LIVE LIFE BIG™
NEWSLETTER
October 2015 • Volume 19 • Number 10

Virginia Attorney
Ben Glass

A Monthly Publication of Ben Glass Law

This newsletter is for informational purposes only and no legal advice is intended.

"ALL YOU LAWYERS SUCK"

by Ben Glass

That was the subject line of an email that I received recently from a potential client whose case we had rejected.

She was frustrated because our firm (and, apparently many others) had rejected her case. She said, "You lawyers are all about the money."

I get it that she was frustrated. She had been through a terrible ordeal with her dentist. Years of pain. Maybe there was malpractice and maybe there wasn't. Maybe she followed the dentist's advice for her own self care and maybe she didn't.

At BenGlassLaw, we get between 3-5 inquiries PER DAY just from people who want to sue their doctors. We get many more inquiries each day for general personal injury cases.

While different lawyers will look at potential cases differently, here's what we look at to determine whether we will accept a case:

Is the negligence clear? Doctors will win 85% of the time in medical malpractice cases in Virginia. In order to win your case, you must fit into that top 15% of cases. This is a tough mountain to climb. Essentially, there must be virtually no conceivable dispute as to what the "standard of care" was for the doctor.

Are the damages catastrophic? Yes - *catastrophic*. Virginia's tort reform laws make it very expensive to bring and maintain a medical malpractice case. Virginia then limits damages at approximately $2 million. In a medical malpractice case, a lawyer will be devoting upwards of 1,000 hours towards the case. In addition, either the client or the lawyer is going to be advancing $50,000 or more in case expenses. There has to be a significant payoff for this risk.

—continued on page 2

In this issue...

Avvo Clients' Choice 2015 Award

BENGLASSLAW HAS WON THE 2015 AVVO CLIENTS' CHOICE AWARD

It's truly an honor serving this community, and we want to thank all of our wonderful clients and readers for making this award possible. It may not seem like much from the outside, but getting insurance companies to treat people with respect and pay their medical bills can be life changing for many Virginians. If you or someone you know have been in a car accident, have had your long-term disability claim denied, or been injured by a medical professional, please give us a call and let us help. ■

HEALTHY EATING OUT AND ABOUT!

by Leslie Schall

Many people eat well when cooking at home, but lose control when dining out. Don't beat yourself up if this happens; it's easy to set aside your willpower when confronted by delicious-looking restaurant options! Going out to eat is fun, and it can play a big part in how we socialize with friends and family. Sometimes it's even required for work.

So how do you avoid these restaurant pitfalls? Plan before you go! Try these 5 tips for eating healthily when dining out:

1. **Help pick the restaurant.** Look at menus in advance and find one that names the source of their ingredients and focuses on organic and local products.
2. **Drink a glass of water and eat a handful of almonds or tablespoon of almond butter before you go.** You won't be starving when you sit down and you will be able to make better mindful choices.
3. **Bread is usually highly processed white flour with preservatives.** Skip it unless it is of very high quality, homemade, and ridiculously good.
4. **Avoid processed sugar.** This can make dessert difficult, but you can order berries with real cream if you want to indulge.
5. **If you choose to have a drink, pick a glass of organic wine or a German beer.** They are a better option than a cocktail because you know what is in it - meaning no added sugar or sugary juice.

Have fun! Eating mindfully and healthily shouldn't mean feeling deprived. You can enjoy a night out with friends and still feel your best. ■

—continued from page 4

Halloween Costume Ideas

Not only is this costume cheap as hell (red polo, khakis, belt) but it's already got a built-in punch line. BONUS: You can also go as Flo from Progressive, all you need is an apron and an ungodly amount of lipstick.

FANTASY FOOTBALL

Wizard costume + football helmet = fantasy football. If you're averse to puns, the rest of this article is not for you.

If you're reading this thinking, "C'mon, give me the cheapest and laziest you've got," look no further:

CHICKEN CORD ON BLUE

Get a blue shirt, a rubber chicken, and an old phone cord from the '90s. Wrap that cord around the chicken and yourself, and there you have it. Chicken cord on blue. You asked for cheap, not sexy.

CEILING FAN

Buy a shirt and write on it: "Go Ceiling!" You're a fan of the ceiling. A ceiling fan. I'll show myself out...

But first! I give you one of the laziest costumes on the planet:

ERROR 404

Take a white shirt and write: "Error 404: Costume not found." It'll get some groans, but if you're ever in a bind and forgot to get a costume for a party, this could be the one that bails you out. You're welcome. ■

—continued from page 1

"All You Lawyers Suck"

Read #2 again. Money is a factor in the decision regarding medical malpractice cases. Law firms are a business, and we don't actually have unlimited money to put toward trying every single case we hear about. A well-regarded law firm is choosing between hundreds of inquiries a year as to which cases it will choose to invest its time and money capital. That is reality.

Finally, there must be a clear connection between the alleged negligence of the doctor and the damages. Sometimes doctors make mistakes and sometimes the damages are huge, but there must be a very clear connection between the negligence and the damages.

So we get it that this lady was angry. It goes with the territory. The fact that several lawyers arrived at the same decision as we did is telling, though it doesn't guarantee that this woman didn't have a case. It's just a reality we must all face, lawyers and clients alike. ■

BGL's Best Bites:

VAMPIRE BITE COOKIES

Courtesy of BakingBites.com

Ingredients:

3/4 cup butter, softened
1/2 cup sugar
1 large egg
1/2 tsp vanilla extract
1/8 tsp almond extract
1 1/2 cups all purpose flour
1/4 tsp salt
Approx 1/2 cup red jam (raspberry/strawberry)

Preparation:

In a large bowl, cream together butter and sugar until light. Beat in egg and extracts.

Add flour and salt to the bowl and mix them into the butter-sugar mixture at low speed until dough is just combined.

Wrap dough in plastic wrap and refrigerate for at least 1 hour.

Preheat oven to 325° F.

Divide dough in half and keep the portion you are not using in the refrigerator.

Roll dough out on a lightly floured surface until it is about 1/8-inch thick. Use a cookie cutter to cut out 2-inch rounds.

Place half of the rounds on a baking sheet, put a teaspoon of jam on each of them and cover with another round of dough. Press edges down lightly, pinching the edges onto the cookie sheet. Use a toothpick and poke two small holes (like a vampire bite) in the top of each cookie.

Bake for 10-12 minutes, until cookies are set.

Cool for about 5 minutes on the baking sheet, then transfer to a wire rack to cool completely.

Dip a toothpick in some extra red jam and insert again in the "bite" holes you made before baking to emphasize them, if not already red. Draw a blood trickle down with the jam from one of the bites, if desired.

Cookies are best the day they are made.

