



ALEXANDER & CLEAVER

A&C Celebrates 38 Years

Check it out...[page 6](#)

In This Issue

New rules to protect consumer credit information

The Fair and Accurate Credit Transaction Act went into effect June 1, 2005.

The E-Business Advisory is intended to provide business ideas and comments to our clients and friends. Topics in this business newsletter discuss the laws, opinions, and other developments on a wide variety of issues. The laws of each jurisdiction may be different. The articles are presented for general reading and should not be relied upon as legal opinion or legal advice. We would be happy to answer further questions or discuss particular factual situations or problems with you in more detail. The Law Offices of Alexander & Cleaver is a full-service law firm that represents clients in a wide range of legal matters, lobbying, procurement and government relations services and association management.

To sign up or remove your name from this list, please go to: lists.alexander-cleaver.net/mailman/listinfo/acnews. To ensure that the A&C E-Business Advisory is delivered properly to your inbox (not bulk, spam, or junk folders), please add us to your address book or safe list.



Alexander & Cleaver
Professional Association
Vol. 1, Issue 3
June 2005

Attorneys

*Gary R. Alexander
James A. Cleaver
Todd K. Pounds
Denise M. Bowman
Joseph P. Hart
Jason A. DeLoach
Chantel R. Ornstein
Jennifer S. Lancaster
James K. McGee*

Government Relations Consultants

*Casper R. Taylor, Jr.
Robin F. Shaivitz
Lyle W. Fowlkes
J. Kenneth Battle, Jr.
Kelley Ray*

Our Offices

*Ft. Washington, MD
301-292-3300*

*Annapolis, MD
410-974-9000*

*Cumberland, MD
301-724-9234*

*Waldorf, MD
301-934-4477*

*Alexandria, VA
703-548-7777*

Contact Us

*1-800-292-LAWS
acnews@alexander-cleaver.com*

E-Business Advisory

www.alexander-cleaver.com

New Rule Issued by the FTC Requires Businesses to Destroy Consumer Credit Information

On June 1, 2005, the Fair and Accurate Credit Transaction Act (FACTA) went into effect. FACTA imposes new requirements on persons or entities, over which the Federal Trade Commission has jurisdiction, that possess or maintain, for a business purpose, consumer information derived from consumer reports. The purpose of the rules contained within FACTA is to reduce the risk of identity theft and other consumer harm from improper disposal of a consumer report or any record derived from one. The Act includes provisions requiring all businesses to destroy any consumer credit information obtained from credit reports. Specifically, the disposal rule provides:

“Any person who maintains or otherwise possesses consumer information for a business purpose must properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.”

To be covered under the rule, the information must mention particular consumers and contain personal identifiers such as driver’s license number, social security number, phone numbers, physical address, and /or email address. The rules contained within FACTA are deliberately very broad in order to cover a wide range of entities and credit information, applying to any consumer information “that is a consumer report or is derived from a consumer report.” This includes paper and computer-generated records, as well as other electronic media.

The standard for disposal is flexible to allow entities to determine what measures are reasonable based on the sensitivity of the information, the costs and benefits of different disposal methods, and relevant changes in technology over time. Acceptable methods of destroying credit information include shredding, burning and even smashing electronic media such as a CD. The particular mode of destruction will obviously depend on the overall size, circumstances, and resources of the company.

In addition to consumer reporting agencies and lenders, the FTC reports that employers (specifically those who perform background checks), insurers, landlords, mortgage brokers, automobile dealers, law firms, waste disposal companies, management companies, and utility companies may also have to comply with the law. Disposal and records management companies also fall under the disposal rule.

Businesses, large and small, have six months to comply with the new disposal rules or face possible penalties.

COMMENT OF COUNSEL: Every business should carefully develop and implement a comprehensive document retention and destruction policy. The policy should establish clear standards for how long consumer information is kept on file and designate a person responsible for deciding what and when information is destroyed. For assistance in developing such a policy or for any other business questions or comment, contact our legal team at 301-292-3300 or email us at acnews@alexander-cleaver.com.



