

## Shareholders Michael Madigan and Brandt Erwin Travel to D.C. for Supreme Court Oral Arguments



On January 16, 2019, MDH shareholders Michael Madigan and Brandt Erwin traveled to D.C. to hear oral arguments before the United States Supreme Court in *Tennessee Wine and Spirits Retailers Association v. Blair*. The case involves Tennessee's two-year residency requirement to obtain a liquor license, which was challenged in Federal District Court and the Sixth Circuit Court of Appeals as a violation of the dormant commerce clause. MDH filed an amicus brief in support of the Tennessee requirements on behalf of the National Beer Wholesalers Association.

Minnesota Adopts Doctrine of

# "Inequitable Forfeiture" in the Context of Employment Contracts

In July of 2018, the Minnesota Supreme Court decided the case of *Capistrant v. Lifetouch*, 916 N.W.2d 23 (2018) and adopted the concept of "inequitable forfeiture" in determining whether it was appropriate for an employer to refuse to pay approximately \$2.6 million in post-employment payments to a former territory manager who failed to abide by the terms of his employment agreement requiring him to immediately return property of his employer to his employer following termination. The court held that the return of property provision was a condition precedent to the employee receiving the post-employment payments and that the employee failed to satisfy the condition precedent by failing to immediately return his employer's property upon termination. However, the court built upon its precedent of disfavoring forfeitures, followed the guidance in Restatement (Second) § 229 (Am. Law Inst. 1981) and formally adopted the concept of "inequitable forfeiture." The court remanded the case to the district court for a determination on the following two factors: 1) whether the immediate return of property under the contract was a material part of the agreed exchange upon entering into the contract; and 2) if not, whether the forfeiture was disproportionate and if so, reduce the amount of forfeiture to an appropriate level.

If your business needs employment contracts drafted or a review of existing contracts, contact Madigan, Dahl & Harlan for a consultation and evaluation.



# Blockchain: What is it and What Should You Know About it?



Conversations about Blockchain were everywhere in 2018 and have continued to pick up momentum in 2019, with many large corporations hailing it as the database of the future. But the question for many remains what exactly is Blockchain? The short answer is that Blockchain is a database, originally developed to facilitate the transfers of cryptocurrency like Bitcoin. In very basic terms, Blockchain works by running each piece of data through a multi-pronged, peer-to-peer validation process. Validated records are stored securely over multiple distributed computers and cannot be altered or deleted. Blockchain is appealing to many companies for the following reasons: 1) a transaction in Blockchain requires no middleman, saving time and money; 2) the distributed nature makes it highly secure, highly reliable, and high available compared to other centralized databases; and 3) once records are validated it is almost impossible to alter them.

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## The Department of Health & Human Services Upgrades its Security Risk Assessment Tool

The Department of Health & Human ("HHS") Services along with the National Coordinator for Health Information Technology ("ONC") and the HHS Office



for Civil Rights ("OCR") has given its Security Risk Assessment Tool, originally unveiled in 2014, an upgrade. The tool is designed to assist entities that are required to conduct a risk assessment, as they undertake the process. All entities covered by the Health Information Portability and Accountability Act ("HIPAA") are required to complete a risk assessment to identify and mitigate potential security risks to electronically protected health information ("ePHI"). For many small and medium sized entities this can prove to be an expensive, time consuming and overwhelming process.

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**"No one has ever become poor by giving."**

**-Anne Frank**

Madigan, Dahl & Harlan was happy to be able to make sandwich for our fall/winter community service event. The sandwiches were gratefully received by Allan Law on behalf of the 363 Days non-profit organization he founded. Below is a photo of firm members who make a bologna sandwich assembly line look fun! Madigan, Dahl & Harlan is a firm where we value giving back to our communities. If you have not previously read about Allan Law and his great work with the homeless, here are a few links:

- <https://www.facebook.com/nationswell/videos/283169955818446/>
- [http://www.363days.org/sandwich\\_instructions.htm](http://www.363days.org/sandwich_instructions.htm)



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