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Economic Loss Rule: New Signs of Life in the Construction Arena and Other Areas

By Michael A. Ludwig

The Economic Loss Rule ("ELR") is a common law rule limiting a contracting party to contractual remedies for the recovery of economic losses unaccompanied by physical injury to persons or other property. In the construction industry, the ELR was frequently used as a theory of defense by contractors and builders against negligent construction claims, but its use by design professionals as a defense was even more prevalent. Up until now, design professionals' liability was usually limited to the owners with whom they had contractual privity. As a result, this usually foreclosed any third parties from suing design professionals when they only suffered economic losses.

In *Flagstaff Affordable Housing Limited Partnership v. Design Alliance*, 223 Ariz. 320, 223 P.3d 664 (2010), an owner hired an architect to design eight apartment buildings to qualify as low income housing projects and to comply with the federal Fair Housing Act's accessibility guidelines. Over nine years later, HUD brought a claim against the owner because the apartments violated the

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Employer Liability for Employee Cyberspace Communications

By Steven D. Leach

Clint Eastwood's iconic character, Harry Callahan, once said, "Opinions are like noses, everybody has one." OK, he didn't say "noses," but you get the point. Everyone has something to say, and cyberspace means people now have a very large pulpit from which to share their opinions. Social networking, blogging, email and the like can make instant "publishers" of us all. Unfortunately, many do not yet seem to appreciate that once you say something in cyberspace, it is out there for all to see, and nearly impossible to take back.

The Internet and all of its communication tools provide on the order of a magnitude leap for business opportunities. Businesses are looking for the newest, most effective way to harness the Internet's power for their own commercial purposes. But, as much as cyberspace is the new marketing frontier, it is also the new employment practices liability minefield. In other words, while employers are spreading the word about their wonderful products, their employees may be using the same tools to spread something else - and that's where the trouble begins.

Cyber communication is creating issues for employers and employees on a number of fronts. An

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In This Issue

The Application of Privilege When Outside Counsel is Involved in Handling Insurance Claims

By Ashley G. Villaverde

In the insurance world, outside counsel may wear many hats. An attorney may be engaged to investigate the facts of a particular claim, to evaluate coverage under a policy, to conduct an examination under oath, to evaluate potential liability and damages, to evaluate bad faith exposure, and to eventually defend against a bad faith lawsuit. The role outside counsel plays in the handling of an insurance claim significantly impacts the privileges that usually attend the attorney-client relationship, and may later impact the defense of a bad faith claim. Appreciating this impact can protect insurers from exposure to additional claims of bad faith, which can arise from communication or documents believed to be privileged but later determined to be discoverable. Understanding the scope of an attorney's role in handling a claim may also protect insurers from the expense of litigating privilege issues should a bad faith lawsuit arise.

Disputes over the discovery of attorney communications and work-product do not tend to arise until after bad faith litigation commences. The insured will typically seek production of the insurance claim file, which often includes records of attorney communications and work product. The insured may also seek to discover the attorney's file. The insured will argue that no privilege applies because the communication was made, and the file materials were prepared, in the course of an insurer's investigation and adjusting of a claim. Insurers will resist the discovery of such material, asserting the attorney-client privilege and work-product doctrine. Such discovery disputes are generally resolved after an *in camera* inspection of the materials by the court, or by a special discovery master appointed by the court to review the materials.

When outside counsel wears the hat of both an attorney and a claims adjuster, protecting documents and communication from disclosure based on the attorney-client privilege and work-product doctrine can be challenging, and the results can be unpredictable. Although Arizona law provides some guidance regarding when to uphold these privileges, courts have a great amount of discretion, and privilege decisions are made on a case-by-case basis. The court's determination of whether to apply the attorney-client privilege will be largely based on whether the communication between the insurer and the attorney was legal in nature, or if it merely pertained to the investigation of facts and processing of the claim. Similarly, the determination of whether the work-product doctrine applies will be based on whether the document at issue was prepared for litigation, or if it was prepared in the ordinary course of the insurer's business.

In Arizona, the attorney-client privilege is defined by A. R. S. § 12-2234 (1982). Under this statute, "unless a client consents, a lawyer may not be required to disclose communications made by the client to the lawyer or advice given to the client in the course of professional employment." *Samaritan Found. v. Goodfarb*, 176 Ariz. 497, 501, 862 P.2d 870, 874 (1993). In order for the attorney-client privilege to attach, the communication: (1) must be made to or by the lawyer, (2) ***for the purpose of securing or giving legal advice***, (3) must be made in confidence, and (4) must be treated as confidential. *Id.* Thus, while communication that meets these requirements is absolutely privileged, not all communication between the insurer and counsel is necessarily privileged.

