



LEGAL UPDATE

**HOEPPNER
WAGNER &
EVANS LLP**
ATTORNEYS AT LAW

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QUALIFIED IMMUNITY EXISTS FOR REPORTING A THEFT TO POLICE



Kevin G. Kerr

Indiana recognizes a qualified immunity for communications made to law enforcement officers. In a recent decision, *Holcomb v.*

Walter's Dimmick Petroleum, Inc., 858 N.E.2d 103 (Ind. 2006) the Indiana Supreme Court provided guidance on how this privilege interacts with the standards for summary judgment.

On December 3, 2002, Glynell, an employee at a "Spee-D-Mart" gas station owned by Dimmick Petroleum, Inc., called the police

and reported that a customer in a green Jeep had driven off without paying for gas. She also gave the license plate number to police. She was shown a driver's license photo and identified him as the person who drove off without paying. The owner of the Jeep with this license plate was arrested and charged with gasoline theft.

Charges against the owner of the Jeep were later dismissed. He then filed a civil action against Glynell and her employer, Dimmick, on the theory of *respondeat superior* for false arrest, false imprisonment, defamation and abuse of process. Glynell and Dimmick moved for summary judgment arguing that her communications with the police were protected by a qualified privilege. The trial court granted this motion. On appeal a divided panel of the Court of Appeals reversed the trial court. A divided Indiana Supreme Court granted transfer and affirmed the trial court in a three to two decision.

The qualified privilege at issue protects "communications made in good faith on any subject matter in which the party making the communication has an interest or in reference to which he has a duty, either public or private, either legal, moral or social, if made to a person having a corresponding interest or duty." Where the facts are not in dispute, the applicability of the privilege is a question of law to be decided by the court. There is, of course, a social

interest in the reporting of crimes and this reporting requires communication with the police.

Critically, for purposes of summary judgment, the qualified privilege required evidence which rebutted the inference that the communication was motivated by malice.

The privilege could be rebutted by evidence showing: 1) that the person making the communication was primarily motivated by ill will; 2) there was excessive publication of the defamatory statement; or 3) the statement was made without a belief or grounds for belief that it is truthful. In examining malice, the actual "spite" by the person making the communication was less at issue than an abuse of the privilege "by going beyond the scope of the purposes for which the privilege exists."

The plaintiff's attempt to overcome this privilege was limited to the issue of Glynell's belief in the truthfulness of her communication. In rejecting

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I THOUGHT YOU WERE DISABLED, BUT YOU'RE NOT – “Regarded As” Disabilities Under the ADA



Ruth A. Cramer

The Americans with Disabilities Act (ADA) not only protects applicants or employees that are disabled, but also those that are “regarded as” disabled. Under

the ADA, a person is “regarded as” disabled if that person has an impairment that is not substantially limiting, but which the employer perceives as substantially limiting.

In a “regarded as” claim, a plaintiff must prove that either: (1) the employer mistakenly believes the employee has a physical impairment that substantially limits a major life activity; or (2) the employer mistakenly believes that an actual, non-limiting impairment substantially limits a major life activity. In other words, the employer must believe, either rightly or wrongly, that the employee has an impairment that substantially limits one or more of the major life activities.

In conjunction with many “regarded as” claims, plaintiffs often seek the protection of reasonable accommodation under the ADA. Although the ADA does not, on its face, state whether a “regarded as” employee should be entitled to reasonable accommodation, the Equal Employment Opportunity Commission (EEOC) has stated that a “regarded as” employee is not entitled to reasonable accommodation. Even with this guidance from the EEOC, courts have been left to debate whether employers should be required to provide such accommodations, and the federal circuit

MEDIATION



Ronald P. Kuker

Mediation is a form of dispute resolution that is often utilized to resolve disputes between parties. This process is different than traditional litigation. In mediation, the parties utilize the services of a neutral third party, a mediator, to reach a negotiated settlement. The mediator assists the parties in discussing the issues in their dispute and exploring options and alternatives for a settlement that would be agreeable to all parties.

Mediation is a private process, that can be attended by the parties and their attorneys. Although the participants are not required to reach a settlement, the process provides the opportunity to explore all types of creative options.

