

# Construction Quarterly



**Jaburg & Wilk, P.C.**  
Attorneys at Law

HELPING YOU MANAGE  
YOUR LEGAL RISKS

Winter 2007

**Construction Law**

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## ***New Federal Rules About Electronic Evidence-- Is Your Back-up, Good Enough to meet the Letter of the Law?***

Revisions to the Federal Rules of Civil Procedure addressing preservation and discovery of data in electronic media, sometimes known as e-discovery became effective December 1st . What does this mean to your business? In layman's terms, the new rules call for preservation of evidence including information kept as electronic data and data storage, in lieu of paper files, it also calls for a reasonable retention policy regarding deletion of information. To minimize legal risk, a business which believes there is a likelihood of litigation in the near future, needs to know that all the information stored on computers (emails, hard-drives, etc.), now must be turned over in the discovery phase of the litigation process and an additional step must be taken to examine your document deletion process, lest your regular schedule of data deletion from an operating system or the common practice of overwriting back-up tapes be seen as a guise to "electronically shred" pertinent evidence. Given that this is a new law, the full ramifications for noncompliance are yet to be determined, but it is likely to be costly.

Attorney, Scott Richardson from the law firm of Jaburg & Wilk, P.C. had the following comment, "The new laws are going to call for businesses to take a stringent look at how they keep information, how long they store information, and if they have the appropriate protocol in place to comply with these new federal statutes." "Furthermore, I strongly suggest anyone anticipating impending litigation speak to legal counsel at once, to address any concerns about the way your business is storing and retaining it's data."

Jaburg & Wilk, P.C. will be presenting a compliance seminar in February but if you are currently involved in any Federal litigation, you should seek assistance immediately.

*For more information on this subject please contact Scott Richardson at [sjr@jaburgwilk.com](mailto:sjr@jaburgwilk.com) or to register for the upcoming seminar please inquire at [info@jaburgwilk.com](mailto:info@jaburgwilk.com)*

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## Upcoming Seminars:

*Contractors'  
Payment Rights and  
Remedies*

**Phoenix  
Jaburg & Wilk Office  
March 9, 2007  
8:00 AM - 12:00 PM**

**Sedona  
Best Western Inn  
April 13, 2007  
10:00 AM - 2:00 PM**

### *I Don't Think We are Going to Remain Friends: When Owners of Closely Held Companies are Deadlocked or In Dispute With Each Other or Former Employees.*

Once upon a time, you and a friend, family member, or even a spouse decided to go into business together. At first, things are great because of the possibilities and excitement a new challenge brings. You may have formed a corporation, an LLC, a partnership or even operated as a sole proprietorship. If there are only two of you, you may own the company equally, which requires both of you to agree on important company decisions.

As with all things, the nature of business and relationships change over time. It may change for the better, but many times, the changes result in people growing apart or in differing directions. When this occurs, whether it is between friends, family members or with a former employee, it can easily damage or destroy the company you have worked hard to build and the emotional toll and stress of such a situation can make the time you spend at the company you helped to build highly unpleasant!

In a perfect world, many of these issues can be avoided altogether through agreements put in place by the owners of a company at the time of formation, or at any time before a dispute arises. Since most of us don't operate in a perfect world, it is important to know that when situations arise there are options. Various types of agreements can create a roadmap to determine how to proceed in dispute resolutions, including operational issues, changes in ownership, or the ownership structure of the company. You also can put agreements in place to prevent potential damage by former employees. Even if you do not have these types of agreements in place currently, there are actions that can be taken at any given time to help you create a roadmap to deal with future or pending disputes or issues. These efforts towards reasonable risk management help you operate your business in a more efficient manner.

Many people do not recognize the risks at the outset of a business venture because regardless of the amount of money being invested in the new venture, it is usually built on hopes and dreams. Occasionally, issues can arise at the outset of a business venture, the typical scenario however is that the disputes arise further down the road when the

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## Jaburg & Wilk Practice Areas:

Appellate

Bankruptcy

Business law

Collections

Construction Law

Corporate Transactions

Defamation

Employment

Escrow

Estate Planning

Family Law

Financial Fraud

Foreclosures

Healthcare

In-House Counsel

Insurance Coverage

Intellectual Property

Litigation

Pest Control

Probate Litigation

Real Estate

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business plan has been put in place and has proven to be successful.

Consulting with an attorney is a good idea if you are starting a company or new business venture. Let them help you put systems and controls in place to manage potential risks. Preventative measures put in place in an attempt to avoid unnecessary risks and manage disputes will help you avoid incurring costly attorneys fees down the road, and may well prove to be one of the most important uses of your company's capital. As the saying goes, "An ounce of prevention is worth a pound of cure."

In addition to the issues that arise between owners of a company, issues also arise with employees. Whether it is through an employee handbook, a covenant not to compete, a non-solicitation agreement or some other type of agreement, there are numerous risks that must be managed by a company in regard to employees. As with most business risks, they are better managed from the outset of the employment relationship instead of when the employee is leaving the company, by then it may be too late. Similar to disputes between the owners of companies, investing the time and expense to enter into necessary agreements with employees at the beginning of an employment relationship will save you time, money and uncertainty should the employer/employee relationship end. Most importantly, it will give you, the company owner, protections in the event you are required to go to court to enforce agreements. The company's rights are spelled out in a document or documents that may allow expedited relief to be obtained in court.

These are issues faced by many companies, large and small, and represent just a few of the perils that must be anticipated by a company and its owners. Remember, policies put in place before there is a problem are the most useful in preventing internal discord and costly litigation. But, if you missed that window, there's no reason not to remedy that oversight immediately. It is never too late to started running your business smarter and safer.

*For more information on this topic, please contact Neal Bookspan at [nhb@jaburgwilk.com](mailto:nhb@jaburgwilk.com)*

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## *Do You have an Employee Subject to an Existing Earnings Garnishment?*

The federal minimum wage has been \$5.15 per hour since September, 1997. As a result, many states have independently increased the minimum wage. Arizona is one of those states, effective January 1st 2007 the minimum wage in Arizona will increase to \$6.75 per hour.

If you have an employee whose wages are subject to an earnings garnishment you know that the employer must exempt from the garnishment 25% of the employee's disposable earnings for that week or 30 times the minimum wage for that week, whichever is less. This invariably brings up the question, by which rate is a business obligated to make its calculations- at the \$5.15 federal wage or the \$6.75 state wage. Arizona law defines the amount of wages exempt from garnishment as "The minimum hourly wage prescribed by federal law." All earnings garnishment exemptions in the state of Arizona should be calculated at the \$5.15, the federal minimum wage rate.

*Please contact Gregory P. Gillis at [gpg@jaburgwilk.com](mailto:gpg@jaburgwilk.com) for further information on the new minimum wage law.*

**To find out more about our Construction Law Group and other practice areas, please visit [www.jaburgwilk.com](http://www.jaburgwilk.com)**

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