

Legal Technology

The newsletter of the Illinois State Bar Association's Standing Committee on Legal Technology

Addressing a technology issue in a standard settlement agreement

BY PETER LASORSA

Most attorneys practicing for any length of time have drafted or reviewed a standard settlement agreement. Most settlement agreements cover terms of payment, no admission of liability, choice of venue, remedies for breach and confidentiality of both the agreement and

subject matter of the agreement, among other terms.

I will focus on what I see as lacking in most confidentiality portions of most settlement agreements. And technology is the reason why I believe it is needed

Continued on next page

Addressing a technology issue in a standard settlement agreement
1

How legal tech exemplifies Chicago's digital economy readiness
1

Review of Surface Pro: It is a great multi-tasker
5

Upcoming CLE programs
6

How legal tech exemplifies Chicago's digital economy readiness

BY SCOTT Y. STUART AND DREW STERN

How prepared is Chicago to fully participate on the burgeoning digital economy?

The city's thriving legal tech community is a microcosm of the scene and illustrates how many of the ingredients for success come together, as outlined in a recent study by the U.S. Chamber of Commerce Foundation, its Free Enterprise

community; and 1776, the global incubator and seed fund.

The group's 2016 study, "Innovation that Matters," analyzed the readiness of 25 U.S. cities to fully participate in the unfolding digital economy and outlined the components necessary for creating the major digital commerce centers of the

Continued on page 4

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Addressing a technology issue in a standard settlement agreement

CONTINUED FROM PAGE 6

more than ever. This is especially true with the explosion of hacking incidents. Here is roughly the typical language in many agreements.

Confidentiality and Non-Disclosure. The Employee shall not disclose the fact of this Agreement, the terms of this Agreement, the facts and circumstances giving rise to this Agreement, or the existence of any claim that Employee has, or may have, that is subject to the release of claims contained in this Agreement, to anyone other than the Employee's spouse, attorney and/or tax and financial advisors, or pursuant to court order or subpoena or as otherwise required by law. Should the Employee disclose information about this Agreement to the Employee's spouse, attorney and/or tax and financial advisors, the Employee shall advise such persons that they must maintain the strict confidentiality of such information and must not disclose it unless otherwise required by law. If Employee is asked about this matter, Employee will respond by saying only, "The matter has been resolved," and nothing more.

Each attorney will have their own wording but the hundreds I have reviewed over the years are pretty similar. And there will be a clause addressing what happens if the employee breaches that clause, i.e., paying back all money plus legal fee, etc. I know you are saying so what's the problem? Well, technology is the problem with the standard language. For example in an employment case where the secretary is suing the company for something the boss did like sexual harassment there will be emails, text messages and perhaps pictures. Although the clause above makes it clear the secretary can't disclose any of that information expect to certain folks already

outlined, it doesn't distinguish alternative forms of disclosure—and who will or won't be at fault.

So if the secretary has her iphone or laptop stolen or lost and someone gets into her sent e-mails or folders and finds sexual emails from the boss and releases them or they otherwise become public, is the secretary in breach of the agreement? What if the sent emails contained pictures and they become released under the same scenario? What if they are the emails to you the attorney in her sent folder discussing all the sexual harassment incidents with pictures? I believe a valid argument could be made that she was protecting the information in her google gmail accounts and that a criminal obtained the information and he was the one who disclosed it and therefore she didn't breach the agreement. Same thing if the information is taken because of a hacker accessing the email account. However, an alternative argument could be made that she was negligent in not properly protecting the information, including having it in the first place after signing the agreement.

To tighten up the confidentiality clause, a better choice of wording would include the employee deleting all emails, text and pictures including sent emails from all of her accounts involving the boss or anything related to her claim. Her attorney would have copies including copies of her correspondence via email with him so she has no need to keep them. In fact one could argue that not having such a clause in the agreement could subject the attorney to a malpractice claim if the information becomes public and the company sues the secretary for breach of the agreement and wants their \$100,000 settlement back plus attorney fees and costs. If your client loses her argument in court that she didn't breach because a hacker stole the information she is going to look to you to pay the \$100,000 for drafting such a poor clause in the agreement isn't she? I would.

