

MONITORED COMMUNICATIONS

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COMMUNICATING WITH CLIENTS BY EMAIL

In re Asia Global Crossing, Ltd., 322 B.R. 247 (Bankr. S.D.N.Y. 2005)

- does the corporation maintain a policy banning personal or other objectionable use
- does the company monitor the use of the employee's computer or e-mail
- do third parties have a right of access to the computer or e-mails
- did the corporation notify the employee, or was the employee aware, of the use and monitoring policies?

In re Royce Homes, LP, 449 B.R. 709 (Bankr. S.D. Tex. 2011)

- “Employees are NOT to disseminate any confidential information over the company's system.”

Held: not privileged

Bingham v. Baycare Health System, 2016 WL 3917513 * 4 (M.D. Fla. 2016)

“it appears that the majority of courts have found that an employee has no reasonable expectation of privacy in workplace e-mails when the employer’s policy limits personal use or otherwise restricts employees’ use of its system and notifies employees of its policy.”

Stengart v. Loving Care Agency, Inc., 990 A.3d 650 (N.J. 2010)

- Client used company laptop to communicate through personal Yahoo email account
- company policy: company may access “all matters on the company’s media systems”
- emails are “considered part of the company’s business . . . records”
 - did not define “media systems”
 - did not expressly address personal accounts

Held: privileged

Pensacola Firefighters’ Relief Pension Fund Bd. of Trs. v. Merrill Lynch Pierce Fenner & Smith, Inc., 2011 WL 3512180 (N.D. Fla. July 7, 2011)

- “E-mail is not confidential; employees have no right to privacy for any e-mail messages transmitted through the firm e-mail system”
 - But Merrill’s ‘First Vice President, Assistant General Counsel’ endorsed and participated in the communications

Held: privileged

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