Alexander & Cleaver
Professional Association
Vol. 1, Issue 3
June 2005

Attorneys

Gary R. Alexander
James A. Cleaver
Todd K. Pounds
Denise M. Bowman
Joseph P. Hart
Jason A. DeLoach
Chantel R. Ornstein
Jennifer S. Lancaster
James K. McGee

Government Relations Consultants

Casper R. Taylor, Jr.
Robin F. Shaivitz
Lyle W. Fowlkes
J. Kenneth Battle, Jr.
Kelley Ray

Our Offices

Ft. Washington, MD
301-292-3300

Annapolis, MD
410-974-9000

Cumberland, MD
301-724-9234

Waldorf, MD
301-934-4477

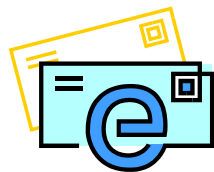
Alexandria, VA
703-548-7777

Contact Us

1-800-292-LAWS
acnews@alexander-cleaver.com

E-Business Advisory

www.alexander-cleaver.com



Maryland's Anti-Spam Law Under Attack

In 2002, Maryland lawmakers entered the foggy realm of Internet regulation and passed legislation to rid our computers of unwanted and potentially dangerous "spam" email. Now, in 2005, two lawsuits are on appeal in Maryland's highest court, the Court of Appeals, after two Montgomery County judges decided in favor of the spammers.

Maryland enacted the 2002 Commercial Electronic Mail Act (CEMA), which permits one to sue in civil court for any damage caused by the receipt of emails which contain false or misleading information in the subject line or regarding the email's origin. CEMA allows individuals to recover \$500 per message or more, plus legal fees, and Internet service providers may sue for \$1,000 per message or more and for \$500 per instance where their Internet domains were used without their permission.

In 2003, two companies were sued in Montgomery County for their alleged violations of CEMA in the cases of *Beyond Systems, Inc. v. Realtime Gaming Holding Company, LLC* and *MaryCLE v. First Choice Internet, Inc.* In *Beyond Systems, Inc.*, the case was dismissed because of a jurisdictional matter where the judge had difficulty establishing sufficient contacts within Maryland. In *MaryCLE*, the judge took a step further and declared CEMA unconstitutional since it was too broad in its attempt to regulate conduct outside of the state.

However, all is not lost regarding the prosecution of those who send spam that is false or misleading. As mentioned in the May edition of the *E-Business Advisory*, Congress passed the CAN-SPAM Act which, among other things, made it a criminal offense to send false and misleading emails. Maryland, along with many other states, followed the Federal government's lead and passed a similar statute—the Maryland Spam Deterrence Act, which took effect last October.

The Maryland law closely mirrors the federal CAN-SPAM Act regarding what constitutes the crime, but diverges in the punishment of the crime. Violators of the Maryland law may receive a fine up to \$25,000 and a jail term up to 10 years. The Maryland Attorney General may also seek civil charges, with much stiffer financial penalties of \$25,000 per day of violation, or \$2-\$8 per spam sent.

COMMENT OF COUNSEL: Alexander & Cleaver will keep you up to date on the status of Maryland's various spam laws. Businesses should begin developing policies to insure compliance with the CAN-SPAM Act and their state's Spam Deterrent Act. Additionally, Marylanders affected by spam, which appear to violate the law should contact the Attorney General's Office at 888-743-0023. For questions or comments contact our legal team at 301-292-3300 or email us at acnews@alexander-cleaver.com.