Makes 2 dozen. ■

FOR OUR ATTORNEY REFERRAL PARTNERS

If you are one of our many attorney referral partners, we thank you for the people you've allowed us to help this past month. We always make sure the client knows that you are the hero for having made the connection. If this month you find yourself with a personal injury, long-term disability, or medical malpractice case that you don't handle, give that person the BenGlassLaw number, 703-584-7277, and make sure they say, "Attorney (Your Name Here) sent me," so that we know who to thank. If you have any questions about how we handle referrals, email info@benglasslaw.com with the subject line "Referral Partners" to learn more about our program.

Reminder About Our Firm's Communication Policy

Our promise to you is that while we are working on your case, we don't take inbound phone calls, faxes or emails. Ben Glass takes no inbound unscheduled phone calls whatsoever. It makes him much more productive and helps get your case resolved faster. You can always call the office at 703-544-7876, and schedule an in-person or phone appointment, usually within 24-48 hours. This is a lot better than the endless game of "phone tag" played by most businesses today. Remember, too, that email is "quick," but is checked no more than twice a day. Replies are then scheduled into the calendar. So if it's really important, don't email–call the office instead.

This publication is intended to educate the general public about personal injury, medical malpractice, and small business issues. It is not intended to be legal advice. Every case is different. The information in this newsletter may be freely copied and distributed as long as the newsletter is copied in its entirety.

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Inside This Issue...

Did you find Ben last month?

Dan Mills
The District of Columbia Bar
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Washington,DC 20005

HALLOWEEN COSTUME IDEAS THAT ARE CHEAP AND HILARIOUS

It's the holy grail of all Halloween costumes: what will make me look clever without hammering my wallet?

FACEBOOK PROFILE

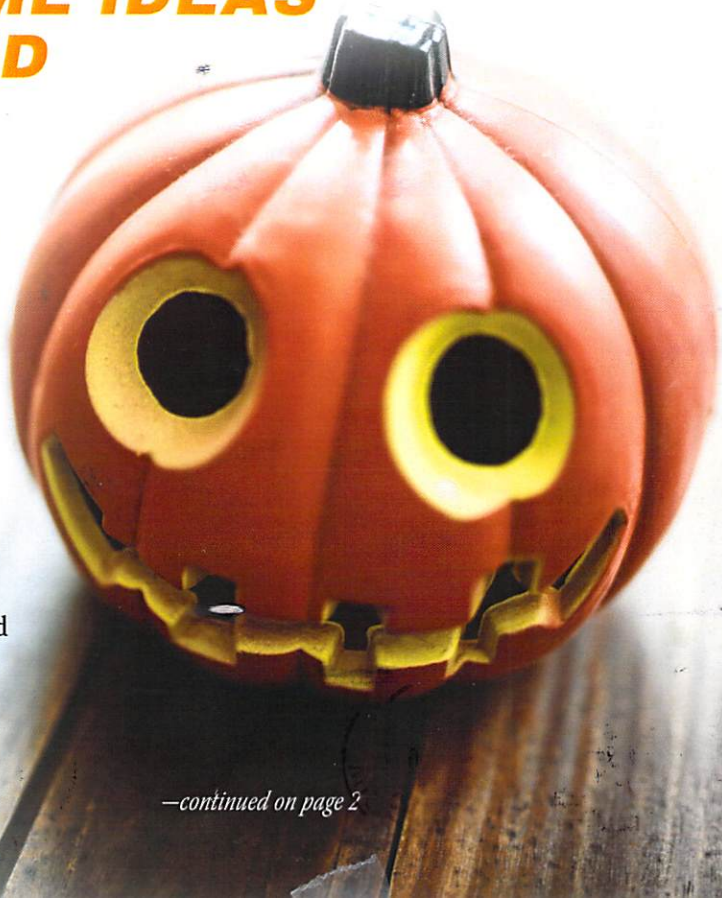
Make a giant cardboard cutout of your Facebook profile, complete with pictures, timeline, feed, etc. Cut out a box for your face and go as your profile picture for the night.

50 SHADES OF GREY

Not as dirty as you're thinking: go around to home improvement stores picking up free swatches of grey paint. Once you've gotten your 50, attach them to a shirt or dress and voila, you're 50 shades of grey... without the weird dungeon.

JAKE, FROM STATE FARM

"What are you wearing, Jake from State Farm?" "Uhh... khakis."



—continued on page 2

Daniel Mills

From: Welter Law Firm, P.C. <connect@welterlaw.com>
Sent: Monday, October 05, 2015 6:20 AM
To: Daniel Mills
Subject: Employment Law Update from Welter Law Firm - October 2015

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WELTER LAW FIRM, P.C.

The Laconic Law Blog
Pithy Commentary on Employment Law

The following articles were recently published on the Laconic Law Blog, focusing on major national, state and local cases, rulings, regulations and trends in employment law.

U.S. Department of Labor Expands State-Level Partnerships to Enforce Employee Classification Standards

On August 13, 2015, the U.S. Department of Labor announced the formal signing of a three-year Memorandum of Understanding (MOU) between DOL and the Alaska Department of Labor and Workforce Development, making it the the twenty-fifth state-federal partnership for labor enforcement. Continue reading

Government Contractors Face a Continuing Wave of Executive Orders on Labor & Employment

Recognizing the impact of the federal government's contractor workforce as a standard-bearer for labor practices, the Obama administration has continued to issue executive

orders that seek to strengthen the protections afforded to personnel within the federal contracting environment. Continue reading

Court Rulings Reiterate that Employers Should Review and Revise Best Practices for Drug-Free Workplace Programs

Employers have many reasons for requiring employees to submit to drug and/or alcohol testing, both as a part of pre-employment screenings, and as a condition for continued employment. The key is how they implement those practices. Continue reading

Employer Beware: 12 California Labor Code Requirements You Don't Even Know Exist

Most California employers are likely very aware of the state's requirements on issues such as meal and rest breaks, overtime, and final pay. What many California employers do not know about are the many more obscure requirements under the California Labor Code. And regardless of how incidental, every rule can lead to a violation. Continue reading

Latest FLSA and EEOC Changes Drive Dramatic Shifts in Overtime, Classification and Discrimination

So far in 2015, the Department of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC) issued new interpretations of key employment principles. In addition, the DOL announced that they intend to revise a key rule that will significantly change future wage claims under the Fair Labor Standards Act (FLSA). Continue reading

Co-worker Safety Trumps Employee's Right to Disability Accommodation After Making Death Threats

Employers' hands are often bound when balancing workplace morale with their duty to accommodate employees with mental or behavioral health issues. However, the U.S. Court of Appeals for the Ninth Circuit recently clarified the limit of the employer's duties in holding that an employee who makes death threats against co-workers is not a qualified individual with a disability (within the meaning of the statute) and need not be accommodated. Continue reading

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About the Firm: The Welter Law Firm is an employment law and business litigation firm. We are dedicated to providing our clients with big firm quality representation along with small firm service. Our philosophy is to minimize unnecessary conflict while helping our clients to maintain positive business relationships. When faced with the unavoidable disputes that arise, we immediately bring the firm's experience and resources to bear on resolving the dispute in the most cost-effective manner possible.