The parties to a dispute, as well as their attorneys, often utilize mediation in order to save time and costs. In addition, Indiana Trial Courts may order parties to participate in a mediation regarding a dispute that is pending in court. On occasion, Indiana Appellate Courts are called upon to decide an issue regarding mediation. Here are some examples:

- *Fuchs v. Martin*, 845 N.E.2d 1038 (Ind. 2006). Trial courts and local court rules may require parties to mediate as a prerequisite to contested trials or hearings. Although courts have no authority to require mediation prior to the initial filing of an action, a requirement for mediation after initial commencement of a case may be permitted.
- *Office Environments v. Lake States Insurance Co.*, 833 N.E.2d 489 (Ind. App. 2005). A trial court acted properly in dismissing a lawsuit where the plaintiff failed to participate in a court-ordered mediation. The mediation session had been scheduled, postponed, and rescheduled several times. The plaintiff never requested to be relieved of the order to mediate. Also, after the plaintiff’s counsel indicated that counsel would not be responsible for the mediation costs, the plaintiff refused to pay a retainer requested by the mediator.
- *Wheatcraft v. Wheatcraft*, 825 N.E.2d 23 (Ind. App. 2005). A written settlement agreement signed at a dissolution-of-marriage mediation was enforceable, even though one party claimed that the other party had committed a fraud. The parties were disputing the valuation of certain property. Statements of value are generally mere expressions of opinion, and the evidence did not show that one party had superior knowledge over the other party regarding the value of certain business property. ■

courts that have decided the issue are currently split. The First, Third, Tenth, and Eleventh Circuits follow the “accommodation” approach while the Fifth, Sixth, Eighth and Ninth Circuits follow the “no accommodation” approach.

The Seventh Circuit has declined to rule directly on the issue, and district courts within the circuit have come down on both sides, ruling against accommodations in 2000 and 2001, but favoring accommodations more recently. See e.g. *Cebertowicz v. Motorola, Inc.*, 178 F. Supp. 2d 949, 953-54 (N.D. Ill. 2001); *Ross v. Matthews Employment*, 2000 U.S. Dist. LEXIS 16554, at *5 (N.D. Ill. Oct. 27, 2000); *contra Miller v. Heritage Prods., Inc.*, 2004 U.S. Dist. LEXIS 8531, at *10 (S.D. Ind. Apr. 21, 2004). The Seventh Circuit has also appeared to suggest a middle ground. In *Cigan v. Chippewa Falls Sch. Dist.*, 388 F.3d 331, 335-36 (7th Cir. 2004), the court considered what must be accommodated, “any condition that the employer (wrongly) supposes to exist, or only those disabilities that actually afflict the employee?” The court commented: “It is hard to imagine that ... employers would have to afford [“regarded as” disabled

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SHIELD A TRADE SECRET FROM DISCOVERY OR SECURE A PROTECTIVE ORDER TO LIMIT DISCLOSURE OF PROPRIETARY INFORMATION



Robert J. Dignam

Harmony B. Wigley died on August 7, 2001, when she lost control of her motor vehicle on Interstate 69 in Madison County.

Her sister, Violet Mayberry, and mother, Audrey Wigley, sued Bridgestone/Firestone North America Tire, LLC and Bridgestone/Firestone Manufacturing Operations Division (Bridgestone), alleging that a tire on Harmony's vehicle was defective, which allowed the tread to separate and cause the fatal crash.

During the litigation, the plaintiffs sought Bridgestone's "skim stock" formula used to coat the steel belts of its tires. Bridgestone objected to the production of such information, claiming it was a trade secret. In *Bridgestone/Firestone North America Tire, LLC and Bridgestone/Firestone Manufacturing Operations Division v. Mayberry*, 854 N.E. 2d 355 (Ind. Ct. App. 2006), the Court of Appeals of Indiana provided valuable guidance about what constitutes a trade secret, who has the burden to prove the existence of a trade secret, and what legal protection is available to the holder of a trade secret.

Initially, the trial court ruled that although Bridgestone claimed that its "skim stock" formula was a trade secret, the information was discoverable. The court, however, did issue a protective order prohibiting the plaintiffs' experts from using the information for any reason other than the lawsuit or sharing the information with anyone but the plaintiffs (and their lawyers). To give teeth to its order, the court warned, "Any violation will be treated as a serious matter subjecting that person to potential severe punishment for

contempt of court." Bridgestone, unassuaged by the protective order, appealed.

In upholding the lower court's decision, the Court of Appeals of Indiana cited the Indiana Uniform Trade Secrets Act for the definition of a trade secret, noting that the Act defines a "trade secret" as information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use;
- and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Ind. Code § 24-2-3-2.