Alexander & Cleaver
 Professional Association
Vol. 1, Issue 3
June 2005

Attorneys

Gary R. Alexander
 James A. Cleaver
 Todd K. Pounds
 Denise M. Bowman
 Joseph P. Hart
 Jason A. DeLoach
 Chantel R. Ornstein
 Jennifer S. Lancaster
 James K. McGee

**Government Relations
 Consultants**

Casper R. Taylor, Jr.
 Robin F. Shaivitz
 Lyle W. Fowlkes
 J. Kenneth Battle, Jr.
 Kelley Ray

Our Offices

Ft. Washington, MD
 301-292-3300

Annapolis, MD
 410-974-9000

Cumberland, MD
 301-724-9234

Waldorf, MD
 301-934-4477

Alexandria, VA
 703-548-7777

Contact Us

1-800-292-LAWS
acnews@alexander-cleaver.com

E-Business Advisory

www.alexander-cleaver.com

**Trade Associations:
 Great Benefits  Potential Liability**

A *Trade Association* is a combination of individuals, firms, entities or corporations that have associated with each other as a result of a common interest or goal. Members are independent of each other and are usually competitively engaged in the same industry.



Trade associations may vary in size, structure, and purpose, but the common thread to all trade associations is the intent to advance the interests of its members, which is defined and determined by the respective association. For example, a trade association may provide one or more of the following services to its members: collect and disseminate information and matters of interest to its members; provide resources and benefits that members may not otherwise be able to obtain on their own; sponsor social opportunities; and represent the common interest before the legislature or governing authorities. Information shared may relate to prices, costs, technology, products, market conditions, trends, etc. Pooling resources may include discount services or bulk purchasing. Representation may include legal analysis, expert analysis, government relations or community relations.

A trade association can be a great resource; however, be careful of potential exposure if the association has not taken the necessary steps to incorporate and maintain its corporate structure and integrity.

There is no uniformity as to the legal form or structure of a trade association's organization or operation. For instance, some trade associations are incorporated, some have only written membership agreements, while others merely have verbal understandings. Incorporated non-stock nonprofit trade associations are membership corporations and the rights, duties and liabilities of the members, subject to any bylaws or charter, are subject to the same rules and limitation of liability governing for-profit corporations. The most significant benefit of the incorporation is the limitation of liability for members. For example, when an incorporated association enters into an obligation, lease, contract, fee arrangement, purchase agreement, note, or the like, the actual obligation is limited to the corporation and does not extend to the members. In addition, those who are injured as a result of some action of the trade association may only obtain compensation from the incorporated association not the individual members.

COMMENT OF COUNSEL: Membership and participation in trade associations can be very advantageous to your business needs and interests. Before joining a trade association you should insure membership does not expose you or your business to liability. Please contact our legal team at 301-292-3300 or email us acnews@alexander-cleaver.com for your trade association's legal or government relations needs.

The law firm of Alexander & Cleaver regularly provides legal counsel and government relations services to a multitude of trade associations. We are proud to represent the Health Facilities Association of Maryland, the Maryland Radiological Society, the Maryland Podiatric Medical Association, and several other trade organizations.



Alexander & Cleaver
Professional Association
Vol. 1, Issue 3
June 2005

Attorneys

*Gary R. Alexander
James A. Cleaver
Todd K. Pounds
Denise M. Bowman
Joseph P. Hart
Jason A. DeLoach
Chantel R. Ornstein
Jennifer S. Lancaster
James K. McGee*

Government Relations Consultants

*Casper R. Taylor, Jr.
Robin F. Shaivitz
Lyle W. Fowlkes
J. Kenneth Battle, Jr.
Kelley Ray*

Our Offices

*Ft. Washington, MD
301-292-3300*

*Annapolis, MD
410-974-9000*

*Cumberland, MD
301-724-9234*

*Waldorf, MD
301-934-4477*

*Alexandria, VA
703-548-7777*

Contact Us

*1-800-292-LAWS
acnews@alexander-cleaver.com*

E-Business Advisory

www.alexander-cleaver.com



Understanding Personal Injury Protection and Medical Payment on Your Automobile Insurance Policy

Whenever you are involved in an automobile accident, whether it was your fault or the fault of another driver, you and your loved ones will often require immediate medical treatment. Who pays for this treatment and when do they pay? When you read your insurance policies you might see terminology such as PIP (Personal Injury Protection) and Med Pay (Medical Payment).

