

August 18, 2004

Vol. 20 No. 2

**Stan Evans Named
President of Ohio
Healthcare Attorney
Society**

Elsass, Wallace, Evans, Schnelle & Co., L.P.A., is proud to announce that Stanley Evans was recently selected by fellow hospital attorneys to serve as president of the Society of Ohio Healthcare Attorneys for a two (2) year term that began in January 2004. The association plays a lead role in advising attorneys and legislators in the field of hospital and healthcare law.

**E-mails Could Be
Public Record**

Technology has led to instrumental changes in the world of business, as file cabinets are compressed onto compact disks and electronic mail replaces phone calls and letters. Regarding the latter, one should use caution when used as a substituting technology for person-to-person communication.

Most electronic communication to and from the government is a matter of public record by law, the few exceptions being personal information such as medical records, parole and probation proceedings, and trial preparation records. But it has become standard for the government to provide for convenient electronic transmission of information, including the use of complaint departments that use e-mail technology.

Care should be taken when considering whether to voice concerns to the government via e-mail. Some suggestions include:

1. Before you begin drafting the perfect email, remember that your correspondence is likely to be seen by more than one person. By law, the public has the right to see government documents, including electronic transmissions received by any public office of the state.
2. The government, unlike private parties, must retain all documents pursuant to a retention schedule. This means that your e-mail may survive longer than you wish.
3. If there is any chance the correspondence is related to a pending or potential law suit or action, always consult your attorney before writing to the government. This includes appeals from government decisions.
4. ALWAYS keep a printed copy of your correspondence for your records. Paper is one medium that will never become incompatible with technology.

**Recreational
Negligence Rule To
Apply In Cases Of
"Backyard Fun"**

Ohio law has long recognized an exception to the general rules of negligence where the injured person was a spectator or participant in a sporting event or recreational activity. Generally, such persons are presumed to understand and assume the risks associated with the recreational activity involved, and thus recovery is prohibited

unless it can be shown that another participant's actions were reckless or intentional.

In the recent case of *Gentry v. Craycraft*, the Ohio Supreme Court applied this rule to an injured plaintiff who was too young to understand the risk of harm. Lucas Gentry, age four, was injured while watching his older brother Levi, age nine, and Christopher Craycraft, age eleven, build a wooden chair. As Christopher attempted to hammer a nail into the wood, the nail flew away and struck Lucas in the eye.

The Supreme Court reinstated the order granting summary judgement to the defendants in a 6-1 decision. The majority had little trouble with the idea that the children were involved in "typical backyard play" that qualified as a recreational activity. The court noted that the reckless/intentional standard of liability applies regardless of whether the activity is an organized event or down-to-earth backyard fun. To hold otherwise, the court said, "would open the floodgates to a myriad of lawsuits involving children's games." Thus, regardless of the age of the victim, when an injury is sustained in a sport or recreational activity, recovery is allowed only if the defendant's conduct was either reckless or intentional.

Professional Development

As part of an ongoing effort to better serve its clients, the firm of Elsass, Wallace, Evans, Schnelle & Co., L.P.A. encourages its attorneys to regularly attend seminars and workshops designed to further enhance their knowledge and abilities in the practice of law. Firm attorneys have participated in the following seminars:

Eugene Elsass - attended an Ohio State Bar Association seminar concerning onshore & offshore asset protection planning;

Rich Wallace - participated in a seminar regarding wealth transfer in Ohio;

Stanley Evans - scheduled to speak at the annual Ohio Health Risk Managers Association, presented at a seminar for the Society of Ohio Healthcare Attorneys, and participated in a seminar for attorneys who serve as Special Counsel to the Attorney General of the State of Ohio;

Keith Schnelle - will attend a seminar on advanced "like-kind" real estate exchanges;

Tony Pulfer - participated in a seminar for attorneys who serve as Special Counsel to the Attorney General for the State of Ohio.

Electronic Theft on the Rise

Identity theft by employees is growing, with studies indicating that inside jobs now make up over half of all such occurrences. Given that companies may be held liable for damages in the event that a consumer's personal data is stolen, it is critical for companies to install adequate safeguards. Outside hacker theft is also rising, with more than 80% of executives surveyed reporting that their IT systems were compromised last year, double the amount in 2002.