When outside counsel is both handling the claim and providing legal advice, the court will look to the ***purpose*** of the specific communication. To the extent that an attorney acts as a claims adjuster, claims process supervisor, or claims investigation monitor, the attorney-client privilege may not attach. *See Mission National Ins. Co. v. Lilly*, 112 F.R.D. 655 (S.D. Ind. 1991). Defending insurers against bad faith claims can be difficult in this context when, for example, off-the-cuff emails are exchanged between adjusters and attorneys that are presumed privileged, but must later be disclosed. Insurance professionals should therefore be conscious of counsel's role when communication is made.

The application of the work-product doctrine in the insurance context presents a special challenge for courts and litigants because although the investigation is an integral part of any insurance company's business, litigation is often likely when investigations are performed. The work-product doctrine protects from discovery materials that have been "prepared in anticipation of litigation or for trial." This includes not only materials prepared by an attorney, but also materials prepared by the insurer, such as materials contained in the claim file.

A court will consider a number of factors in determining whether material was prepared "in anticipation of litigation," including whether the event is likely to lead to litigation, whether the materials contain legal opinions, whether the material was prepared by a party or its representative, whether the materials were routinely prepared, and whether specific claims were presented. *Brown v. Superior Court in and for Maricopa County*, 137 Ariz. 327, 335, 670 P.2d 725, 733 (1983); *see also* McLaughlin, M., To Protect or Not to Protect? The Benefits of Using Defense Counsel to Assist With Initial Company Investigations, JS&H Reporter, Winter 2011 Ed., for a discussion of privilege in the corporate context.

Even if the material is deemed work product, it may still be discoverable upon a showing of "substantial need," and that the insured is unable without undue hardship to obtain the substantial equivalent of the materials by other means. *See* Ariz. R. Civ. P. 26(b)(3). But this rule also protects from discovery, "the mental impressions, conclusion, opinion, or legal theories of an attorney or other representative of a party concerning the litigation."

In *Brown*, the Arizona Supreme Court specifically addressed the work-product doctrine in the bad faith context. There, the insured sought the production of an insurance claim file, which the insurer resisted. The Court held that the portion of the claim file created after the claim was denied was indeed work-product, however, it was discoverable because the insured had a substantial need for the material and was unable to obtain the equivalent through other means. In reaching this conclusion, the Court reasoned that bad faith actions against an insurer "can only be proved by showing exactly how the company processed the claim, how thoroughly it was considered, and why the company took the action it did." *Brown*, 137 Ariz. at 336, 670 P.2d at 734. Furthermore, "the reasons the insurance company denied the claim or the manner in which it dealt with it are central issues" to a bad faith claim. *Id*. at 337, 670 P.2d at 735. And, when mental impressions are directly at issue, as they are in the context of a bad faith claim, courts will permit an exception to the rule and allow discovery.

In the insurance context, the work-product doctrine does not provide reliable protection to either insurers or outside counsel retained to carry out the insurers' ordinary business of adjusting claims. As the *Brown* Court recognized, "the cases are in considerable confusion in attempting to define the phrase 'prepared in anticipation of litigation.'" *Brown*, 137 Ariz. at 334, 670 P.2d at 732. Because it is difficult to predict the exact point at which a court may determine litigation is anticipated, as a rule of thumb, insurers should assume that the entire claim file is subject to discovery. If outside counsel has the dual role of both handling the claim and providing legal expertise, insurers should assume that counsel's file materials related to the handling of the claim are also discoverable. Moreover, even if the materials have all of the characteristics of work-product and were prepared by an attorney, insurers should assume an insured will be able to show a substantial need for the material in a bad faith action.

Insurers should continue to engage outside counsel to investigate coverage, because they can benefit from legal expertise in making appropriate coverage determinations, and because counsel can help reduce the insurers' risk of exposure to bad faith claims. Insurers must keep in mind, however, that not all communication with counsel is privileged, nor should they assume that just because counsel is retained, the file materials will be protected from discovery. Outside counsel will likely be aware of his or her role and whether a communication is privileged. But, since communication works both ways, insurers can benefit from being conscious of counsel's role when the communication is made. It is also important for insurers and attorneys to communicate regarding the specific scope of the attorney's representation, and to communicate this to the insurance professionals who are involved in handling the claim, and who are most likely to communicate with outside counsel. ◆

Announcements

JS&H is pleased to announce that **Doug Cullins** has been elected into the partnership and welcomes **Tyler Carrell, Jason Kasting** and **Christopher Pierce** to the firm as associates.