About the Author: Eric A. Welter is the President of the Welter Law Firm. Eric left one of the largest law firms in the country in 2000 to found his practice. His driving passion was to establish a law firm that provides top quality legal representation to companies in a cost-effective manner.

Eric is an experienced trial lawyer who has represented national corporations in complex litigation, including class actions, involving a wide range of employment law, public

accommodations and business issues. His practice focuses on employment law and litigation, but also includes representing organizations in commercial litigation involving breach of contract, franchise disputes, or trade secret misappropriation cases. Eric has also counseled and represented executives in contract negotiations and disputes.

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Daniel Mills

From: ZwillGen Blog <staff=zwillgen.com@mail253.suw14.mcdlv.net> on behalf of ZwillGen Blog <staff@zwillgen.com>
Sent: Tuesday, September 22, 2015 3:06 PM
To: Daniel Mills
Subject: ZG Welcomes New Attorneys, 9th Circuit Dismisses VPPA Suit, & Eight Data Agreement Clauses to Avoid

ZwillGen blog

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Law Across the Wire and Into the Cloud

Recent Developments in Internet Law

CDA DOESN'T PROTECT WEBSITE THAT HELPS DEVELOP ILLEGAL CONTENT

Sep 21, 2015 09:44 am

Internet service providers and other online services that publish third-party content (like user-posted videos, reviews and ads) rely upon Section 230 of the Communications Decency Act (CDA) to provide them with immunity from liability for what those third parties say and do. Section 230 of the CDA has allowed user-generated sites to flourish in a […]

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EIGHT CLAUSES IN DATA AGREEMENTS YOU SHOULD AVOID (IF YOU CAN)

Sep 17, 2015 11:47 am

I draft and edit a lot of data licensing and data services agreements for online, offline, social and mobile data. I often find myself revising or deleting certain reoccurring provisions because they invite disputes, raise confusion, forfeit rights or create business risk and potential disruption. This list catalogues some of what I consider the worst […]

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GPEN SWEEP FINDS MIXED NEWS FOR CHILDREN'S ONLINE PRIVACY

Sep 14, 2015 11:22 am

The third annual privacy sweep conducted by the Global Privacy Enforcement Network (GPEN), a cross-border network of privacy regulators, has yielded good news and bad news for children's apps and websites. The bad news—a May 2015 GPEN survey raised privacy concerns about 41% of the 1,494 children's apps and websites examined. The United Kingdom Information […]

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GAME OVER: NINTH CIRCUIT AFFIRMS DISMISSAL OF VPPA CLAIMS RELATED TO PLAYSTATION NETWORK

Sep 11, 2015 11:02 am

The Video Privacy Protection Act (“VPPA”) limits how video tape service providers permissibly may disclose and retain a consumer’s personal information. In a case of first impression for the Ninth Circuit, on September 4, 2015 the Ninth Circuit affirmed dismissal of a class action VPPA claim against two related Sony entities. Rodriguez v. Sony Computer […]

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THIRD CIRCUIT, ONCE AGAIN, STRIKES DOWN NEW JERSEY SPORTS GAMBLING

Sep 10, 2015 10:15 am

The U.S. Court of Appeals for the Third Circuit dealt another blow to New Jersey's hopes of legalizing sports gambling in its casinos and racetracks. In a 2-1 decision, the Third Circuit sided with the plaintiffs, a collection of the four major sports leagues (the NFL, NBA, NHL, and MLB) and the NCAA, affirming a […]

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DATA LOCALIZATION AUDITS BEGIN IN RUSSIA FOR SOME

Sep 03, 2015 03:48 pm

Companies collecting Russian citizens' personal data are now subject to Russia's data localization law and potentially face an audit by the Russian communications regulator, Roskomnadzor. The Russian government plans to audit 317 companies by the end of 2015, or 0.012% of all companies it believes are working with personal data in Russia. However, Roskomnadzor does […]

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ZG WELCOMES KANDI PARSONS AND MARCI ROZEN

Aug 31, 2015 10:08 am

We are happy to announce that we have added two new attorneys to our Washington, D.C. office. Kandi Parsons, former Senior Staff Attorney at the Federal Trade Commission ("FTC") in the Division of Privacy and Identity Protection, has joined the firm today and Marci Rozen, former associate in the Privacy, Data Security, and Information Law Group […]

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FTC HAS POWER TO REGULATE DATA SECURITY; WYNDHAM CASE TO PROCEED ON THE MERITS

Aug 25, 2015 02:17 pm

Companies have yet another reason to pay attention to their privacy policies and ensure their data security systems are up to snuff. Marking another important win for the FTC in FTC v. Wyndham, the Court of Appeals for the Third Circuit has affirmed the FTC's authority to bring enforcement actions against companies with unfair data […]

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OTA SEEKING PUBLIC COMMENT ON IOT TRUST FRAMEWORK

Aug 21, 2015 08:53 am

The Online Trust Alliance (OTA) released a proposed Internet of Things (IoT) Trust Framework ("Framework") and is requesting public comment by September 14. The Framework is the first global, multi-stakeholder effort to address the privacy and security risks associated with IoT devices, and is intended to provide best practices for industry participants when designing, creating, […]

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NINTH CIRCUIT AFFIRMS DISMISSAL OF VPPA CLAIMS AGAINST NETFLIX (AND NETFLIX USERS REJOICE)

Aug 20, 2015 11:30 am

Netflix operates the world's largest subscription service for viewing video content. One great feature Netflix offers is the ability to use Netflix-ready devices (such as your connected television with a Netflix app) to access Netflix. You just need to enter your username and password, and you can watch Netflix from your TV. After you've entered […]

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Daniel Mills

From: Christopher Guest, Esq. - Law Office of Christopher Guest, PLLC <cguest@guestlawllc.com>
Sent: Wednesday, September 30, 2015 12:20 PM
To: Daniel Mills
Subject: September 2015 The Future Estate Newsletter from the Law Office of Christopher Guest, PLLC

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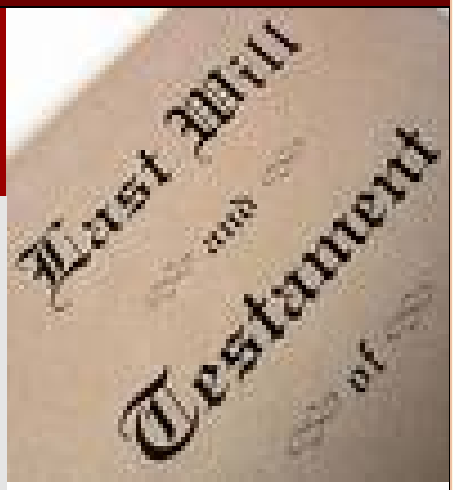
The Future Estate

Volume 6, Issue 8, September 2015

Law Office of Christopher Guest

A Law Office Planning for the Future



Dear Dan,

The leaves are starting to fall and the weather is starting to turn. With the change of weather, it also means the American Diabetes Walk is not far away. Like every year since 2003, I am captaining a team to raise funds for the American Diabetes Association and would love any support you can give by clicking here.

