

Appeals Practice

Fennemore Craig appellate lawyers are experienced in appeals in federal and state court, as well as before federal and state administrative agencies. Attorneys in the group regularly appear before the United States Court of Appeals for the Ninth Circuit, the Supreme Court of Arizona and both divisions of the Arizona Court of Appeals. Fennemore Craig attorneys also participate in appeals before the United States Supreme Court and the United States Court of Appeals for the District of Columbia Circuit, the Fourth Circuit, the Fifth Circuit, the Tenth Circuit, and the Eleventh Circuit.

The firm has represented clients in numerous reported cases that have resulted in new law:

National Ass'n of Home Builders v. Defenders of Wildlife, 127 S.Ct. 2518, June 25, 2007 (Nos. 06-340, 06-549.) Lead counsel [Norm James](#) with [Janice Procter-Murphy](#), [Theresa Dwyer](#), and [Jaron Bromm](#).

Lead counsel for the National Association of Home Builders and other industry trade associations in an action challenging EPA's approval of Arizona's application to administer the National Pollutant Discharge Elimination System program under section 402(b) of the Clean Water Act. The Supreme Court ruled in favor of the Home Builders, holding that section 7(a)(2) of the Endangered Species Act applies only in situations in which there is discretionary federal involvement or control and that EPA's discretion in approving Arizona's program was limited to ensuring that the statutory criteria in the Clean Water Act were met.

Griffis v. Pinal County, 215 Ariz. 1, 156 P.3d 418, (April 25, 2007) (No. CV-06-0312-PR.) Lead counsel [Tim Berg](#) with [Theresa Dwyer](#) and [Janice Procter-Murphy](#).

Arizona Supreme Court held that e-mails of government officials that are solely personal in nature are not public records subject to review and copying under the public records law. The Arizona Supreme Court said that "Disclosure of purely private documents does nothing to advance the purposes underlying the public records law. The contents of purely private documents shed no light on how the government is conducting its business or spending taxpayer money." The Justices also stated that a review of the nature and purpose of the e-mail compared to the official's or the agency's activities should guide what is ultimately considered solely personal communication and what is a public record.

Stonecreek Bldg. Co., Inc. v. Shure, 216 Ariz. 36, 162 P.3d 675, (Div. 1, July 26, 2007) (No. 1 CA-CV 06-0372.) Lead counsel [Keith Hendricks](#) with [Scott Shelley](#).

The Court of Appeals sets forth the grounds test an owner may cite as justification for withholding payment and clarifies the effect of payment on later disputes between the parties. The judges stated the state's Prompt Payment Act is designed to ensure that contractors get their money for work performed in a timely manner.

Lennar Corp. v. Auto-Owners Ins. Co., 214 Ariz. 255, 151 P.3d 538, (Div. 1, January 23, 2007) (Nos. 1 CA-CV 03-0451, 1 CA-CV 03-0593, 1 CA-CV 03-0715, 1 CA-CV 03-0804, 1 CA-CV 04-0327.) Lead counsel was [Tim Berg](#) with [John Balitis](#).

The Arizona Court of Appeals defines an insurance carrier's obligations to provide coverage to developers, builders and contractors in residential construction defect lawsuits brought by homeowners. The Court's decision addresses what can constitute an "occurrence" under an insurance policy when property damage to a home results from allegedly faulty workmanship. It also defines an insurer's obligation to investigate occurrences and rebut coverage when a builder makes a factual showing that a claim is covered.

The scope of the firm's appellate practice covers civil, administrative and regulatory law, with emphasis in the following areas:

- Constitutional and Public Law - challenges to the validity under the United States and Arizona Constitutions of statutes and ordinances and state, local and municipal regulations.
- Bankruptcy and Creditors' Rights - appeals to the United States District Court and the Ninth Circuit Bankruptcy Appellate Panel.
- Taxation - challenges to state and local ad valorem real property taxation, state and local sales, use and income

taxation and federal income taxation.

- Real Property - actions to enforce mortgages, deeds of trust and restrictive covenants, and suits concerning title to minerals on private and public land.
- Natural Resources, Environmental and Water Law - challenges to the United States Environmental Protection Agency's adoption of rules and orders, and appeals from orders of the Arizona Department of Water Resources and Arizona Department of Environmental Quality.
- Public Utility Law - appeals from orders of the Arizona Corporation Commission setting rates for and governing provision of service by public service corporations, and appeals arising from suits and administrative proceedings involving the competing rights of public service corporations, governmental bodies and other entities to provide utility service.
- Tort Law - appeals primarily on behalf of defendants in cases involving product liability claims, medical negligence claims and business torts, such as antitrust, lender liability and insurance coverage claims.
- Commercial Litigation - appeals arising from claims of violations of the securities laws, laws governing trade secrets and unfair competition as well as disputes arising from every aspect of corporate and business transactions.
- Labor and Employment - appeals primarily on behalf of employers from orders of the National Labor Relations Board and in cases involving breach of contract, wrongful discharge and discrimination claims.

Attorneys from the Appeals Practice Group have served and currently serve on the Appellate Handbook Committee of the State Bar of Arizona and currently are responsible for the chapters of the Handbook relating to attorneys' fees on appeal. They also serve on the Advisory Committee of Division One of the Arizona Court of Appeals. The chair of the practice, [Tim Berg](#), is past president of the American Academy of Appellate Lawyers.

Appeals Practice Group

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