After providing the statutory language, the court of appeals reiterated that a trade secret is 1) information, 2) which derives independent economic value, 3) is not generally known or readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and 4) is the subject of efforts reasonable under the circumstances to maintain its secrecy. The appellate court then added that information is a trade secret "only if it is the subject of reasonable efforts to maintain its secrecy. The owner of the alleged trade secret must take reasonable, though not overly extravagant, measures to protect its secrecy."

Next, the court of appeals explained that the initial burden rests with the party claiming a trade secret to show that the requested information fits within the language of the statute. If that burden is

satisfied, the burden shifts to the party seeking discovery to show that the disclosure of trade secret information is relevant and necessary to the case, meaning it is essential to either prove a theory of liability or rebut an opposing theory.

Importantly, after considering the parties' arguments, the Court of Appeals of Indiana clarified that "trade secrets are not absolutely privileged from discovery in litigation," and rather than affording trade secrets "automatic and complete immunity against disclosure," Indiana courts will weigh "their claim to privacy against the need for disclosure."

Applying that rationale to the "skim stock" trade secret asserted by Bridgestone, the appellate court determined that the trial court had not abused its discretion in allowing discovery of Bridgestone's proprietary information under a protective order. In reaching its decision, the court of appeals noted:

Once relevancy and need have been established, the trial court must balance the need for the information against the injury that would ensue if disclosure were ordered. This balance typically tilts in favor of disclosure. 'Because protective orders are available to limit the extent to which disclosure is made, the relevant injury to be weighed in the balance is not the injury that would be caused by public disclosure, but the injury that would result from disclosure under an appropriate protective order.' In this regard, it is presumed that disclosure to a party who is not in competition with the holder of the trade secret will be less harmful than disclosure to a com-

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plaintiffs] the sort of accommodations appropriate to a genuine disability." Presumably this middle approach would distinguish "regarded as" disabled employees that have no impairment at all from those who have some impairment that does not substantially limit a major life activity.

The Supreme Court's narrow interpretation of the ADA's actual disability prong has led many individuals plagued by some sort of impairment to look to the "regarded as" prong for protection from employer and co-worker discrimination. With the number of "regarded as" lawsuits on the rise in recent years, employers must use caution when dealing with perceived disabilities. However, without any clear direction from the Supreme Court or the Seventh Circuit, employers are left to wonder whether they must make attempts to accommodate

employees with perceived disabilities. What is clear is that an employer is not even required to engage in an interactive process with an employee to discuss a reasonable accommodation unless and until the employee makes a request for accommodation. With that in mind, employers must also understand that no magic words are required to constitute a request, and such request need not be formal.

Furthermore, before the court can even reach the issue of whether reasonable accommodation is required, the plaintiff must prove that he or she was "regarded as" disabled, and must not only show that the employer perceived a disability, but also that the employer believed that such disability substantially limited a major life activity. Even if an employer perceives that an employee is disabled or has facts to suggest that this is the case, the employer

should not assume that a disability will necessarily impair the employee's ability to function in the workplace or that any impairment is substantially limiting.

Employers can protect themselves from "regarded as" claims by refraining from assessing the health status of their employees and making personnel decisions based on job performance rather than assumptions about an employee's health. "Regarded as" claims are extremely fact-specific.

Therefore, if an employer suspects that an employee is suffering from an impairment that prevents that employee from performing his or her work, the employer should consult legal counsel to discuss the individual facts to determine what actions are appropriate in any given situation and whether the employer is at risk of facing a failure to accommodate claim. ■

FAILURE TO FOLLOW INDIANA'S HOME IMPROVEMENT CONTRACTS ACT COULD BE COSTLY TO HOME IMPROVEMENT CONTRACTORS



Thomas L.
Chrzanowski

In 1987, Indiana enacted the Home Improvement Contracts Act (hereinafter "Act"). After almost twenty years, the Act is still being enforced, although many home improvement contractors either don't realize the Act exists or have long forgotten its requirements. The Act provides that a home improvement supplier that violates the Act commits a deceptive act that is actionable by the Indiana Attorney General or the consumer under the Indiana Deceptive Practices Act, which may result in the injured consumer receiving actual damages, treble damages in cases of willful deception, and reasonable attorney fees from the contractor.