This month's topics include how an irrevocable trust can be amended, how a person can access a safe deposit box to retrieve a will and the estate issues of Frank Gifford

About My Firm

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Sincerely,

Chris

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Newsletter Spotlight

-Can an Irrevocable Trust be Amended? - Part 1.

-Basics of Estate Planning: How Do I Get a Will Out of Safe Deposit Box?

-Estate of The Month: Frank Gifford

Can an Irrevocable Trust be Amended? - Part 1

Like many things in life, estate planning has many little quarks and nuances that can almost be contradictory in nature. One of the more interesting contrasts is the fact an irrevocable trust is not as "irrevocable" as you would think. Depending on the situation, an irrevocable trust can be amended or changed to reflect circumstances that the grantor might not have foreseen generating the need to change or terminate the trust.

But, let's take a step back. An irrevocable trust is one that generally cannot be modified or revoked by the person who creates it, otherwise known as the settlor or grantor. A grantor establishes an irrevocable trust to gain the dual benefits of reducing the grantor's estate tax liability while simultaneously transferring wealth to loved ones. In return for these benefits, the grantor gives up the right to amend or revoke the terms of the trust. This drawback, however, is not as restrictive as it may seem.

More in the September 2015 Newsletter

Evening appointments available.

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Questions or comments? E-mail us at cguest@guestlawllc.com or call 202.349.3969

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An engagement agreement must be signed by both the attorney and the client to establish an attorney-client relationship with the Law Office of Christopher Guest, PLLC

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Basics of Estate Planning:
How Do I Get a Will Out of Safe Deposit Box?

When clients complete their estate plans with me, I provided a long instruction letter about where to keep their estate plan. One of those options, among the many, is placing the documents in a safe deposit box. One of the biggest positives for a safe deposit box is the restricted access. One of the biggest negatives for a safe deposit box is the restricted access. It is quite the double-edged sword, and this article will focus on how to access a safe deposit box if decedent's will is stored in one and can't be opened.

More in the September 2015 Newsletter

Estate of the Month:
Frank Gifford


Frank Gifford in his younger days

As many of you know, I have a strong passion for football and like to use the pitfalls of deceased NFL players' estates as examples of what not to do in estate plan. NFL Players have failed to account for estate taxes (Steve McNair), dying intestate and with improper joint tenancy ownership (Sean Taylor), and questions on witnesses to the execution of a will (Gene Upshaw). Not even NFL owners are spared from making mistakes in their estate planning. (Tom Benson). On August 9th, another football great, Frank Gifford died and his will was recently filed with a Connecticut probate court and providing more evidence on the wisdom to create a trust.

considered attorney advertising under the rules in some states. Prior results described in this newsletter cannot and do not guarantee or predict a similar outcome with respect to any future matter that the firm or any lawyer may be retained to handle. Case results depend on a variety of factors unique to each case and circumstance.

Frank Gifford spent most of his life in and around the NFL. He had a 12-year playing career as a running back and flanker for the New York Giants and was inducted into the NFL Hall of Fame in 1977. He also had a successful post-NFL career becoming a play-by-play announcer and commentator for 27 years on ABC's Monday Night Football. He also exhibited sport casting ability beyond football by announcing for Wide World of Sports and the Olympics.

More in the September 2015 Newsletter

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Daniel Mills

From: Margarita R. Sanchez <msanchez=disanlegal.com@mail49.wdc01.mcdlv.net> on behalf of Margarita R. Sanchez <msanchez@disanlegal.com>
Sent: Monday, September 28, 2015 12:00 PM
To: Daniel Mills
Subject: Disan LLP Welcomes Former Chief Officer of Investment and Trade

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Firm News

En castellano aquí

Specialized New Hire Bolsters Washington D.C. Law Firm's International Counsel Roster

Former Chief Officer of Investment and Trade in Services in the Republic of Panama joins Disan LLP bringing 10+ years of diverse expertise in public international law

WASHINGTON, D.C. – September 16, 2015 – International law firm Disan LLP is pleased to announce that Margie-Lys Jaime has joined the firm as an international counsel. Since opening its doors more than a year ago, Disan has held a keen focus on providing expert legal services throughout Latin America and

the Caribbean. The firm's leadership is confident that Jaime will strengthen Disan's public international law and sovereign states practice from its flagship Washington D.C. office, and enhance the firm's ability to help corporate clients navigate the complexities of international treaties when structuring investments in the region.

Jaime comes to Disan with more than ten years of international law experience specialized in treaty negotiation and investor-state dispute settlement issues. She will focus on providing sovereign clients with expert advice on treaty negotiation, as well as investment and international dispute prevention and management. Jaime will be tasked with fortifying the firm's capabilities for infrastructure projects involving public authorizations or concessions.

Margarita Sánchez, founding partner of Disan states: "We are beyond pleased to welcome Margie-Lys to our growing team. Her experience and knowledge will not only strengthen our sovereign state capabilities, but also our practice as a whole."

Jaime is a former Chief Officer of Investment and Trade in Services of the Ministry of Trade and Industries in the Republic of Panama. Throughout her career, she has participated in free trade agreement negotiation rounds on trade in services, government procurement and investments. She has experience conducting consultations with public and private sectors, monitoring treaty implementation processes, and drafting statutory laws and other international compliance regulations. Jaime holds a PhD, three LL.Ms, a master's degree in higher education, and a JD from universities in Panama, Paris, and Washington D.C.

Please click here for more information about Jaime's experience and education.

Lea esta nota en castellano aquí

Contact
Margarita R. Sánchez
Disan LLP | Washington DC
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About Disan

Disan LLP is an international law firm based in Washington D.C. with a keen focus on Latin America and the Caribbean. The firm is dedicated to helping companies, sovereign governments, and multilateral development banks, resolve their problems and achieve their goals throughout these regions. Disan focuses on providing a rich understanding of Latin American culture and round-the-clock dedication to its clients through the field of international law. Learn more about Disan at www.disanlegal.com.

In the past you provided Disan LLP with your email address. Occasionally you will receive our announcements or newsletters regarding issues involving Latin American and the Caribbean.

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Daniel Mills

From: Beach-Oswald Immigration Law Firm <polina@beach-oswald.ccsend.com> on behalf of Beach-Oswald Immigration Law Firm <dbeach@beach-oswald.com>
Sent: Tuesday, October 06, 2015 6:03 AM
To: Daniel Mills
Subject: September 2015 Updates from Beach-Oswald Immigration Lawyers

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Beach-Oswald Immigration Law News Update

In This Issue . . .

Quick Links

Issue: #7 **September 2015**

Beach-Oswald Immigration Law Associates, PC are **Washington, DC immigration attorneys**. Our law firm is devoted **exclusively to immigration law**. We have an **AV rating** (highest possible rating for lawyers for legal acumen and ethical standards). Practicing law since 1981.

