

LAW OFFICES

RONALD L. TOBIA ●▲  
JILL TOBIA SORGER ●▲■

**TOBIA & SORGER ESQS., LLC**

A LIMITED LIABILITY CORPORATION OF LAWYERS

COUNSEL

SAL M. ANDERTON ● ■

BAR AFFILIATIONS

NJ BAR ●  
FLA BAR ▲  
NY BAR ■

500 SUPOR BOULEVARD  
HARRISON, NEW JERSEY 07029

1-973-746-6000

FAX: 1-973-509-1578

EMAIL: RTOBIA@TOBIASORGER.COM  
EMAIL: JSORGER@TOBIASORGER.COM  
EMAIL: SANDERTON@TOBIASORGER.COM

TRENTON OFFICE

172 W. STATE STREET  
P.O. BOX 2041  
TRENTON, NJ 08607  
609-393-1442  
609-393-1990 FAX

FLORIDA OFFICE

4302 HOLLYWOOD BOULEVARD  
SUITE 171  
HOLLYWOOD, FL 33021  
973-746-6000

*Reply to: Harrison, NJ Office*

May 2009

***Ex-Employee Theft of Company Data: A Growing Concern In A Declining Job Market***

By: Jill Tobia Sorger, Esq.

***Introduction:***

An unwanted, yet inevitable, consequence of difficult economic times is an increase in employee layoffs and terminations. Employers, either by choice or by necessity, are now downsizing their payrolls and reorganizing their workforces in order to survive the recent economic downturn. However, as employers increase their layoffs and terminations, they are also experiencing the unwanted consequence of an increase in “theft” of company data by their ex-employees.

Whether motivated by greed, vengeance, or simply impulse, ex-employees are resorting to stealing information such as customer email lists and financial data often contained on a company-issued laptop or desktop computer. Misuses of this information, once it is improperly taken, range from providing the same to a competitor of the employer to using said information as evidence in a subsequent lawsuit against the employer. The rise in these instances of information “theft” has employers scrambling to locate old confidentiality agreements (presumably given to employees when they begin their employment) and/or instituting costly litigation in hopes of mitigating potential damage from the information’s misuse. All too frequently, however, these efforts are too little, too

late. Accordingly, the only way for employers to successfully combat this growing trend is to implement a comprehensive data protection strategy that recognizes the fact that information “theft” is a growing concern and, therefore, must be prevented throughout an employees’ employment and not just merely upon termination.

***A Recent Study:***

Results of a recent Study, conducted jointly by a leading Midwest security, storage and systems management firm and by a leading Southwest information and privacy management firm, revealed that an estimated fifty nine percent (59%) of ex-employees who experienced a job loss in 2008 had admittedly stolen confidential and/or proprietary employer information such as email contact lists and financial data. Of the same ex-employees, a vast majority took the information by downloading it onto a CD, DVD or USB drive, while numerous others sent themselves email attachments to their personal email accounts. Nearly all of those surveyed indicated that their employers had failed to review the employees’ access to confidential documents and/or information at the time of their termination. Furthermore, and perhaps most frightening, nearly a quarter of those surveyed stated that they continued to have access to their company computer system, including email, even after their termination.

Recent cases throughout the country involving the theft of company information support the Study’s findings. Strikingly, several of these cases involve the use of the stolen information by the

**TOBIA & SORGER ESQS., LLC**  
A LIMITED LIABILITY CORPORATION OF LAWYERS

500 SUPOR BOULEVARD  
HARRISON, NJ 07029  
973-746-6000  
FAX: 973-509-1578

EMAIL: RTOBIA@TOBIASORGER.COM  
EMAIL: JSORGER@TOBIASORGER.COM  
EMAIL: SANDERTON@TOBIASORGER.COM

ex-employees to prosecute cases against their former employer. In addition, this litigation also highlights the difficulty of proving information “theft” as there are numerous allegations contained in these lawsuits that computer savvy ex-employees are attempting to erase their misdeed by utilizing “file wiping” programs and other such deletion technology. The outcome of these lawsuits in the upcoming months will shed some light on the steps that employers need to take to prevent and/or prosecute theft of company data.

***Advice For UTCA Contractors:***

As more and more UTCA Contractors utilize computers, especially handhelds and laptops, as part of their everyday businesses, information “theft” becomes a greater concern. While, like any other theft, it is impossible to anticipate all scenarios that will lead to the stealing of company data, the following steps will at least help to deter the same:

- Perform routine inspections of company-issued laptops and desktops;
- Restrict and monitor employee access to sensitive information, including customer lists and financial data;
- Draft specific confidentiality agreements for each and every employee who is issued a laptop and/or who is given access to confidential and/or proprietary information;
- Post clear warnings on laptops and desktops that the same are the property of the employer and that there is no expectation of privacy therein; and

**TOBIA & SORGER ESQS., LLC**  
A LIMITED LIABILITY CORPORATION OF LAWYERS

500 SUPOR BOULEVARD  
HARRISON, NJ 07029  
973-746-6000  
FAX: 973-509-1578

EMAIL: RTOBIA@TOBIASORGER.COM  
EMAIL: JSORGER@TOBIASORGER.COM  
EMAIL: SANDERTON@TOBIASORGER.COM

- Policies and procedures should be implemented to review a departing employees' access to sensitive company data as well as to terminate continued access.

As with any preventative strategy, legal counsel should be consulted to assist in developing an information protection strategy specific to the individual needs of each contractor. Especially since employers are expected to continue downsizing, preventative measures in this area now will be well worth the time spent.

**TOBIA & SORGER ESQS., LLC**  
A LIMITED LIABILITY CORPORATION OF LAWYERS

500 SUPOR BOULEVARD  
HARRISON, NJ 07029  
973-746-6000  
FAX: 973-509-1578

EMAIL: [RTOBIA@TOBIASORGER.COM](mailto:RTOBIA@TOBIASORGER.COM)  
EMAIL: [JSORGER@TOBIASORGER.COM](mailto:JSORGER@TOBIASORGER.COM)  
EMAIL: [SANDERTON@TOBIASORGER.COM](mailto:SANDERTON@TOBIASORGER.COM)