Ed Hochuli has been selected as the Program Chair for the 2012 Annual Conference of the National Retail and Restaurant Defense Association (NRRDA).

Michael Ludwig has been elected by his peers to the Federation of Defense and Corporate Counsel (FDCC). Mike joins fellow JS&H partners Ed Hochuli and Don Myles as members of this organization.

Lawful and Unlawful Pre-Employment Inquiries in Arizona

By Barry H. Uhrman

In the past, some employment applications and interviews requested information about an applicant's race, religion, physical and/or mental condition. This information was often used to exclude an applicant before his or her ability to perform the job was even evaluated.

With the advent of statutes that protect applicants from discrimination based on immutable characteristics, pre-employment inquiries that discriminate on the basis of race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, or disability are prohibited by law. In addition, pre-employment inquiries that objectively cause to a reasonable person to think that the information will be used in for a discriminatory purpose are prohibited.

Below is a general summary permissible and prohibited pre-employment inquiries. The following information applies to any type of employment inquiry made of applicants, particularly through pre-employment interviews and reference checks.

SUBJECT	ACCEPTABLE PRE-EMPLOYMENT INQUIRIES	UNACCEPTABLE PRE-EMPLOYMENT INQUIRIES
Name	Name of applicant and any other names applicant may be known by	
Address or Residence	Place and length of residence, telephone number.	
Age	Statement concerning employment subject to verification that applicant meets legal age requirements	It is unlawful for an employer to print or publish any notice or advertisement relating to employment indicating any preference, limitation, specification or discrimination based on age, except when age is a bona fide occupational qualification for employment. It is unlawful to limit, segregate or classify applicants for employment in any way that would deprive or tend to deprive employment opportunities based on a person's age.
Birth Place/ Citizenship	Employers may ask about the status of residency – if the applicant is a citizen of the United States or has the legal right to remain permanently in the United States. Employers may also tell an applicant, that, if hired, the applicant may be required to submit proof of citizenship or the legal right to remain in the United States.	Before an offer of employment is made, it is unlawful to require proof of citizenship or residency.
National Origin	Inquiry into languages an applicant speaks, reads, or writes fluently, if this information is job-related.	Inquiry into the language commonly used by an applicant. Inquiry into how an applicant acquired ability to read, speak or write a foreign language.

SUBJECT	ACCEPTABLE PRE-EMPLOYMENT INQUIRIES	UNACCEPTABLE PRE-EMPLOYMENT INQUIRIES
National Origin		Inquiry into an applicant's lineage, ancestry, national origin, descent, parentage, or nationality. Nationality of an applicant's parents or spouse. Inquiring, limiting, segregating or classifying applicants in any way that deprives or tends to deprive employment opportunities based on that applicant's national origin.
Gender		Limiting, segregating or classifying for employment in any way that would deprive an applicant of employment opportunities based on that applicant's gender.
Religion		Inquiring into an applicant's religious denomination, religious affiliations, church, parish, or religious holidays observed. Inquiring as to whether an applicant regularly attends a house of worship. Inquiring, limiting, segregating or classifying applicants for employment in any way that would deprive or tend to deprive employment opportunities based on that applicant's religion.
Race/Color	Statement that a photo may be required after hiring.	Requirement that an applicant affix a photograph to the employment application form. Request an applicant, at his/her option, to submit a photograph. Requirement of a photograph after interview, but before hiring. Employers may not inquire about an applicant's skin color or limit, segregate, or classify applicants in any way that would deprive an applicant of employment opportunities based on that applicant's race, color or physical description.
Marital Status		All inquiries into an applicant's marital status.
Sexual Orientation		All inquiries into an applicant's sexual orientation.

