Does Intra-Corporate Disclosure of Privileged Communications Waive the Corporation's Privilege?

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In his July 11, 2012 “Privilege Points” release, Tom discusses intra-corporate sharing of privileged communications:

Relying on traditional case law emphasizing the importance of keeping privileged communications confidential, courts examining widespread intra-corporate sharing of privileged communications sometimes conclude that such widespread circulation demonstrates that the communications were not primarily motivated by legal issues and therefore do not deserve privilege protection. As if this were not troubling enough, other courts apply a waiver analysis to such widespread intra-corporate circulation.

In Lolonga-Gedeon v. Child & Family Services, No. 08-CV-00300A(F), 2012 U.S. Dist. LEXIS 67843 (W.D.N.Y. May 15, 2012), the court acknowledged that some communications claimed by defendant to be privileged were shared only with company employees. However, in addressing one email, the court held that "Defendant's failure to demonstrate that [three employees] each needed to know the information contained in the communication has waived the attorney-client privilege." Id. at *12.

It seems wrong to use a waiver analysis in this setting, because the privileged email never went outside the corporation. However, decisions like this highlight the need for corporations to warn their employees not to share privileged communications beyond those with a "need to know" – even within the corporation.