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Please complete a Client Data Form prior to your consultation. We have forms in English, French, Spanish, Arabic, Tagalog, Vietnamese, Croatian, and Mandarin Chinese.

If you require a form in another language, please call us at (202) 331-3074.

The picture above was taken of the BOILA team for our Fall Retreat on the Odyssey Potomac Boat Cruise.

Read on!

EU Announces Refugee Quota Plan

The European Commission President Jean-Claude Junker announced in an annual address, a new comprehensive plan to assist EU countries in responding to the growing number of migrants fleeing internal conflict and civil war in the Middle East/North Africa region. The United Nations' refugee agency, UNHCR estimated that more than 336,000 refugees and migrants have crossed the Mediterranean sea to the European continent so far this year. This journey has proved to be extremely dangerous as overcrowded boats capsize, drowning its passengers. For those who make it across the sea their futures are still uncertain as each European nation differs in their approach to asylum seekers. As the migrants wait they face harsh border officers, extreme overcrowding, and a severe lack of basic necessities

In recent months countries throughout Europe have been subject to chaotic scenes as large numbers of migrants have crowded boarders and in some instances violently collided with security forces, such as on Hungary's southern border with Serbia where migrants broke through police lines and forced the closure of a main highway.

The Military Accessions Vital to the National Interest Program (MAVNI)

Washington, DC

Super Lawyers

2011 to 2015

Military Accessions Vital to the National Interest, also known as MAVNI, is a U.S. military recruiting program that permits legal non-citizens with high valued skills to join the U.S. Army in exchange for an expedited path to U.S. citizenship. A non-citizen who joins the U.S. Army through MAVNI is able to move from a non-immigrant visa or asylee, refugee, TPS status directly to U.S. citizenship. Simply put, the non-citizen will bypass the Green Card process entirely and immediately gain U.S. citizenship. In most cases participants in the MAVNI program will become naturalized by the time they graduate from the ten week Basic Combat Training or accept a commission as Army Officers.

The U.S. Army frequently posts the types of skills it is seeking. Currently the U.S. Army is seeking non-citizens with specific foreign language skills and those in the health care profession. The sought after languages include Albanian, Amharic, Arabic, Azerbaijani, Bengali, Bulgarian, Burmese, Cebuana, Cambodian-Khmer, Chinese, Czech, French (with citizenship from an African country), Georgian, Haitian Creole, Hausa, Hindi, Hungarian, Igbo, Indonesian, Kashmiri, Korean, Kurdish, Lao, Malay, Malayalam, Moro (Tausug/Maranao/Maguindanao), Nepalese, Pashto, Persian Dari, Persian Farsi, Polish, Portuguese, Punjabi, Russian, Sindhi, Serbo-Croatian, Singhalese, Somali, Swahili, Tagalog, Tajik, Tamil, Thai, Turkish, Turkmen, Ukrainian, Urdu (with citizenship from Pakistan or Afghanistan), Uzbek, and Yoruba. Additionally, the U.S. Army is requesting skills in the medical and health care professions ranging from dental to emergency medical specialties.

The general requirements for the MAVNI program include:

- Applicants must be in one of the following categories at the time of their enlistment:
    - o Non-immigrant categories E, F, H, I, J, K, L, M, N, O, P, Q, R, S, T, TC, TD, TN, U or V
    - o Asylee, refugee, or Temporary Protected Status (TPS)
    - o Deferred Action for Childhood Arrivals
    - Applicants must legally reside in the U.S. for a minimum of 2 years prior to joining the Army (excluding DACA Applicants) without a single

absence from the country lasting longer than 90 days

- Applicants must have a high school diploma and a qualifying score on the Armed Forces Qualification Test (AQFT)

Recently, Beach-Oswald was successful in assisting a client with acceptance into the MAVNI program and he is on his way to quickly becoming a U.S. citizen. Please contact our office if you are interested in obtaining more information about the MAVNI program or are interested in pursuing this route to citizenship!

Republic of Yemen Designated for Temporary Protected Status

The Department of Homeland Security announced yesterday that the Republic of Yemen has been designated for Temporary Protected Status ("TPS") for a period of 18 months, beginning September 3, 2015 and running through March 3, 2017. The Secretary of Homeland Security designated Yemen for TPS due to the ongoing armed conflict within Yemen, such that the return of Yemeni nationals would pose a serious threat to their personal safety.

The TPS designation allows Yemeni nationals who have continuously resided in and been continuously present in the United States since September 3, 2015 to be eligible for TPS. If you are a Yemeni national and believe you are eligible for TPS you may apply within the 180 day registration period beginning on September 3, 2015 and ending on March 1, 2016. You are also permitted to apply for an Employment Authorization Document and travel authorization.

Beach-Oswald Immigration Law Associates has a great deal of experience with TPS cases and would be more than happy to assist you in this process should you have any questions or concerns.

The Successful Externalization of the U.S. Border

A recent report by the Migration Policy Institute ("MPI") has shed some statistical light on the trends in apprehensions and deportations of Central American migrants from the US and Mexico. In the summer of 2014, this migration gained significant media attention, particularly due to the amount of unaccompanied minors coming from the Northern Triangle of Central America (Guatemala, Honduras, and El Salvador). The Obama administration responded aggressively to the situation by partnering with the Mexican government to stem the tide of migrants before they reach the US Southern border.

These immigration management measures are known as "border externalization," a term which has grown in usage with the latest refugee crises in Central America and Europe. It typically consists of measures taken by receiving countries shifting the responsibility of controlling undesired migration to countries of transit. In the case of US-Mexican collaboration, these measures were mostly channeled through Mexico's *Plan Frontera Sur*. This program largely embodied the adoption of US-style immigration enforcement practices and emphasized interdiction, apprehension, detention, and deportation of Northern Triangle migrants transiting Mexico on their way to the US.

The MPI report gives clear-cut statistical indication of the US border externalization into Mexico. According to the MPI, the US and Mexico have apprehended near to 1 million Central American migrants in the past five years. In the 2014 fiscal year the US apprehended 239,000 Northern Triangle migrants, and Mexico only 102,000. After the successful implementation of these programs, the numbers have reversed. In the 2015 fiscal year US apprehensions are on pace to drop by half (110,000), while Mexican apprehensions are projected to grow by 70 percent (173,000). This change is likely driven by the increasingly aggressive border enforcement measures implemented by the Mexican government since 2014.

To Read The Full Report Click Here...

Pope Francis Sends Strong Message on Immigration During U.S. Visit

Pope Francis arrived in Washington, D.C. last Tuesday, September 22 for his first official visit as a pontiff. The pope gave a speech at the White House welcoming ceremony and he later addressed the US Congress. His speeches were loaded with strong messages on the matter of immigration, in relation to both US immigration issues and the European refugee crisis. During his six-day visit he is also expected to give a special blessing to a group of undocumented immigrants in New York City.