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Erroneous Determination of Coverage Does Not Establish that the Coverage Question was Fairly Debatable

By Kevin D. Neal

In *Lennar Corporation v. Transamerica Insurance Company*, 606 Ariz. Adv. Rep. 21 (Ct. App. April 14, 2011), the Arizona Court of Appeals refused to hold that the erroneous granting of summary judgment in the insurers' favor created a reasonable basis to deny coverage to defeat an insured's claim for breach of good faith and fair dealing. The Court of Appeals went on to declare that the filing of a declaratory judgment action does not relieve an insurer of its duty of good faith and fair dealing in the handling of an insured's claim.

The insureds were a group of related companies collectively called "Lennar." In the early 1990s, Lennar oversaw the development of 105 homes in a project called Pinnacle Hill. Soon after several homeowners moved in, they began to complain about construction problems. In September 1998, these homeowners filed suit.

Lennar tendered the claims under commercial general liability policies issued to it by several different insurance carriers. The insurers filed a declaratory judgment alleging they did not owe a duty to defend or indemnify Lennar, which cross-claimed for breach of contract and bad faith.

The trial judge granted summary judgment in favor of the insurers, dismissing all of Lennar's claims. This decision was based on the conclusion that defects in the homes did not constitute an "occurrence" within the meaning of the policies. The Court of Appeals reversed, holding the homeowners' allegations of damage resulting from faulty construction were sufficient to allege an "occurrence" under the policies.

About a year after the opinion was issued, the insurers again moved for summary judgment on Lennar's bad faith claim. The insurers' position was that the trial judge's initial ruling in their favor established that the insurers had a reasonable basis for denying coverage. The Court of Appeals, however, refused to hold that the prior (erroneous) ruling in the insurers' favor meant the claim was "fairly debatable" as a matter of law. Whether the reasonableness of an insurer's coverage position may be determined as a matter of law depends on the nature of the dispute and other factors, including whether extraneous evidence bears on the meaning of the contested policy language. Whether the insurers acted reasonably in challenging Lennar's claims based on the meaning of "occurrence" in the policies was a question for the jury to resolve.

The trial judge's initial determination that the damages Lennar sought did not relate to an "occurrence" within the meaning of the policies may be relevant to the reasonableness of the insurers' failure to admit coverage. Beyond the objective reasonableness of the insurers' coverage positions is the issue of their subjective beliefs about the coverage positions they took. The court held that an insurer's belief in fair debatability is a question of fact to be determined by the jury. Even if an insurer objects to coverage, it may not disregard its normal claims-handling responsibilities while the coverage issue remains unresolved. ◆

Appellate Highlights

Young v. Beck
AZ Supreme Court
The family purpose doctrine, which subjects a vehicle's owner to vicarious liability when the vehicle is provided and used for the family members' general use, is still valid in Arizona.

Preston v. Kindred Hospitals West, LLC
AZ Supreme Court
A plaintiff may substitute a real party in interest without showing that the initial failure to name the proper party resulted from an understandable mistake or difficulty identifying that party.

Slaughter v. Maricopa County
AZ Court of Appeals
Rejecting a plaintiff's argument that the County was the State's "agent," such that service of the notice of claim on the County was effective as to the State. Failure to serve notice of claim directly on State required dismissal of those claims.

Cook v. Orkin Experimenting Co., Inc.
AZ Court of Appeals
The expertise of a party to an arms-length commercial transaction does not create a fiduciary relationship obligating that party to act for the other party's benefit.

Chavez v. Arizona School Risk Retention Trust, Inc.
AZ Court of Appeals
Students injured by an automobile while waiting to board a school bus are entitled to underinsured motorist coverage under the school district's automobile insurance policy.

North Peak Construction, LLC v. Architecture Plus, Ltd.
AZ Court of Appeals
A contractor who relies on plans and specifications prepared by an architectural company may assert a breach of implied warranty claim against the architectural company.

Wickham v. Hopkins
AZ Court of Appeals
A landowner owed no duty of reasonable care to a licensee once he left a party at the landowners' home, even where the licensee was injured by other partygoers on the street near the home.

Congress Elementary School District No. 17 v. Warren
AZ Court of Appeals
Courts may not enjoin future public records requests unless a public entity specifically shows that there is a public interest sufficient to overcome the presumption favoring disclosure of the records.

