THE FIG LEAF PRECEDENT SET BY STENGART V. LOVING CARE AGENCY, INC.

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On March 30, 2010, the New Jersey Supreme Court affirmed the intermediate appellate court's decision in *Stengart v. Loving Care Agency, Inc.*, a widely followed workplace privacy case with national implications. In a unanimous opinion, the Supreme Court held that an employee had a reasonable expectation of privacy in her e-mail communications exchanged with her personal attorney through her web-based, password-protected Yahoo! e-mail account using her employer's computer.

This decision is significant because it was generally understood that an employer has unfettered access to, if it does not own, the data residing on computers it issues to its employees. In one of the first state supreme court decisions to address employee cyber-privacy rights, the justices held that the e-mail communications were protected by attorney-client privilege. In an employee-centric opinion, the New Jersey Supreme Court criticized the employer's electronic communications policy for its ambiguity and not stating that web-based, password-protected e-mail communications were subject to employer review. The Supreme Court also directed the trial court to hold hearings to determine the appropriate sanction for the failure of the employer's attorney to promptly notify the court or the employee's attorney when the nature of the e-mail communications became clear.

While the opinion bears the hallmarks of a landmark employee privacy rights decision, there is much more to *Stengart v. Loving Care* than its vindication of the employee's privacy claims. A closer look at the Supreme Court's opinion and, notably, its disagreements with the

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intermediate appellate decision it affirmed, reveals a precedent that is not as threatening to employers as it might appear.

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