So if the clause adds said employee warranties she has destroyed all emails,

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texts, voice messages, and pictures of boss or anything related to the claim, if they were to turn up, the burden would fall on her not you as the attorney. Sure it's a CYA clause but in this age of technology,

and hacking, why not tighten this portion of the agreement up. Remember people have storage devices and keep stuff on the cloud and half the time I don't think they even know where everything is. This type

of clause and a checklist provided by the attorney will help them find and delete ALL information and hopefully, allow them to escape any future liability. ■

How legal tech exemplifies Chicago's digital economy readiness

CONTINUED FROM PAGE 6

future. While Chicago ranked 12th overall, the foundation is expanding, and its legal tech community exemplifies what it takes to win.

Today, Chicago boasts at least 12 legal tech businesses in various stages of development – from kCura, a leading innovator in eDiscovery, to Smokeball, with its productivity and case management software, to our own Esquify, a tech-based assist for the document review process that was just launched last fall.

But the numbers are growing, thanks to the key building blocks that characterize Chicago's tech community generally and its legal tech community specifically. Among those held out by the Innovation that Matters study:

- **Connectivity.** The better connected the startup community – universities, investors and civic institutions all pulling together – the better equipped it is to lead the growth of the digital economy. And that connectivity is a hallmark of Chicago's legal tech community. Six renowned law schools join forces with the Chicago-headquartered American Bar Association and the Illinois State Bar Association. Combine that with the city's strong investment community (we ranked sixth in the study for "next wave capital" overall) and it's clear how Chicago is poised to support and advance the tech innovations shaping the legal field.
- **Talent.** The study's talent score factored in a city's population flux (new blood), educational attainment (young people to support tech startups and be early

adopters) and workforce skills. While Chicago ranked low – 22d – in the study for its talent readiness, legal tech is a bright spot on this front. It's home to over 30,000 legal professionals and its law schools attract a diverse group from the next generation. They're tech savvy and likely leaders of the ongoing wave of tech businesses advancing the practice of law.

- **Industry specialization.** Chicago ranks high – 7th – in this dimension of tech readiness, which considers cities' ability to move beyond general IT into more specialized fields to establish competitive advantage. Moreover, the study also pointed to the importance of strong traditional business clusters that can be mobilized to support the next generation of startups. The strong base that's being established in legal tech is something to be built on as the law field slowly begins its drive to realize the efficiencies of technology solutions.
- **Quality of life.** The study parks this under the "culture" category, and while Chicago gets low marks on this front, those of us in Chicago's tech community (legal and otherwise) would take exception. Despite our state's well-publicized political/fiscal issues, the cost of living here in Chicago makes starting a tech firm here far more palatable than on either coast. It's also easy to live and work here, with a rich environment for the arts and entertainment, an excellent transportation network, thriving tech incubators and generally supportive regulatory policies.

Legal tech has the potential to be a

distinguishing cornerstone of Chicago's emerging digital economy. While perhaps not as big a force as the burgeoning health tech or smart city sectors, its continuing cultivation still stands to be an important differentiator for our city and for the legal community itself.

The challenge will be how effectively our community of lawyers, legal educators, investors and, of course, legal tech entrepreneurs ourselves, embrace the possibilities and work together to solidify our continuing leadership as we move forward. ■

Scott Y. Stuart, scott@esquify.com, and Drew Stern, drew@esquify.com, are co-founders and co-chief executives of Esquify (www.esquify.com). Esquify is an innovative document review platform that combines machine learning and advanced communication technologies to improve upon the age-old process for litigation document review.



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**NEW
RELEASE!**

Turner on Illinois Mechanics Liens

by Howard M. Turner



TURNER ON ILLINOIS MECHANICS LIENS

"Turner on Illinois Mechanics Liens is the most noteworthy publication in recent years for Illinois construction lawyers. It will take its place next to the First and Second Editions of Love on Mechanics Liens. Every Illinois construction lawyer should have this book on their desk."

– Stanley Sklar, Esq., *Dispute Resolution Services, Northbrook, Illinois*

Published with the cooperation of the Society of Illinois Construction Attorneys (SOICA), *Turner on Illinois Mechanics Liens* is sure to be the new authoritative text on the law of Illinois mechanics liens. It is authored by mechanics lien expert Howard M. Turner, who has been practicing, teaching, writing, and drafting legislation on mechanics lien law for over 50 years.

The book is user-friendly, comprehensive, and straightforward. Chapter II, Practical Considerations, covers matters judges believe lawyers often get wrong. There are seven checklists, including: how to prepare a lien; how to defend against a lien; how to draft a pleading; and how to make payments so an owner only pays once. Order your copy today! Published April 2016, 312 pages.

