

# 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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