

McLane News

JUNE 2010

NH Supreme Court Rules on Unauthorized Internet Posting



Thomas J. Donovan

When a website that is not related to your business posts negative details about your business without your permission, you may have only limited rights to have that content removed from the site. In its recent decision, *The Mortgage Specialists, Inc. v. Implode-Explode Heavy Industries, Inc.*, the New Hampshire Supreme Court ruled that the right to be free of prior restraint (censorship) clearly outweighs the desire to protect private or confidential information.

The *Mortgage Specialists* case involved the 2008 publication on a mortgage-industry website of a link to a financial document from an anonymous source that The Mortgage Specialists allegedly submitted to New Hampshire banking authorities. The Mortgage Specialists sued the website, demanding that the document be removed from the Internet and that the anonymous source be identified. The New Hampshire Supreme Court vacated a lower court injunction preventing publication of the leaked document. The Supreme Court determined that the injunction operated as a form of prior restraint or unlawful censorship and rejected the argument that publishing the document violated laws governing confidentiality and privacy.

The New Hampshire decision aligns with the determinations of the courts of a number of other states in protecting free speech on the Internet over confidentiality considerations. The New Hampshire Supreme Court did not address the plaintiff's damages claims based on defamation or consider misuse of trademarks or copyrighted materials. So businesses may continue to pursue claims against a website host if the facts support claims based on defamation or misuse of intellectual property.

If you have questions about Internet postings on your web site or on third-party sites or on the impact of The Mortgage Specialists case for your business, please contact McLane Director Tom Donovan at 603-628-1337 or tom.donovan@mclane.com.

Internships —No Such Thing as a Free Employee

An increasing number of recent college graduates unable to find entry-level jobs and even laid-off mid-career professionals are seeking out and accepting unpaid internships. These internships may seem like a win-win for the employers and the interns—the employer receives free labor and the intern obtains experience and makes connections; but, in many cases, these unpaid internships violate state and federal minimum-wage and overtime laws. While the interns themselves are generally unwilling to blow the whistle for fear of alienating employers and hurting their chances of future employment, state and federal authorities have stepped up their enforcement of wage and hour laws through increased audits and education of employers on the legal requirements of internships.

Both federal and state laws include very broad definitions of the term “employee,” with the result being that many “interns” may be legally defined as employees. Under the law, all persons fitting the description of “employee” are entitled to the benefits of minimum wage and overtime laws, even if they are called “interns” and have agreed to work without salary.

A number of factors will be considered in determining whether an intern really is an employee. Among these are whether retention of the intern displaces regular employees, whether the internship experience is for the benefit of the intern, and whether the employer providing the internship derives no immediate advantage from the activities of the intern or even has its operations impeded by the internship.

McLane regularly assists employers in considering and structuring unpaid internships to help avoid pitfalls and assure that an internship program works for all involved.

If you have questions about your current interns or your internship program, please contact Adam M. Hamel at 603-628-1189 or adam.hamel@mclane.com.



Adam M. Hamel

**MCLANE DIRECTOR
ROBERT WELLS ELECTED
TO BOARD OF
THE AMERICAN COLLEGE
OF TRUST AND ESTATE COUNSEL FOUNDATION**

APPOINTMENTS

**MCLANE ATTORNEY
DAVID K. MOYNIHAN
ELECTED TO BOARD OF
NORTH SUBURBAN
CHAMBER OF COMMERCE**

McLane Director Bob Wells has been elected to the American College of Trust and Estate Counsel Foundation. The Foundation is the charitable arm of the American College of Trust and Estate Counsel, known as **ACTEC**. The Foundation has two major areas of focus: promotion of scholarship and education in trust, estate, tax, and related areas of the law and civic engagement of individual ACTEC Fellows through programs and activities that serve the general community, including those who are at risk and underserved. Bob is a member and former chair of McLane's Trusts and Estates Department and has served as a member of numerous civic and charitable organizations throughout New Hampshire.



Robert A. Wells

McLane Attorney David K. Moynihan has been elected to the board of the North Suburban Chamber of Commerce, based in Northern Massachusetts. The North Suburban Chamber of Commerce is a professionally managed non-governmental business association dedicated to providing its membership with effective business tools and resources that help businesses become more profitable, visible and community-oriented. As a member of McLane's TradeCenter 128 office in Woburn, Massachusetts, David's practice focuses on real estate and related matters, including acquisitions, leasing and condominium law.



David K. Moynihan

McLane Contributes Quilts of Valor for Wounded Soldiers

McLane employees have teamed together and contributed their lunch-times and free time to stitch quilts for the **Quilts of Valor Foundation**, which provides gifts of hand-stitched quilts to wounded soldiers returning from combat. The McLane quilts will be given to soldiers returning from Iraq and Afghanistan.

The McLane effort was inspired by the daughter of long-time McLane employee Brenda Beer. Second Lieutenant Paula Beer suggested the project after being moved by the story of a wounded Army Colonel whose quilt gave him strength as he recovered from injuries sustained while overseas. Brenda Beer and fellow McLane employee, Cathy Rousseau, quickly mobilized a group of McLane quilters. In just a few months, the group has produced fourteen stunning quilts. "It's the least we can do," said Ms. Beer. "Our service people give so much of themselves to protect us. We wanted them to feel our gratitude in a real way."



Upcoming Events

Tue., June 08, 2010 - "**Understanding Military Deployment**," hosted by the New Hampshire Committee for Employer Support of the Guard & Reserve (ESGR) and the Human Resources State Council of New Hampshire will be held from 8:00 am to 3:00 pm at the Richard Flynn Fire Academy in Concord, NH. McLane attorney **Charla Stevens** will be among the presenters. For more information or to register, please call (603) 225-1892.

Tue., June 15, 2010 - "**Ten Key Errors in Drafting LLC Operating Agreements**," sponsored by the National Business Institute will be held at 11am and will be provided via a live teleconference. McLane attorney **John Cunningham** will be the speaker. Call NBI at 1-800-930-6182 or visit www.nbi-sems.com for more information or to register.

Mon., June 21, 2010 - "**Risk Management at Independent Schools**," sponsored by McLane, will be held at 8:30 am in McLane's TradeCenter 128 offices in Woburn, MA. McLane's **Education Law Practice Group** will address significant, current issues confronting independent schools as well as practical strategies for managing risk. For more information or to register, please contact Heather Wolcott at heather.wolcott@mclane.com or (781) 904-2700.

Thu., June 24, 2010 - "**10 Steps to Build Your Social Media Strategy**," sponsored by McLane, will be held at 7:30 am at the Beacon Grille Restaurant in Woburn, MA. For more information or to register, please contact Heather Wolcott at heather.wolcott@mclane.com or (781) 904-2700.

Wed., June 30, 2010 - "**Building Your Civil Trial Skills**," sponsored by the National Business Institute, will be held from 9:00 a.m. to 4:30 p.m. at the Highlander Inn & Conference Center in Manchester, NH. McLane attorney **Jennifer Parent** will be among the presenters. Don't miss this opportunity to prepare yourself for success in the civil trial courtroom. Call NBI at 1-800-930-6182 or visit www.nbi-sems.com for more information or to register.

For more information by telephone, call (603) 625-6464.