The pope began his brief speech at the White House by saying that "[a]s the son of an immigrant family, [he was] happy to be a guest in this country, which was largely built by such families." At the canonization mass he held at the National Shrine, he reaffirmed his concern on immigration issues yet again. He finalized the sermon by inviting the American people "[not to] be afraid to welcome [the migrants]." He ensured that "as so often in the past, these people will enrich America and its church."

On Thursday 24, Pope Francis addressed the US Congress, where he insisted on his message of compassion towards migrants and refugees. He reminded US lawmakers that "millions of people came to this land to pursue their dream of building a future in freedom. We, the people of this continent, are not fearful of foreigners, because most of us were once foreigners. I say this to you as the son of immigrants, knowing that so many of you are also descended from immigrants. [For them], I wish to reaffirm my highest esteem and appreciation."

Explanation of the New Visa Bulletin

The Visa Bulletin indicates when statutorily limited visas are available to prospective immigrants based on their individual priority date, which is generally the date when the applicant's relative or employer properly filed the immigrant visa petition on the applicant's behalf with USCIS. Availability of an immigrant

visa means eligible applicants are able to take one of the final steps in the process of becoming U.S. permanent residents.

However beginning in October, a new process has been implemented to provide more clarity to the immigrant visa and adjustment of status application filings. The new process is attempting to reflect President Obama's November 2014 Immigration Executive Action to ensure that all available visa numbers per fiscal year are in fact used and that the system for determining immigrant visa availability is more predictable. The changes are expected to benefit intending US permanent resident applicants and to begin accounting for adjustment of status applications that were denied, abandoned, or withdrawn.

Each month, USCIS, in coordination with the Department of State, will monitor visa numbers and post the relevant charts described below. Applicants can then use the charts to determine when to file their immigrant visa or adjustment of status application. To determine whether additional visas are available, as requested by President Obama in November 2014, USCIS will compare the number of visas available for the remainder of the fiscal year with qualified visa applicants reported by the Department of State, pending adjustment of status applications reported by USCIS and the drop off rate which includes denied, withdrawn, and abandoned applications. Hopefully the new system will ensure that all available visas for each fiscal year are in fact used and issued to well-deserving intending immigrants.

From now on the monthly Visa Bulletin will now contain <u>two</u> charts per visa preference category for Family-based and Employment-based applicants.

The first chart is entitled <u>Application Final Action Dates</u>, which can also be interpreted as "Approval Cutoff Dates." This chart lists the cutoff dates that determine when immigrant visa or adjustment of status applications may finally be approved and issued. For those applications to be approved and permanent residence granted, an applicant's priority date must be before the relevant approval cutoff date listed on the chart.

The second chart is entitled <u>Dates for Filing New Applications</u>. This chart indicates when intending immigrants may be able to file their applications for adjustment of status or immigrant visa. For intending immigrants to be able to file their applications for adjustment of status or immigrant visa, their priority date must be before the relevant filing cutoff date listed on the chart.

As is apparent, there is a large disparity between September Visa Bulletin cutoff dates and the October filing cutoff dates (Chart #2 Dates for Filing New Applications) means that a large number of previously backlogged foreign nationals will newly become eligible to file immigrant visa or adjustment of status applications on October 1. With the large number of immigrant visa and adjustment of status applications being filed as a result of the change in priority dates, it is likely that it will cause a retrogression of filing dates in the Visa Bulletin posted in November. Thus, if you or a family member is eligible per the new October Visa Bulletin charts to file an immigrant visa or adjustment of status application it is recommended that you do so immediately.

Visa Bulletin for October 2015

FAMILY SPONSORED PREFERENCES:

Application Final Action Dates

Family Sponsored	All Areas Except Those Listed	China - Mainland Born	India	Mexico	Philippines
F1	15 JAN 08	15 JAN 08	15 JAN 08	22 NOV 94	01 JUN 01
F2A	15 APR 14	15 APR 14	15 APR 14	01 MAR 14	15 APR 14
F2B	15 JAN 09	15 JAN 09	15 JAN 09	01 AUG 95	01 OCT 04
F3	22 MAY 04	22 MAY 04	22 MAY 04	08 JUN 94	01 OCT 93
F4	08 FEB 03	08 FEB 03	08 FEB 03	22 MAR 97	01 MAY 92

Dates for Filing Family-Sponsored Visa Applications

Family Sponsored	All Areas Except Those Listed	China - Mainland Born	India	Mexico	Philippines
F1	01 MAY 09	01 MAY 09	01 MAY 09	01 APR 95	01 SEP 05
F2A	01 MAR 15	01 MAR 15	01 MAR 15	01 MAR 15	01 MAR 15
F2B	01 JUL 10	01 JUL 10	01 JUL 10	01 JAN 96	01 JAN 05
F3	01 APR 05	01 APR 05	01 APR 05	01 MAY 95	01 AUG 95
F4	01 FEB 04	01 FEB 04	01 FEB 04	01 MAY 97	01 JAN 93

EMPLOYMENT-BASED PREFERENCES:

Application Final Action Dates

Employment Based	All Areas Except Those Listed	China-Mainland Born	India	Mexico	Philippines
1st	Current	Current	Current	Current	Current
2nd	Current	01 JAN 12	01 MAY 05	Current	Current
3rd	15 AUG 15	15 OCT 11	08 MAR 04	15 AUG 15	01 JAN 07
Other Workers	15 AUG 15	01 JAN 06	08 MAR 04	15 AUG 15	01 JAN 07
4th	Current	Current	Current	Current	Current
Certain Religious Workers	U	U	U	U	U
5th Targeted Employment Areas/Regional Centers and Pilot Programs	Current	08 OCT 13	Current	Current	Current
5th Regional Center (I5 and R5)	U	U	U	U	U

* U = Unauthorized means that the numbers are not authorized for issuance

Dates for Filing Family-Sponsored Visa Applications

Employment Based	All Areas Except Those Listed	China-Mainland Born	India	Mexico	Philippines
1st	Current	Current	Current	Current	Current
2nd	Current	01 JAN 13	01 JAN 06	Current	Current
3rd	15 AUG 15	22 DEC 04	22 DEC 04	15 AUG 15	22 DEC 04
Other Workers	15 AUG 15	01 JAN 04	22 DEC 04	15 AUG 15	22 DEC 04
4th	Current	Current	Current	Current	Current
Certain Religious Workers	Current	Current	Current	Current	Current
5th Targeted Employment Areas/Regional Centers and Pilot Programs	Current	22 SEP13	Current	Current	Current

* Unauthorized means that the numbers are not authorized for issuance

DIVERSITY IMMIGRANT (DV) CATEGORY FOR THE MONTH OF OCTOBER

Region	All DV Areas Except Those Listed	
Africa	9,100	Except: Egypt: 8,000 Ethiopia: 8,000
Asia	2,800	Except: Nepal: 2,400
Europe	9,150	
North America (Bahamas)	2	
Oceania	275	
South America, and the Caribbean	475	

View October Visa Bulletin Here...

Please let us know if we can help you in any way for all your immigration needs.