PIP coverage is for medical expenses and lost wages. Med Pay coverage is for medical expenses only. Neither PIP nor Med Pay is required in Maryland or the District of Columbia and are only provided upon request of an insured for additional premiums. The underlying basis for these types of coverage is to insure that a person injured in an automobile accident is provided immediate funds without consideration of fault for medical treatment and with PIP lost wages without resorting to litigation.

Generally, in the State of Maryland, PIP coverage provides minimal funds of \$2,500. You can contract for higher PIP coverage upon request and for additional premium. Review your coverage to determine that it is sufficient in the event you are injured and unable to work. A significant feature of PIP in Maryland is that these payments are benefits derived from your contract with your insurance company and need not be reimbursed should you collect monies in a civil lawsuit against the adverse driver who caused your accident, unlike coverage under your health insurance plan.

In the District of Columbia, PIP when purchased under your insurance policy is subject to an election within 60 days of the date of the accident. You must elect whether to proceed under your PIP coverage or to waive PIP and bring an action in court against the party that has caused your injuries. This 60 day election creates a very short time window within which to make your decision on how to proceed. Under District of Columbia law, if you elect to seek PIP coverage you can only be compensated for medical expenses and lost wages and you give up your right to bring an action in court for personal injury damages, pain and suffering.

COMMENT OF COUNSEL. Think carefully before you select the amount of coverage for PIP or Med Pay under your automobile insurance policy. Failing to have sufficient immediate no fault coverage can have a devastating impact on your financial stability. Should you have any questions, comments or need additional information concerning your PIP and Med Pay coverages under your automobile insurance policy please contact our legal team at 301-292-3300 or email us acnews@alexander-cleaver.com



Alexander & Cleaver
 Professional Association
Vol. 1, Issue 3
June 2005

Attorneys

Gary R. Alexander
 James A. Cleaver
 Todd K. Pounds
 Denise M. Bowman
 Joseph P. Hart
 Jason A. DeLoach
 Chantel R. Ornstein
 Jennifer S. Lancaster
 James K. McGee

**Government Relations
 Consultants**

Casper R. Taylor, Jr.
 Robin F. Shaivitz
 Lyle W. Fowlkes
 J. Kenneth Battle, Jr.
 Kelley Ray

Our Offices

Ft. Washington, MD
 301-292-3300

Annapolis, MD
 410-974-9000

Cumberland, MD
 301-724-9234

Waldorf, MD
 301-934-4477

Alexandria, VA
 703-548-7777

Contact Us

1-800-292-LAWS
 acnews@alexander-cleaver.com

E-Business Advisory

www.alexander-cleaver.com

**The Law Offices of Alexander & Cleaver
 Celebrate 38 Years**

Many clients and friends of the Law Offices of Alexander & Cleaver joined us in celebrating 38 years in practice. We also proudly congratulated Attorney Todd Pounds on his election as President of the Prince George's County Bar Association. We followed our social gathering with concert performed by the Bertell Knox Group, noted jazz combo.

Gary and Jim thanked our clients, vendors, and friends for making A&C the thriving firm that we are today. They attributed much of our success as a premier firm to our referring friends, colleagues, and neighbors.



Delegates Joseph Vallario and James Proctor stopped by to wish their former colleague all the best. Shown here with them are Sandie Turner, Gary Alexander, and Jim Cleaver.



(ABOVE) Friends of the firm, Joe Marino, Jr. and Mary Anne Marino.



(RIGHT) The Bertell Knox Group with Gary and Kenny Battle, who treated the audience to a solo performance with the band.



(ABOVE) Some of the attorneys, lobbyists, and staff of Alexander & Cleaver. (l to r) Angie Lynch, Cas Taylor, Kelley Ray, Jennifer Lancaster, Jim McGee, Denise Bowman, Jason DeLoach, Sandie Turner, Gary Alexander, Jim Cleaver, Todd Pounds, Lyle Fowlkes, Joe Hart, and Kenny Battle.