The Act requires home improvement suppliers performing any alterations, repair, or modification to residential home property in an amount greater than \$150 to provide the customer with a home improvement contract. For purposes of the Act, "home improvement supplier" means a person who engages in or solicits home improvement contracts whether or not the person deals directly with the consumer. The Act also requires the following provisions to be included in the contract before it is signed by the consumer: (1) the name and address of the consumer and residential property; (2) the name and address of the home improvement supplier, and each of the telephone numbers and names of any agents to whom consumer problems and inquiries may be directed; (3) the date the home improvement contract was

submitted to the consumer and any time limitation on the consumer's acceptance of the contract; (4) a reasonable detailed description of the proposed home improvements; (5) the approximate start and completion date; (6) a statement of contingencies that would materially change the approximate completion date; (7) the contract price; and (8) signature lines for the supplier and the consumer, with a legible printed or typed version of that persons name placed directly after or below the signature.

The Indiana Court of Appeals recently put the Act to test in *Benge, d/b/a Raceway Construction v. Miller*, 855 N.E.2d 716 (Ind. Ct. App. 2006). In *Benge*, Benge and Miller entered into a written home improvement contract wherein Benge agreed to construct a sun-room addition and concrete patio,

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PARENT CORPORATION NOT NECESSARILY SUBJECT TO PERSONAL JURISDICTION BASED ON THE ACTS OF ITS WHOLLY OWNED SUBSIDIARY



Richard M. Davis

In *LinkAmerica Corp. v. Albert*, 857 N.E. 2nd 961 (Ind. 2006), the Indiana Supreme Court clarified the extent of personal jurisdiction over a party in Indiana and discussed some related concepts.

William Cox is an Indiana truck driver that entered into a typical written contract with Hi-Cube. Cox bought a semi-tractor from Hi-Cube, leased it back to Hi-Cube and entered into an operating agreement to operate the vehicle exclusively for Hi-Cube. The purchase agreement required Cox to operate the truck pursuant to the lease and the operating agreement until all payments were made for the purchase. Hi-Cube terminated the lease and operating agreement and repossessed the truck. Cox sued and obtained summary judgment against Hi-Cube for breach of contract and theft on the issue of liability. The issue of damages remained for trial. Cox then

sought and was granted leave by the trial court to amend the complaint adding Hi-Cube's parent corporation, LinkAmerica. LinkAmerica is an Oklahoma corporation with its principal place of business in Oklahoma.

LinkAmerica moved to dismiss for lack of personal jurisdiction and the trial court certified its order for interlocutory appeal. The Court of Appeals affirmed the denial of LinkAmerica's motion to dismiss for lack of personal jurisdiction and the Indiana Supreme Court granted transfer.

The Supreme Court noted at the outset of the discussion that the 2003 amendment to Indiana Trial Rule 4.4(a) which serves as Indiana's long arm jurisdiction provision, made personal jurisdiction in Indiana co-extensive with that which is allowed by the due process clause of the Fourteenth Amendment of the United States Constitution. This expanded the scope of personal jurisdiction in Indiana. Previously, the applicable Trial Rule listed eight (8) criteria and required that one of those be satisfied, as a preliminary

matter, in establishing personal jurisdiction. Although those criteria still appear in the rule, the amendment in 2003 has expanded personal jurisdiction to the full extent permitted by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, thus making the criteria, or "laundry list" in the rule essentially meaningless.

In an earlier Indiana decision *Wesleyan Pension Fund, Inc. v. First Albany Corp.*, 964 F. Supp. 1255 (S.D. Ind. 1997), found that a parent corporation of a wholly owned subsidiary was subject to personal jurisdiction on the facts of that case. In that case, the parent and the subsidiary not only shared a common board of directors (which is often the case), but also shared identical operational employees as well. Though there is a presumption that a parent and a subsidiary are independent entities for purposes of personal jurisdiction, this presumption can be overcome. Clear evidence is required that either: (1) the subsidiary acts as an agent for the par-

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Qualified Immunity Exists For Reporting A Theft To Police (continued from page 1)

this argument, the Court noted the liability would "not be imposed when the defendant does nothing more than detail her version of the facts to a policeman and ask for assistance, leaving it to the officer to determine what is the appropriate response" unless the representation of facts prevents the intelligent exercise of discretion. Of particular concern was the idea that average citizens must be allowed to provide information to the police trusting in the officer's discretion to protect the citizen's rights under the law.