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Illinois has a history of
some pretty good lawyers.
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Review of Surface Pro: It is a great multi-tasker

BY CARL R. DRAPER

One of the most common questions asked by attorneys on technology topics is, “What kind of computer should I get?” The debate on this has existed from the development of the first personal computers before 1990. When IBM style PCs were first introduced, there were very few choices. Yet firms started with 286 processors and as little as 64 MB of RAM. Personally, our firm purchased its first computer of that kind together with a limited amount of software in a DOS operating system environment and a laser printer. The entire package cost nearly \$20,000.

A vast number of ISBA members grew up with PCs appearing in their homes during their grade school years, if not earlier, and have had the benefit of the exponential growth of hardware and software choices. In the early 1990s, the debate was Microsoft versus Apple. That debate raged for years. As with all things, computers became faster, more powerful with more storage and operating memory, and smaller while at the same time growing more and more affordable. Equipping an office with a desktop computer today is relatively simple because of the wide range of powerful computers at very affordable prices.

As office computers became more affordable and useful, many attorneys found that the portability of a laptop computer was an essential requirement for travel and remote work. Again, the initial versions available two decades ago were heavy and had short battery life. In order to get the processing power and operating memory to be a truly useful office machine, expense was a significant barrier.

This past decade has brought on the advent of computers small enough to make the dream of Dick Tracy’s 2-way wrist radio (now video phone) the reality that is affordable. With so much to choose from how do you make a smart choice for your computing needs?

A very serious option to be considered and any attorney purchasing the next upgrade to office equipment is a multi-functional device that can serve all needs in the office, home, or on the road. I have found the answer for my own needs in the Microsoft Surface Pro. At technology CLE presentations, a lot of information is available about the tablet-style computers which have grown in popularity. I had experimented with the iPad which was a wonderful traveling companion and have settled on the Surface Pro as the only computing device I use for office, home and travel (in addition, of course, to my smart phone).

Our office recently had outgrown the desktop computers that we had used for over six years. In addition to the PCs, the attorneys all had purchased laptop computers and some still had desktop units operating at home. When we re-equipped the office, we bought PCs for all of the support staff, but the attorneys had preferences for processing power equal to the desktop units that we were buying but wanted portability. About half elected a laptop with the traditional configuration available today. These all had several USB ports, light-weight architecture, long battery life and 16 GB or more of storage memory. Unlike older models of laptops, these came without any optical drive which most of us agree is not necessary given the wide availability of smaller thumb-sized USB memory sticks and the ability to download or transfer files across the internet. Our office has always maintained its own Microsoft based network server with a physical firewall and VPN connectivity to allow attorneys to work remotely from the office with a secure connection.

This article will focus on the advantages of multi-purpose tablet/laptop like the Surface Pro. When considering equipment like this, one of the important considerations is the kind of model that

needs to be purchased. In order to keep this article from quickly becoming dated, the only real specification that is important is that it is the **Surface Pro** rather than the Microsoft Surface for home or more casual use. Microsoft has made a light-weight version of the Surface, which like other tablet type devices, has its own operating system that can replicate Microsoft Window’s operating system when needed. The Surface Pro, by contrast, is a true PC that operates Windows 10. Because of that, there are no compatibility issues with any of the office software and no special apps that need to be used to mimic office software.

Surface Pro comes as a tablet that is approximately 8” x 10 ½” and extremely thin. As a tablet, it is a little hard to hold in one hand and many people might prefer one of the smaller tablet options available like Galaxy or iPad devices. The resolution on the screen is remarkably vivid and it has all of the features of a tablet including complete touch operation. It also has an optional pen for handwriting or drawing on the screen.

Surprisingly, it has not yet been packaged as a complete device with a keyboard or other accessories. I purchased the keyboard/cover as well as the pen that operates with the tablet system. When the Surface Pro keyboard cover is attached, the user has a keyboard sufficiently large to make it easy to type. It folds over the screen as a protective cover and puts the operating system in to standby mode. The actual screen size that is visible is approximately 10” x 7” for the screen. This allows enough room for a single application to be readable. An optional pen allows handwritten notes to be made on this screen that can be immediately translated in to text. When used as a tablet, this is a useful function for short notes and email replies.

To make it a useful office device, we also purchased a docking station for each attorney. The docking station has all of the network connections for the office.

