allowed Alexis' soon-to-be ex to pick up the kids on Alexis' day. You would have thought the guy had let the children play with Ebola monkeys. All hell broke loose. There were lawyer letters and finger-pointing and "visitation" this and "visitation" that. And then there was Daniel's e-mail to the daycare establishment.

"Dear Sir/Madam," it began – certainly courteously enough. "I write to inform you of the sort of parent with which you are dealing in Mr. Carrington. I am quite sure that your security policies are sound and that the facility's staff does their best to ensure those policies are upheld, however, the degree of harm and danger that Mr. Carrington represents cannot be overstated. For that reason, I strongly urge you to reassess your policies in view of the threat to the Carrington children's safety that this menace of a man presents." That's not all. There's more. (Isn't it wonderful?)

He went on: "Based on my personal experience and observation, I can attest that Mr. Carrington is a profound alcoholic. On several occasions, he has come uninvited and unannounced to my home in a state of extreme intoxication to berate and abuse his soon-to-be former wife, Mrs. Carrington, and me. Mrs. Carrington reports that he owns several pistols, one of which he keeps illegally in the glove box of his car – no doubt the same car he uses to retrieve his children from your facility. There can be no question that, if Mr. Carrington is permitted on your property for any reason, including to pick up the Carrington children, you are placing yourselves and all children in your care in unimaginable danger. Please do not hesitate to contact me if you would like to discuss this in more detail."

Here's the real kick in the pants. Daniel sent this little gem from the company's email system bearing the company's electronic signature, including its big, bold logo. On that basis, Mr. Carrington sued Daniel and the company for defamation under the theory that the email was a communication of the company. I swear, if I hadn't known better, I would have thought the whole thing was a practical joke. It may not be the most cogent of legal theories, but you've got to hand it to the plaintiff's lawyer. That's pretty darn creative. By suing Margaret's company, Mr. Carrington (and his lawyer) assured that there was a deep pocket from which to collect a judgment. Once I stopped marveling at Daniel's unadulterated (pardon the pun) stupidity to write such an email, I focused my sights on keeping Margaret's bottom line out of Mr. Carrington's reach.

I placed a call to Alexis' divorce lawyer to find out what I could about Mr. Carrington and, perhaps more importantly, his lawyer. I wanted to know what I was dealing with. In addition to the attraction of a deep corporate pocket, I suspected that Mr. Carrington sued Daniel and the company to exert pressure on Alexis in the divorce proceedings and to gain leverage, or at least save face, in the custody battle. If Mr. Carrington didn't dispute Daniel's damning words and appear outraged, a family court judge might give Daniel's words some credence and view Mr. Carrington's inaction as a tacit admission. Doubtful, but possible.

In the end, the Carringtons resolved their custody dispute out of court and, as part of the deal, the defamation suit was dropped. Mr. Carrington really did keep a pistol in his car and, although he is a member of Alcoholics Anonymous, examination of his Amex statements revealed an affinity for Beltway Liquors. It didn't take too much to convince him and his creative lawyer that Mr. Carrington would not fair well in a defamation trial. Truth is, after all, a complete defense.

Although it turned out well for Margaret, the company and Daniel, Daniel's escapade as Valiant Protector of Children cost Margaret and her business money and time. The distraction from business and Margaret's anxiety over the whole mess bear mentioning as well. Most employers these days have policies in place that company email and internet systems are not

for personal use, and that employee computer use is subject to monitoring – or some variation on these themes (the latter of which is a Pandora’s Box for another column). These policies and those like them are typically enforced only when an employee is surfing the internet more than doing her job, or to justify spying on an employee suspected of downloading porn.

Taking these policies seriously and using them as more than mere no-clowning-around rules can be the difference between being sued and not being sued. Had Margaret enforced her own policies to this effect, Daniel would likely have used his Gmail account to lambast Mr. Carrington instead of the company’s email, which announced to the world that Daniel was communicating as a Senior Vice President of Margaret’s company. Putting the kibosh on employees’ personal computer use isn’t just about workplace efficiency. What your employees do through your computer server is attributable to your business. And if your employees are anything like Daniel, it’ll cost you more than a sausage dinner.