



DOUMAR LAW GROUP NEWSLETTER

A Periodic Publication of Popular Client Issues and Concerns

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E-Mail on Company Computers Belongs to the Company, Not the Employee

A few cases have arisen where employees have tried to challenge employer review of personal e-mail on company computers as a violation of privacy, particularly under the Electronic Communications Privacy Act, which prohibits “intercepts” of telephone or e-mail communications. This statute is designed to prevent eavesdropping, but creative lawyers have tried to bring it to bear (unsuccessfully, so far) to protect employees where employers have uncovered damaging e-mails. Companies can avoid these issues by specifying in a manual, handbook or memo that all e-mail belongs to the company, is company property, and is subject to company review.

Arbitration Fees and Costs Can Be Substantial – Sometimes a Lot More Than Court Fees

Commercial contract parties frequently choose arbitration as a less costly alternative to dispute resolution than court litigation. Although there is generally less discovery in arbitration, initial arbitration fees can be substantial, and are typically non-refundable. In a

recent multimillion dollar dispute, an up-front arbitration fee of \$120,000 was required before the arbitral forum would proceed. Injunctive proceedings before the American Arbitration Association require a \$3250 initial filing fee. These types of arbitration fees can serve as a disincentive to frivolous lawsuits. Remember, the arbitrators can be attentive to your case, but are paid by the hour. The judge and her staff are paid by the taxpayers.

Lessons from Commercial Lease Reviews – Let the Tenant Beware

Even in a tenant-friendly environment, commercial landlords can require onerous terms. Thinking commercial tenants such as several firm clients have recently faced landlords that refused to budge on unreasonable lease provisions, but at the least tenants should try to negotiate for lease terms such that the tenant is not automatically in default based on technical issues, the tenant receives some grace period on rent payment before default is declared, and punitive interest provisions are removed or at least subject to a grace period. To increase leverage, commercial tenants should negotiate with multiple landlords and be willing to walk away from a prospective lease.