Sincerely,

Danielle Beach-Oswald
Beach-Oswald Immigration Lawyers

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Daniel Mills

From: Haynes Novick Immigration <info=dcimmigrationattorney.com@mail31.suw11.mcdlv.net> on behalf of Haynes Novick Immigration <info@dcimmigrationattorney.com>
Sent: Friday, August 21, 2015 10:31 AM
To: Daniel Mills
Subject: Haynes Novick Immigration Update (Aug. 2015)

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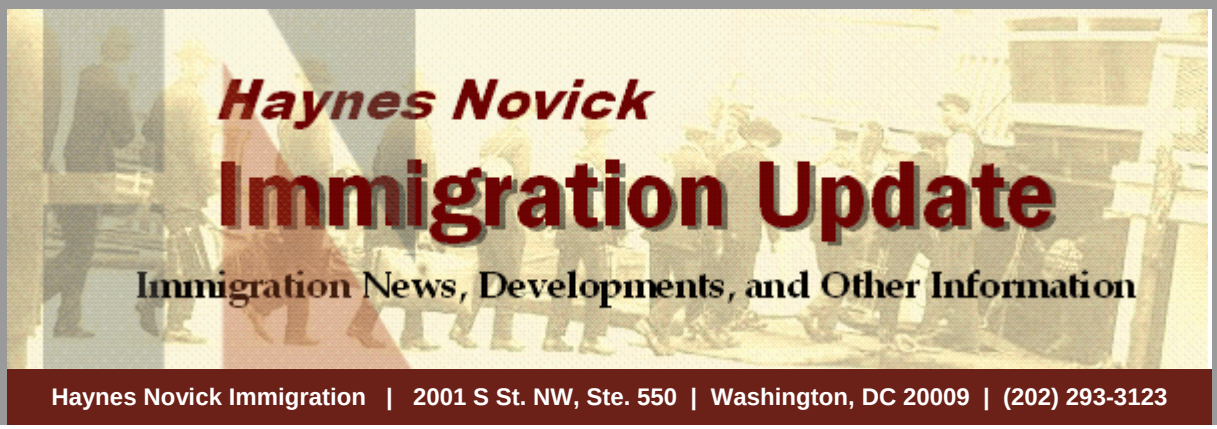

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IN THIS ISSUE

EB-5 Investor, E-Verify, Conrad 30, Religious Workers

Popular Immigration Programs Set to Sunset September 30 Unless Reauthorized by Congress

Once again we are at that time of year when four popular programs — the EB-5 "Regional Center" Visa Program, the Conrad 30 Waiver Program for Foreign Physicians, the E-Verify Electronic Employment Verification Program, and the Religious Workers Immigrant Visa Program — will sunset unless reauthorized by Congress. All four programs have been extended numerous times, but often at the last minute and without any change. This year, as in the past, the climate surrounding any kind of immigration legislation makes reauthorization — never mind change to the programs — uncertain and complex. Let's take a look at the EB-5 and the Conrad Waiver programs.

EB-5 Program

The EB-5 program has received significant negative criticism over the past several years; many believe the program needs major changes including increasing the minimum investment, addition of integrity provisions, and redefining the certain provisions, including what is a targeted employment area (TEA). As of this writing, parallel efforts to extend the program are underway in both chambers of Congress.

In the U.S. House of Representatives, two bills have been introduced. The first, H.R. 616, the American Entrepreneurship and Investment Act of 2015 would, in part:

- make the Regional Center program permanent;
- require EB-5 petition adjudication within 180 days;
- exempt spouses and children of EB-5 immigrants from EB-5 admissions limits;
- authorize concurrent adjustment of status filing;
- eliminate the per-country limit for employment-based immigrants and increase the per-country limit for family-based immigrants.

The second bill the EB-JOBS Act of 2015, would:

- extend and reform the EB-5 program;
- create a new green card category for entrepreneurs who establish start-up businesses;
- create a new green card category for certain treaty investors who have maintained their status for 10 years;
- create a renewable reserve of 10,000 EB-5 visas upon exhaustion of the initial 10,000.

In the U.S. Senate, S. 1501, the American Job Creation and Investment Promotion Reform Act of 2015, would, in part:

- reauthorize the Regional Center program for 5 years;
- increase the minimum TEA investment from $500,000 to $800,000 and non-TEA minimum investment from $1 million to $1.2 million;
- eliminate state authority to certify TEAs;
- limit high unemployment areas/TEA to a single census tract; and

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For over 30 years, the Washington, DC law firm of Haynes Novick Immigration has been helping individuals

- create several different restrictions on indirect job creation calculations.

It is expected that these legislative efforts will combine at some point to fast-track an extension so that Congress can take a vote when members return to Washington after the August recess.

Conrad 30 Waiver Program

The Conrad 30 Program permits each state to support up to 30 foreign physicians for a waiver of the J-1 two-year home residence requirement that attached to the foreign physician's visa status in exchange for the doctor's two-year service in a medically underserved area in the United States.

A bill introduced in the Senate, S. 1189, the Conrad State 30 and Physician Access Act, would:

- remove the sunset provisions;
- clarify requirements of the physician National Interest Waiver classification; and
- make technical fixes, including confirming the ability of J-2 spouses to change status to classifications other than H-4.

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Ruling Stayed Until February 2016

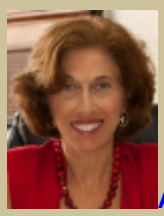
Federal District Court Finds DHS Extension of STEM OPT Invalid

The U.S. District Court for the District of Columbia held that a 2008 DHS interim final rule extending the period of post-graduation optional practical training (OPT) by 17 months for STEM students on F-1 visas is invalid because DHS promulgated the rule without notice and comment. Post-graduation OPT allows nonimmigrant foreign nationals on an F-1 student visa to engage in employment during and after completing a course of study at a U.S. educational institution.

The court found, however, that vacating the rule immediately would cause substantial hardship for F-1 STEM students and would create a major labor disruption for the technology sector. As such, the court ordered that the 2008 rule and its subsequent amendments be vacated, but that the *vacatur* be stayed until February 12, 2016, during which time DHS may submit the rule for proper notice and comment.

The plaintiffs are a collective-bargaining organization that represents science, technology, engineering, and mathematics (STEM) workers. The rule in question was issued by DHS on April 8, 2008 — H-1B filing season — without notice and public comment. In describing the purpose of the interim rule, DHS explained that "the H-1B category is greatly oversubscribed and as a consequence, OPT employees often are unable to obtain H-1B status within their authorized period of stay in F-1 status, including the 12-month OPT period, and thus are forced to leave the country." DHS also noted that the inability of U.S. employers, in particular in the STEM fields, to obtain H-1B status for much needed highly skilled foreign workers

and businesses with their immigration issues.