So when I arrive in the morning, I have a single cable to connect to the Surface Pro from the docking station. That supplies all of the power and connectivity I need for everything in the office. It is easy to set up dual monitors and the docking station allows me to have my full-size keyboard that I prefer, mouse, access to the network including printers, and a full-sized monitor. It is easy to set the dual monitor function up so that I can keep my calendar, to-do list, and timekeeping functions on one screen while my word processing, email, and internet programs appear on the second. At the end of the day I have the option of saving my work to a local folder or desktop and immediately resuming it from home or on the road. With the availability of 16 or more GB of memory, it is easy to take entire client folders when on the road. Likewise, the VPN connection allows the security to be able to work remotely as long as there is access to Wi-Fi of any reasonable speed.

The entire Surface Pro slips easily in to a shoulder bag that I use instead of a briefcase. It starts quickly much like MAC users brag that their machines do. Battery life easily reaches 6 hours.

DISADVANTAGES. Some of my personal dislikes might be something to note before anyone decides to purchase

this as their new computing system. One is that while the Surface Pro is as portable or more portable than any laptop, it does not actually sit in one's lap very comfortably. The tablet portion has a flip stand and the keyboard clips on to the base much like the cover of other tablets. There is nothing sturdy about this as a stable platform to rest on one's lap. When traveling, it is necessary to use the tray from the seat ahead of passenger in a plane or train. An easy solution is to set it up on a yellow notepad (yes, I still carry those) to make it more stable on your lap.

IPad lovers may have some hesitation giving up their Apple devices for something like the Surface Pro. By comparison to the number of apps available for tablet platforms, the Surface Pro takes us back to Windows as its operating system. While there are still very many applications available for Windows, the simple convenience and attractive use of tablet apps is not true for using the Surface Pro as a tablet. For me, that is much less of a problem than it might be for other users. My main preference is office-based applications and internet accessibility. It has a good camera facing the user for video conferencing capabilities. It does support various forms of tablet based book readers including the Microsoft

version of Amazon's Kindle for reading books. I certainly find it comfortable for that function. When traveling, its small size generally allows it to be placed in the pocket in front of a passenger on an airliner. Be careful, however, because airlines collect a large number of tablet devices in their lost and found each year.

The bottom line in my trial is that the Surface Pro has been an excellent choice for a new computing system. If cost is an important factor, desktop units and even light-weight laptops still come at a much more affordable price. The Surface Pro with docking system as I have described it exceeds \$1,500.00. However, that price is much cheaper than PCs I have purchased decades ago in the earliest days of Windows environments. The Surface Pro gives all the computing power that I need, easy connection to my network, faster startup speed and an easy way to have access to my office network wherever I am located. This is one great option for reducing the number of devices and taking full advantage of tablet and full Windows based office computing. ■

Carl R. Draper is an attorney in Springfield, Illinois practicing administrative law, employment law, and civil rights at the firm FELDMANWASSER.

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September

Thursday, 09/01/16- Webinar—
Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Thursday, 09/08/16- Webinar—
Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Thursday, 09/08/16- Webcast—
Monetizing Intellectual Property. Presented by IP. 12:30 p.m. – 2:15 p.m.

Friday, 09-09-2016- Webcast—
Telemedicine: Diagnosing the Legal Problems. Presented by Health Care. 9:00 a.m. – 11:00 a.m.

Wednesday, 09/14/16- Webcast—Hot Topic: Union Dues/Fair Share—Friedrichs v. California Teachers Association. Presented by Labor and Employment. 10:00 a.m. – 12:00 p.m.

Wednesday, 09-14-16—Webinar—2016 Military Law Overview. Presented by Military Affairs. 12:00 p.m. – 1:15 p.m. (maybe later).

Thursday, 09/15/16- CRO—Family Law Table Clinic Series (Series 1). Presented by Family Law. 8:30 am – 3:10 pm. Vid: NONE THESE WILL NOT BE RECORDED OR ARCHIVED.

Friday, 09-16-06- CRO and Live Webcast—The Fear Factor: How Good

Lawyers Get Into (and avoid) Bad Ethical Trouble. Master Series Presented by the ISBA—WILL NOT BE RECORDED OR ARCHIVED. 9:00 a.m. – 12:15 p.m.