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SUBJECT	ACCEPTABLE PRE-EMPLOYMENT INQUIRIES	UNACCEPTABLE PRE-EMPLOYMENT INQUIRIES
Medical	Make pre-employment inquiries into ability of an applicant to perform job related functions. Employers may require a medical examination after an offer of employment has been made to a job applicant but before commencement of employment duties. Employers may condition an offer of employment on the results of such examination if both of the following apply: (a) All entering employees are subjected to the examination regardless of disability. (b) Information obtained regarding the medical condition or history of the applicant, including any genetic information, is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record.	The prohibition against discrimination based on a disability includes medical exams and inquiries. Employers should not conduct a medical exam or make inquiries as to whether an applicant is disabled or as to the nature or severity of the disability. Failing or refusing to hire, or otherwise discriminating against, any individual based on the results of a genetic test received by the employer. Employers may not use qualification standards, exams, tests or other selection criteria that screen out or tend to screen disabled individuals, unless the standard test or other selection criteria is shown to be job-related for the position in question and consistent with business necessity.
Education	Inquiry into the academic, vocational or professional education of an applicant and the public and private schools he has attended, as well as any degrees received.	Specific inquiry into the nationality, racial or religious affiliation of a school.
Criminal Record	Employers may ask about prior criminal convictions, including the time and location and the final disposition of the case. Employers must include a statement that a conviction will not be an absolute bar to employment.	
References	Employees may ask an applicant to list the person who referred the applicant, names of the applicant's relatives currently employed by the employer, and former employers.	Requirement of the submission of a religious reference.
Organizations	Employers may ask applicants to list all organizations of which an applicant is a member excluding those that indicate race, color, religion, gender, age, national origin, or sexual orientation.	List all clubs, societies and lodges to which an applicant belongs.

Employers should provide notice to applicants that any misstatements or omissions of material facts in the application may cause for dismissal. In addition, employers should take these steps to comply with laws prohibiting discrimination in the workplace:

- Direct all individuals who participate in any part of the hiring pre-employment process to comply with the guidelines provided above.
- Review all hiring procedures and related forms for compliance with these guidelines.
- Direct all individuals who make inquiries to obtain applicant information or recommendations to comply with the guidelines above.

Employee handbooks and other written policies need to be continuously updated to comply with state and federal laws governing discrimination. Most importantly, employers must ensure that all human resources personnel and supervisors are properly trained regarding pre-employment inquiries to avoid costly litigation. ◆

Jones, Skelton and Hochuli's Employment Law Practice Group will continue to keep you apprised of all future developments concerning employment law. Please feel free to contact Barry H. Uhrman [(602) 263-1706, buhrman@jshfirm.com] with any questions you may have regarding these important developments.

Speaking Engagements

David Cohen will present "Legal 101 Q&A" at the Arizona Health Care Association's (AHCA) 2011 Annual Conference and Trade Show on August 24, 2011 in Scottsdale.

Eileen GilBride and **Lori Voepel** presented "Winning Appellate Briefs and Oral Arguments" at the 14th Annual Public Practice Legal Seminar on May 6, 2011 in Prescott.

Bill Schrank presented "Are Your Bases Covered?" at the Canadian Trucking Alliance Conference held on April 18-19, 2011.

Mark Zukowski was a panel member for the "Managing the Media in Today's World: Why You Do Not Respond to Media Inquires with No Comment" session at the Spring 2011 USLAW Client Conference on April 1, 2011.

Georgia Staton presented "Whatever Happened to Atticus Finch" at the District of Arizona's Annual Conference on March 11, 2011 in Tucson.

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accessibility requirements. The owner settled with HUD for a large sum of money and sued the architect and contractor in contract and tort. The contract claims were dismissed because the statute of repose had run. The issue on appeal was whether the owner could assert a negligence claim against the architect and whether the ELR applied as a defense.

Reversing the Court of Appeals (Division One), the Arizona Supreme Court held that a contracting party is limited to its contractual remedies for purely economic loss from construction defects. The Court went on to state that a plaintiff who contracts for construction cannot recover in tort for purely economic loss, unless the contract provides otherwise. Accordingly, the Court upheld the trial court's dismissal of the architect because the owner was limited to its contractual remedies, even though the statute of limitations had run on those claims.

Flagstaff Affordable Housing explained that the ELR was designed to encourage private ordering of economic relationships and to uphold the expectations of the parties by limiting a plaintiff to contractual remedies for loss of the benefit of the bargain. The Court recognized, however, that these concerns are not implicated when the plaintiff lacks privity and cannot pursue contractual remedies. In such instances, courts are to evaluate whether the applicable substantive law allows for liability in the particular context. For example, a contractor who is not in privity with an architect, but who sustains economic losses such as increased costs from relying upon the architect's negligent and erroneous plans, would have no contractual remedies. The contractor could, however, potentially sue for tort remedies such as negligence or negligent misrepresentation in that particular context.

