

## **NO IMPLIED WARRANTY OF PROFESSIONAL SERVICES**

*Hogue v. ProPath Laboratory, Inc.*, 2-04-376-CV (Tex. App. – Fort Worth 2006, no pet.)

Following Texas Supreme Court precedent, the Fort Worth Court of Appeals in *Hogue v. ProPath Laboratory, Inc.* reiterated that “Texas law does not recognize a cause of action for breach of an implied warranty of professional services.” In so doing, the Court rejected the plaintiffs’ argument that an implied warranty should be recognized when the defendants had not provided services to the plaintiffs personally. The defendants provided pathology analysis and related services concerning a skin biopsy taken from the plaintiff husband. The biopsy was sent to defendants by the husband’s physician, not plaintiffs themselves. The Court wrote: “The Hagues cite no authority to explain how the lack of direct contact renders the services performed by ProPath something other than professional services, and our own research has found none. We therefore decline to create an implied warranty under the circumstances presented.” This case is particularly significant to architects and engineers hired by a general contractor or builder rather than by the building owner because the same rationale would apply to the professional services they provide.

If you have any questions regarding this case, please contact Bob Dawson (robertd@gucl.com) or Richard Schellhammer (res@gucl.com).