Wednesday, 09-21-16—Webcast— Restorative Practice in Illinois: Practical and Creative Alternatives to Resolve Civil and Criminal Matters. Presented by Human Rights. Part 1- 10:00 a.m. – 12:00 p.m. Part 2- 1:00 p.m. – 3:00 p.m.

Thursday, 09-22-16- Webcast—Family Law Changes and Mediation Practice. Presented by Women and the Law. 11:00 a.m. – 12:00 p.m.

Thursday, 09/22/16- CRO and Webcast—Recent Developments in E-Discovery in Litigation. Presented by Antitrust. 1:00- 5:15 pm.

Thursday, 09/22/16- Webinar— Introduction to Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Monday, 09/26/16- Friday, 09/30/16— CRO—40 Hour Mediation/Arbitration Training Master Series. Presented by the ISBA. 8:30 am – 5:45 pm each day. MASTER SERIES WILL NOT BE ARCHIVED.

Friday, 09-30-16—DoubleTree Springfield—Solo and Small Firm Practice Institute Series. A Balancing Act: Technology and Practice Management Solutions. Presented by GP, SSF. 8:00 a.m. – 5:10 p.m.

October

Wednesday, 10-05-16—CRO— Cybersecurity: Protecting Your Clients and Your Firm. Presented by Business Advice and Financial Planning; co-sponsored by IP (tentative). 9:00 a.m. – 5:00 p.m.

Thursday, 10/06/16- Webinar— Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA

Members Only. 12:00- 1:00 pm.

Thursday, 10-06-16—Webcast—Nuts and Bolts of EEOC Practice. Presented by Labor and Employment. 11:00 a.m. – 12:30 p.m.

Monday, 10-10-16—CRO and Fairview Heights, Four Points Sheraton—What You Need to Know to Practice before the IWCC. Presented by Workers Compensation. 9:00 a.m. – 4:00 p.m.

Thursday, 10/13/16- Webinar— Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Thursday, 10-13-16—IPHCA, Springfield—Open Meetings Act: Conducting the Public's Business Properly. Presented by Government Lawyers. 12:30 – 4:00 p.m. This program will not be recorded and put in the archives.

Thursday, 10-13-16—CRO and webcast—Limited Scope Representation: When Less is More. Presented by Delivery of Legal Services. 1:00 p.m. – 5:00 p.m.

Wednesday, 10-19-2016—Webcast— Tips for Combating Compassion Fatigue. Presented by Women and the Law. 10 a.m. – 11 a.m.

Wednesday, 10-19-16- CRO and Live Webcast—From Legal Practice to What's Next: The Boomer-Lawyer's Guide to Smooth Career Transition. Presented by Senior Lawyers. 12:00 p.m. to 5:00 p.m.

Thursday, 10/20/16- Webinar— Introduction to Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Friday, 10/21/16- Galena, Eagle Ridge Resort—Obtaining a Judgement and Collections Issues. Presented by: Commercial Banking, Collections, and

Bankruptcy. 8:50 am - 4:30 pm

Wednesday, 10-26-16—Webcast— Federal Rule of Civil Procedure 56— Summary Judgement a Refresher Course. Presented by Federal Civil Practice. 12:00 – 2:00 p.m.

Wednesday, 10-19-16—DoubleTree Bloomington 10-27-16—Holiday Inn, Bloomington—Real Estate Law Update 2016. Presented by Real Estate. 8:15 a.m. – 4:45 p.m.

Friday, 10-28-16—CRO—Solo and Small Firm Practice Institute Series. Title TBD. Presented by GP, SSF. ALL DAY.

November

Wednesday, 11-02-16—Linder Conference Center, Lombard—Real Estate Law Update 2016. Presented by Real Estate. 8:15 a.m. – 4:45 p.m.

Thursday, 11-03-2016—Webcast— Settlement and Severance Agreements: The Non-Pecuniary Terms. Presented by Labor and Employment. 1:00 p.m. – 3:00 p.m.

Thursday, 11/03/16- Webinar— Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Thursday, 11/10/16- Webinar— Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Friday, 11-11-16—CRO and live Webcast—Motion Practice from Pretrial through Post Trial. Presented by Civil Practice and Procedure. 8:50 a.m. - 4:00 p.m.

Thursday, 11/17/16- CRO—Family Law Table Clinic Series (Series 2). Presented by Family Law. 8:30 am – 3:10 pm. Vid: NONE THESE WILL NOT BE RECORDED OR ARCHIVED. ■

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