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NewsAlert

For Immediate Release:

Cadwalader Secures Precedent Setting Ruling Regarding Personal E-Mail

District Court Finds Personal E-Mail From Work Privileged

New York, NY, February 11, 2010, Attorneys at Cadwalader, Wickersham & Taft LLP, one of the world's leading international law firms, secured a precedent-setting victory contradicting a long-standing, popular belief that employees have no expectation of privacy on work computers.

Partner Jim Robinson and associate Jeannine D'Amico successfully represented Assistant U.S. Attorney Jonathan Tukul, a federal prosecutor, in an effort to maintain as privileged e-mails he sent to his attorney using government computers. Contradicting a popular belief that employees have no expectation of privacy on work computers, the U.S. District Court for the District of Columbia ruled on December 10 that Tukul had a reasonable expectation of privacy in those e-mails because federal prosecutors were allowed to use work e-mail for personal matters.

Relying on case law and reasoning provided by Tukul, Judge Royce C. Lamberth found that any "disclosure" was inadvertent because Tukul had no intention of allowing the Department of Justice to read his e-mails and took reasonable steps to prevent the Department from doing so. Former federal prosecutor Richard Convertino, who lost his job after convictions in a high-profile terrorism trial in Detroit (*United States v. Koubriti*) were overturned in 2004 due to prosecutorial misconduct, sought the e-mails in the hopes that they would shed light on his efforts to find who leaked confidential information into his conduct, which he believes was in retaliation for whistleblowing on the Bush administration. Tukul, one of the prosecutors in Detroit who reviewed Convertino's cases, denied that he was the source of the leak. Nonetheless, Convertino argued that Tukul had no privacy expectations in e-mails sent over a government computer. The court disagreed, holding that the Department of Justice maintains a policy that does not ban personal use of the company e-mail. Although the Department did have access to personal e-mails sent through the account, Tukul was unaware that they would be regularly accessing, reviewing, or

storing e-mails. Because his expectations were reasonable and he took appropriate steps to protect the communications, his private e-mails to his attorney remain protected by the attorney-client privilege.

About Cadwalader, Wickersham & Taft LLP

Cadwalader, Wickersham & Taft LLP, established in 1792, is one of the world's leading international law firms, with offices in New York, London, Charlotte, Washington and Beijing. Cadwalader serves a diverse client base, including many of the world's top financial institutions, undertaking business in more than 50 countries in six continents. The firm offers legal expertise in antitrust, banking, business fraud, corporate finance, corporate governance, environmental, financial restructuring and reorganizations, healthcare, insurance, intellectual property, litigation, mergers and acquisitions, private client, private equity, real estate, regulation, securitization, structured finance, and tax. More information about Cadwalader can be found at www.cadwalader.com.