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Newsletters

The Professional Line - January 2011

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The Right to Privacy and the Right to Bear Arms – Two United States Supreme Court Decisions That Impact Local Units of Government

By:**Steven M. Puiszis**

The U.S. Supreme Court decided two cases in 2010 that substantially impact local units of government. In *City of Ontario, California, et al. v. Quon,* 130 S. Ct. 2619 (2010), the Court considered the legality of a police chief's search and of the Fourth Amendment. In *McDonald v. City of Chicago,* 130 S. Ct. 3020 (2010), the Court addressed state and local government gun control regulation and the Second Amendment. Risk managers and those active in municipal professional liability loss control should be mindful of these decisions because of their impact on daily operations for governmental entities.

Recent Court Rulings — Case Summaries & Conclusions

Insurance Agents: Insurer Had No Duty to Advise Insured Where No Clear Request for Advice Was Made

Mullen v. State Farm Casualty and Fire Company, 2010 WL 2228369 (D.S.C.)

After a fire destroyed his house, an insured made a claim against his homeowner's insurance policy. When the insured renewed his policy a few months before the fire, the policy provided coverage of $202,900 for any actual loss sustained by the insured's home, and an additional $40,580 in coverage for "Increased Dwelling Limit." Following the fire, the insured made three claims on the policy: (1) for the loss of the home; (2) content loss; and, (3) living expenses. In response, the insurer issued payment of $204,006.93 for the loss of the home, $203,509 of which represented the policy limit for the dwelling at the time of the fire. The insurer subsequently issued payment of $91,338 for the insured's content claim, and fully reimbursed the insured for certain living expenses.

For more information, please contact Bradley M. Zamczyk or your regular Hinshaw attorney.

Architects & Engineers: Florida Professionals Cannot Contractually Limit Damages for Their Independent Professional Obligation

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Service Areas

Appellate

Directors & Officers Liability

Witt v. La Gorce Country Club, 35 So. 3d 1033 (Fla. 2010)

A country club wanted to construct a reverse osmosis water supply treatment system at the country club. It entered into a design-build contract with ITT Industries, Inc. (ITT) and a contract with Gerhardt M. Witt and Associates, Inc. (GMWA) for consulting services and project administration. GMWA was to provide certain geological services needed to construct the facility. Gerhardt M. Witt (Witt) was a licensed professional geologist employed by GMWA to perform the professional services under the contract.

For more information, please contact Darrell S. Dudzik or your regular Hinshaw attorney.

Architects & Engineers: Summary Judgment Granted Where No Causal Connection Between Lack of Guard Rail and Fall
Zeimaran v. Commercial Concepts, Inc., 303 Ga. App. 447, 693 S.E.2d 513 (Ga. App. Ct. 2010)

Plaintiff business owner contracted with an architect and a general contractor for the building of a beauty salon. After having operated the salon for approximately eight months, the business owner made a routine trip into a storage area to organize boxes of supplies. The last thing she remembered before waking up in the hospital was being on the storage platform organizing boxes. She learned that she had fallen through the acoustical tile adjacent to the storage platform and had struck the floor that was more than 10 feet below.

For more information, please contact Kevin R. Sido or your regular Hinshaw attorney.

Architects and Engineers: Statutory Authority to Practice May Impose Duty Despite Standard Contract Disclaimer
Trikon Sunrise Assoc., LLC v. Brice Bldg. Co., Inc., 41 So. 3d 315 (Fla. App. 2010)

An architect was sued for malpractice in connection with services he was performing for his employer, an architecture firm that was also named as a separate defendant. A tenant had hired the firm to provide various architectural services. The architect signed the contract on the firm's behalf. Approximately one year later, the tenant entered into a form contract with a general contractor. Plaintiff, the owner of the subject property, was not a party to either the general contractor's contract or the architecture firm's contract.

For more information, please contact Kevin R. Sido or your regular Hinshaw attorney.

Architects & Engineers: Negligence Claims Against Architects and Engineers Barred by Economic Loss Rule
Indianapolis-Marion County Public Library v. Charlier Clark & Linard, P.C., 929 N.E.2d 722 (Ind. 2010)

The Indianapolis – Marion County Public Library sued architectural and engineering subcontractors, alleging defective design and inspection services during the construction of an underground parking garage. The subcontractors moved fdefeor partial summary judgment, arguing that the library's negligence claims were barred by the "economic loss doctrine." The trial court granted the motion, and the court of appeals affirmed. The case was then transferred to the Supreme Court of Indiana, which also affirmed.

For more information, please contact David J. Hanus your regular Hinshaw attorney.

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This newsletter has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.