November 30, 2010

T&E Litigation Update: *Ajemian v. Yahoo! Inc.*

In *Ajemian v. Yahoo! Inc.,* Case No. 09E-0079-GC1 (Nov. 10, 2010), the Norfolk County Probate and Family Court (Casey, J.) addressed the question of whether the administrators of an estate could access the decedent's e-mail account with Yahoo, including all of the decedent's e-mails. Yahoo filed a motion to dismiss the administrator's complaint in equity, arguing, *inter alia*, (1) that the forum selection clause in the "Terms of Service" contract between the decedent and Yahoo requires the action to be brought in California, (2) that the one-year limitations period set forth in the contract had expired, and (3) that the administrators had failed to state a claim upon which relief can be granted because the private e-mails in the decedent's Yahoo account are not property of the decedent's estate.

The Court granted Yahoo's motion to dismiss based on the forum selection clause. The Court explained that these clauses are to be enforced in Massachusetts if (1) doing so is fair and reasonable, (2) the contract was not affected by fraud, undue influence or a disparate bargaining position, and (3) enforcement would not contravene a strong public policy of Massachusetts. Regarding online contracts in particular, the Court explained that courts elsewhere have applied traditional principles of contract law and determined whether the plaintiff had both reasonable notice of the online contract and manifested assent to its terms. Here, the Court rejected the administrators' argument that forcing them to travel to California to litigate would be oppressive. Mere inconvenience and additional expense are not enough, especially where it may be assumed that the contracting party had received consideration for this inconvenience and expense. Moreover, the Court found it significant that the administrators' legal remedies would not be reduced in California, because both Massachusetts and California consider the same principles in measuring fairness and reasonableness. The fact that the decedent may not have actually read the Yahoo contract was of "no consequence," because the decedent was free to find another no-cost e-mail provider.

Given the enforceability of the forum selection clause, the Court held that the California court should determine when the one-year limitations period in the contract began running and whether it had expired. The Court likewise held that the "seminal issue" of whether the decedent's e-mail accounts are property of his estate or Yahoo should also be resolved by the California court.