Applying these principles to the facts, the Court held that simply identifying the plaintiff to police did not go "beyond the scope of the purposes for which [the] privilege

exists". The Court was particularly concerned that imposing even potential civil liability under these facts would make people reluctant to provide facts to law enforcement because they may be subject to civil liability if the information results in a false arrest.

The majority in the Court of Appeals and Justices Dickson and Rucker, dissenting, would have held that a material question of fact existed which precluded summary judgment. They reasoned that Glynell could have intentionally and falsely reported the plaintiff or that she reported him with reckless disregard for the truth. The dissent noted that there was evidence supporting an inference that the gas was pumped

after plaintiff left and that the theft was not reported until nearly an hour later.

The majority noted that these were "logical possibilities" but held that they were not supported by evidence. The only evidence was that the plaintiff was wrongfully identified. To accept that undisputed error supported an inference of intentional or reckless misconduct by the witness would "swallow the privilege" because this scenario was always possible. The facts established that Glynell accurately identified plaintiff's physical appearance, the make and color of the vehicle and the license plate number. This accurate information did not support an inference of recklessness. ■

ent; (2) the parent exercises greater control of the subsidiary than is usual in the case of common ownership and directorship; or (3) the subsidiary is merely an “empty shell.”

In the present case, the Indiana Court of Appeals believed that because LinkAmerica and all of its subsidiaries had the same address in Oklahoma for each home office, the same board of directors, held the annual shareholder meetings at the same place and time, and because LinkAmerica paid Hi-Cube’s legal fees and Hi-Cube’s checks carried a LinkAmerica logo, that the evidence was sufficient to show the presumption of separate corporate entities

was overcome. The Indiana Supreme Court disagreed. All of the above are commonplace in parent-subsidiary relationships. The distinction between this case and the *Wesleyan* case was the fact that the subsidiary, Hi-Cube, had different operational personnel than the parent. The operational personnel for Hi-Cube were located in Indiana and dealt directly with plaintiff Cox. In *Wesleyan*, the parent and all of its subsidiaries had exactly the same operational personnel. In the case at bar, LinkAmerica did no business in Indiana through its own employees. The only Indiana business was done by the subsidiary and the degree of

control of LinkAmerica over the operations of the subsidiary, Hi-Cube was not beyond what one would expect a parent corporation to exercise over its subsidiary in terms of directorship and policy matters. Thus, the court determined that it is the operational personnel and procedures which are the key in determining whether the parent corporation will be subject to personal jurisdiction based upon the actions of its subsidiary. Consequently, the holdings of the trial court and the Indiana Court of Appeals were reversed and the Indiana Supreme Court directed that LinkAmerica’s motion to dismiss should be granted.■



LABOR & EMPLOYMENT LAW UPDATE

by James L. Jorgensen

The Department of Labor (DOL) requires all employers, regardless of size, to post the most recent Federal Minimum Wage poster in their workplaces. This is just one of several posters that may be required for posting in your workplace - for more information, go to www.dol.gov/osbp/sbrefa/poster/main.htm.

Workplace posters are a minor and easily met part of regulatory compliance for a business, but what about the laws behind those posters? With the Federal Minimum Wage Bill perhaps only days away from being passed by Congress and signed into law by the President, are you ready to take on the challenges this new law may impose on your business? Call us. We’re here to help. For answers to this question and more, contact a member of our Labor & Employment Team at 219.464.4961.

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Failure To Follow Indiana’s Home Improvement Contracts Act Could Be Costly To Home Improvement Contractors (continued from page 4)

install wiring for a hot tub that was to be placed on the concrete patio, and improve a kitchen, including the installation of a laminate floor in both the kitchen and sunroom. The parties subsequently entered into a contract addendum for the construction of an extension to Miller’s garage, which did not contain Miller’s signa-

ture. Further, neither the contract nor the addendum included approximate start or completion dates, or a statement of contingencies that would materially change the approximate completion date.

After paying more than \$64,000 for the work, Miller was not satisfied with its quality. Thereafter, Miller sent Benges a letter seeking correction of the defective work as well as the return of over \$4,000 in overpayments. Benges failed to correct the defects or return the overpayments to Miller, causing Miller to file a seven count complaint against the Benges for among other things, violation of the Home Improvement Contracts Act. Benges filed a counter claim against Miller alleging additional payment of \$4,300. The trial court ruled for Miller on all counts and awarded damages of \$7,104.40, plus attorney fees.