The significance of *Flagstaff Affordable Housing* is that the Supreme Court has foreclosed application of the ELR in negligence cases where no contractual remedies are available to a plaintiff. The Court ultimately found it

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employer's use of social network information when making employment decisions can, for example, be problematic depending on how the employer obtains the information. As another example, employees may find themselves without jobs after making critical comments on their Facebook walls about their respective employers. The New Jersey Supreme Court addressed yet another way cyberspace communications can come back to haunt employers. In *Blakey v. Continental Airlines, Inc.*, 164 N.J. 38, 751 A.2d 538 (2000), the Court addressed whether harassing comments between co-workers on an employer-provided Internet message board can form the basis for employer liability.

Tammy Blakey was the airline's first female Captain to fly the wide-body Airbus A-300. Some of her male cohorts were, however, unimpressed by her professional accomplishments - an attitude they displayed by leaving pornographic material and vulgar comments in aircraft cockpits and other work areas. Blakey responded by filing sexual harassment claims, and the fight was on. Male pilots, perhaps the same high-minded folks that caused the problem to begin with, started posting adverse gender-based messages about Blakey on Continental's on-line bulletin board called "Crew Members Forum." Continental provided the Forum as a virtual community with the intent to foster communication among its aircrew. Several male pilots used the Forum instead to post messages suggesting that Blakey was "using" her gender as an excuse to cover up her alleged inadequacies as a pilot.

Blakey filed another lawsuit against the individual pilots who posted the adverse comments and against Continental for providing the Forum where the communications were posted. One of the issues raised by her suit -- fought all the way to the New Jersey Supreme Court -- was whether an employer can be liable for co-employee harassment that occurs outside the conventional bounds of the workplace and work day if the speech occurs on the company Internet bulletin board. The New Jersey Supreme Court held that such liability may indeed arise if the employer had reason to know of the harassment, stating:

"Continental's liability will depend on whether the Crew Members Forum was such an integral part of the workplace that harassment on the Crew Members Forum should be regarded as a continuation or extension of the pattern of harassment that existed in the Continental workplace."

The Court went on to explain:

"To repeat, employers do not have a duty to monitor private communications of their employees; employers do have a duty to take effective measures to stop co-employee harassment when the employer knows or has reason to know that such harassment is part of a pattern of harassment that is taking place in the workplace and in settings that are related to the workplace."

So, what is an employer to do? First, evaluate all avenues of cyber communication provided to employees as part of their jobs. Then, ensure that effective Internet use policies are in place to govern cyber-communication on those media. Employees must be trained on those policies so they appreciate that what they say on such forums, no matter when and where the communication occurs, can lead to discipline. Make sure, in other words, that employees understand that their employer has a right to monitor and control communication on employer-provided sites. Finally, do what you say you are going to do - implement the policies, monitor communication, and obligate employees to report abuses.

Most cyber communication issues can be addressed in the same fashion. Effective policies, adequately communicated and appropriately enforced, can protect employers from liability when their employees are not smart enough to keep their mouths....or their keyboards....quiet. ◆

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inequitable to allow a party to escape liability for tortious conduct merely because it lacks contractual privity with the aggrieved party. On the flip side, the Court limited those who do have contractual privity to the contractual remedies only.

Although the Court clearly intended its decision to be limited to construction defect claims, the ELR has since been applied in several Court of Appeals decisions to situations involving bank lenders, credit card processing companies, car dealers, and sellers of real property. Given this trend, one can expect to see greater prominence of the ELR in a variety of contexts in the future. ◆

About The Authors

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Mr. Leach joined Jones, Skelton & Hochuli as a partner in 2005 and is the chair of the firm's Employment Law Practice Group. He concentrates his practice on employment law, public entity/ school district defense, aviation law, general tort defense and insurance bad faith. Mr. Leach received his law degree from the University of Iowa College of Law in 1987 and is admitted to practice in Arizona, the U.S. District Court, District of Arizona and the U.S. Court of Appeals, Ninth Circuit.

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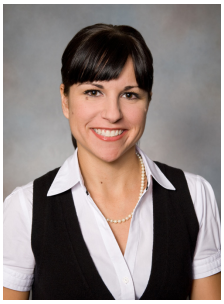

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