Corporate Exposure

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Estimates indicate that businesses generate approximately 120 billion sheets of paper information per year. The costs of retaining information beyond legal requirements—be it on paper, microfilm, microfiche, or optical disc—can be staggering. Annual storage costs range from $200 per cubic-foot box to $800 per four-drawer file cabinet.

More important, however, is that unnecessary storage can actually prove *detrimental* in legal proceedings.

Case Example

In the 1940s and 1950s, a nationally recognized manufacturer of asbestos products enjoyed a profitable business. After all, asbestos was the best fire-retardant available at that time. Subsequently, several employees developed respiratory problems, claiming these were caused by asbestos exposure. The rest is history. By the 1980s, observers estimated that potential asbestos claims against the firm amounted to billions of dollars.

The company had no choice but to file Chapter 11 bankruptcy, thus protecting itself against claimants and creditors.

During the proceedings, the courts compelled the company to turn over relevant records to private litigants and other companies. The firm responded by delivering *16 million* pages of documents—many of which had been kept well beyond the legally mandated time period.

Buried within the heap were internal memoranda that the plaintiffs claimed confirmed the firm's culpability. The discovery of these documents created the impression—or constituted an admission, the plaintiffs argued—that the firm knew, or should have known, that asbestos was dangerous.

The defendants argued that the documents were being read out of context, and were thus being misinterpreted.

The firm, now attempting to emerge from Chapter 11, still operates a warehouse at its own expense to provide claimants with access to the documents.

Had this firm followed proper internal control procedures (i.e., a records management program was in place, but had been disregarded), and had it been covered by Destruction of Organizational Records (DOOR) insurance, the matter would likely have been resolved differently.

Skeletons in the Corporate Closet

The procedures most often instituted to control this kind of exposure consist of two components: (1) internal action strategies, and (2) external transfer to an insurance company of those risks that cannot be eliminated.

In terms of **internal actions**, a company can:

1. *Educate employees.* Everyone must understand that written records *can* be brought into court, and that they may be interpreted in ways other than what the writers intended. Anyone producing a written record should always ask, "Would I want the information in this document published on the front page of the local newspaper?"

2. *Control distribution of information.* Limit distribution of internal information on a "need to know" basis. Consider asking outside agencies to which you have provided sensitive information to return all documents.

3. *Implement a records management program.* Inventory your records and identify:

*Vital Records. Follow standards established by the National Fire Protection Association, as well as prudent security standards, to protect these data.

*Records with retention schedules mandated by state and federal statutes. Retain as long as required, then destroy.

*Records no longer needed. Destroy according to a thoroughly researched, companywide destruction schedule.

It is critical that you maintain a log listing all records and their destruction dates.

In terms of **external action**, the corporation should purchase a new records liability insurance policy (the DOOR policy, explained above). This protects against liability claims resulting from an organization's inability to produce records in legal proceedings because the records were voluntarily destroyed under a records management program.

Note: The American Management Association offers a seminar on how to develop a formal records management program. For information, call (212) 903-8202. Information regarding the new records liability policy is available through your broker, or by calling Reliance National at (212) 858-5911.

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This column will appear regularly in this *Forum*.