The Indiana Appeals Court stated that the purpose of the Act is to protect consumers by placing specific minimum requirements on the contents of home improvement contracts. The Court asserted that few consumers are knowledgeable about the home improvement industry or of the techniques that must be employed to produce a sound structure. The consumers’ reliance on the contractor coupled with the well known abuses found in the home improvement industry, served as an impetus for the Act’s passage and contractors are therefore held to a strict standard.

In *Benges*, the Appeals Court also found that none of the written contracts included Miller’s signature, an approximate start or completion date, or a statement of contingencies that would materially change the approximate completion date. Further, the Court found that the contract for the kitchen renovation, including the instal-

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MANAGING PARTNER'S CORNER



William F. Satterlee, III
Managing Partner

Congratulations Indiana Super Lawyers **Larry G. Evans** and **Mark E. Schmidtke**! *Law & Politics* magazine mailed more than 13,000 ballots to Indiana lawyers asking them to nominate the best attorneys that they have personally seen in action, Larry and Mark were among the those selected.

If you are looking for a "Certified Estate Planning and Administration" attorney, look no further - **Morris A. Sunkel** was recently approved by the Indiana State Bar Association after a stringent application and testing process.

Robert L. Clark has been busy authoring the Indiana and Seventh Circuit chapters, as well as editing the Wisconsin and Illinois Law chapters of the American Bar Association's publication on *Misrepresentations in Life, Health and Disability Applications* due to be published in April 2007.

On March 28-30, **Mark E. Schmidtke** will present at DRI's *Life, Health, Disability and ERISA Claims Seminar* being held in Chicago at the Renaissance Hotel. The seminar is open to DRI members - Defense attorneys, corporate counsel, ERISA Litigation attorneys, claims professionals, risk managers, and employee benefit plan administrators. **Robert L. Clark, Eric P. Mathisen, Robert J. Dignam, and Ruth A. Cramer** will be attending.

James L. Jorgensen will also present on labor and employment law at the Annual SHRM Conference to be held at the Radisson in Merrillville on March 21.

On March 8, **James L. Jorgensen** and **Tina M. Bengs** presented the topic, *Labor & Employment Law Update*, to the Greater Valparaiso Chamber of Commerce Percolator Club members.

On February 1, **Eric P. Mathisen** presented a mini-seminar in Merrillville regarding comparative fault and new legislation to the members of the Calumet Adjusters Association.

Tina M. Bengs presented a lunch and learn session, *Simple Steps for an Employer to Control Costs*, to the Building Industries Association (BIA) members on January 25th in Schererville.

On January 17, **Gerry Stout** presented the topic *Indiana Tax Law Changes: Retail Merchant Certificates* - to the members of the Lowell Chamber of Commerce.

In January, **Ronald P. Kuker** was a presenter at a Public Policy Mediation course at Indiana University School of Law-Indianapolis. Ron's topic was *Alternative Dispute Resolution Rules and Case Law*.

In December 2006, **Ronald P. Kuker** served as seminar chairman for the Lake County Bar Association Applied Professionalism course for newly admitted attorneys.

Failure To Follow Indiana's Home Improvement Contracts Act Could Be Costly To Home Improvement Contractors (continued from page 6)

lation of the laminate floor, was not even in writing. The Indiana Court of Appeals held that Benges violated the Act and upheld the trial court's decision against Benges awarding Miller damages and attorney fees.

With the courts' continued enforcement of the Home Improvement Contracts Act, it would be wise for home improvement suppliers to become acquainted with the Act before agreeing to perform home improvements for consumers in Indiana.■

Shield A Trade Secret From Discovery Or Secure A Protective Order To Limit Disclosure Of Proprietary Information (continued from page 3)

petitor. Indeed, the [United States] Supreme Court has recognized that 'orders forbidding any disclosure of trade secrets or confidential commercial information are rare.'

Accordingly, since Indiana courts are empowered to order dis-

covery of information even when it qualifies as a trade secret, in addition to proving the existence of a trade secret, a company must also be prepared to show that the proprietary information is not necessary to the requesting party's case. Further, a company holding a trade secret must attempt to show that even limited

disclosure under a protective order will cause irreparable harm. Finally, if discovery appears inevitable, a company must vigorously pursue a clearly-worded protective order which includes a significant consequence for any breach.■

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