Amy Novick focuses her practice on obtaining visas for highly skilled professionals, waivers of the two-year home residency requirement, issues of concern to G-4 international workers, E investors, extraordinary ability visas, foreign adoptions, naturalization and citizenship, waivers of inadmissibility, and family- and marriage-based immigration matters. Amy also conducts I-9 audits on behalf of corporate clients. more >>

Joy Alegría Haynes represents couples in adjustment applications based on marriage and other family-based petitions. She advises bi-national LGBT couples and has a successful track record securing marriage-based permanent residency when one or both spouses are transgender. With the downfall of DOMA, she now regularly files adjustment applications on behalf of married same-sex couples.. more > >

had adversely affected the ability of U.S. employers to recruit and retain skilled workers. Such a loss of skilled workers, DHS said, created a competitive disadvantage for U.S. companies. The agency concluded that the rule would "quickly ameliorate some of the adverse impacts on the U.S. economy" by potentially adding "tens of thousands of OPT workers ... in STEM occupations in the U.S. economy." On several occasions, the agency modified, without notice and comment, the list of disciplines that qualify for the STEM extension via memos and updates to its website.

While it is unlikely that DHS will eliminate 17-month STEM OPT for eligible students when it conducts formal rulemaking, it is likely to review the program and make changes consistent with President Obama's November executive action on immigration. In fact, the agency already announced plans to expand the degree programs eligible for OPT STEM and to review more generally the length of time foreign graduates can work in the U.S. in OPT status.

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Ongoing Delays for Interview-Waivable Cases

Since 2013, there have been extensive adjudication delays of certain interview-waivable, family-based adjustment of status cases held at the National Benefits Center (NBC), with no real relief available while the case waits. Interview-waivable cases are those that the USCIS determines a personal interview at a USCIS field office is not required for adjustment adjudication. While in theory this is a benefit because the individual is not required to appear for an interview, in practice delayed cases are often adjudicated after a year or even longer whereas individuals scheduled for an interview at a USCIS field office normally obtain a decision and their green card within 6–8 months of filing. For the past two years, USCIS has repeatedly stated that it is trying to resolve this problem; however, delays continue. According to the latest USCIS update released on April 16, 2015, USCIS hopes to bring these cases within the regular four-month NBC processing time by the end of this fiscal year — September 30, 2015. We can only hope this means all delayed cases will be adjudicated by this date and going forward all interview-waivable cases will be processed within four months.

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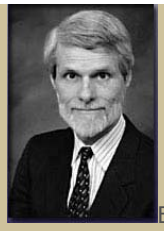
Certain DACA Recipients with Three-Year EADs Must Return Them to USCIS

In response to the injunction challenging President Obama's executive action on immigration (Texas v. United States), USCIS is taking extreme measures to retrieve three-year employment authorization documents (EADs) issued to DACA recipients in violation of the court's order even though the recall only applies to recipients who received the card after February 16, 2015. Such steps included making home visits to obtain the cards. There are more than 100,000 other DACA recipients with valid three-year EADs who do not need to return them.



Experienced in a variety of areas, **Jim Tom Haynes** has represented large multinational corporations, universities, embassy personnel, and employees of international institutions. Mr. Haynes advises corporate clients on all matters related to visas and residence for officers, personnel, and their families. more > >

Karen Burke has been practicing law for over 20 years and has devoted herself to the practice of immigration law since 2004. She has represented individuals and corporations with respect to obtaining temporary and permanent employment-based visas for their foreign national employees Ms. Burke also has developed expertise in removability, inadmissibility, citizenship and the immigration consequences of criminal convictions, as well as federal court litigation aimed at forcing the USCIS to adjudicate petitions and applications. more > >

Rina Gandhi has worked for Haynes Novick Immigration since 2013 as both a summer associate and law clerk while a student at William and

As of August 5, 2015, USCIS has accounted for over 99 percent of the approximately 2,600 identified invalid work permits requiring return. USCIS sent multiple letters to such recipients warning them that they must return the EAD by July 17, 2015. Failure to return the invalid EAD without good cause, USCIS warned, may affect the recipient's deferred action and employment authorization. Indeed, USCIS reports that 22 recipients failed to respond to the recall, and their DACA has been terminated.

Meanwhile, the DHS Inspector General found no evidence that USCIS deliberately violated the court's injunction when it issued the three-year EADs after the court enjoined the November 2014 executive actions on immigration.

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NVC Corrects Erroneous Letters Indicating Possible Termination of Immigrant Visa Applications

In July some visa applicants received e-mails from the National Visa Center (NVC) indicating that proceedings to terminate their immigrant visa application would commence, or that the application was being terminated for failure to contact the NVC within one year of notification of the availability of a visa, even when the individual or the attorney contacted the NVC within the one-year period. The NVC has since advised that is correcting the issue and is sending affected applicants a follow-up e-mail to let them know that their case is still in process, and that they should disregard the e-mail previously received. Further clarification on the best process for reopening an erroneously terminated application is expected. A similar issue arose last year.

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Flores v. Reno (1985) Redux

Detention of Immigrant Children — Litigated Some 30 Years Ago — Back Before the Courts

Some 30 years ago in 1985, a lawsuit, *Flores v. Reno*, was brought against the government for detaining minor immigrant children in secure and unlicensed facilities. Twelve years later, in 1997, the government entered into a nationwide settlement agreement and agreed not to detain such children anymore. Those issues are back before the courts in the wake of DHS's detention of Central American immigrant children and their mothers, which began in the summer of 2014.

The current litigation, brought in federal district court in February 2015, alleges that the government breached the 1997 *Flores* settlement agreement by detaining immigrant children in the same kind of facilities. After the parties failed to reach an agreement in July, the judge in the case, Judge Dolly Gee, stepped in and issued an order to show cause, essentially a ruling in which she found that the government had, in fact, breached the *Flores* agreement and that it could not hold the children any longer in these facilities. Judge Gee also found that the immigrant children should be released and

Mary Law School. She joined the firm in September of 2014. During her time at HNI, at other law firms, as well as serving as a volunteer with various legal aid programs, Rina has had the opportunity to work on a wide variety of cases In addition, Rina actively lobbies for the enactment of the DREAM Act, comprehensive immigration reform, and ending family detention. more > >

David J. Rothwell (Of Counsel) devotes his practice exclusively to Immigration Law. He has over 30 years of experience in immigration matters, and has built a substantial immigration law practice including immigrant and non-immigrant visa applications, representation of U.S. and overseas businesses wishing to bring workers to the U.S., family visa applications, deportation defense, political asylum, naturalization and other immigration matters. more > >

preferably to a parent, including the parent with whom they had entered the country unless that parent posed a flight or security risk.

In its lengthy response, the government argued that the circumstances had changed since April 2015 and that it no longer had a blanket policy of detention. It argued that it now had a process whereby children and their mothers who passed the first hurdle of establishing "credible fear" — the first step toward winning asylum — were being released. It also argued that the court should revisit the order and reassess a number of the terms. Furthermore, the government asserted that detention ensured certain medical care and access to counsel to which the children would not be afforded if released. Plaintiffs replied. They argued that the government's detention policies have not, in fact, changed and that access to counsel and medical care were, in fact, impeded by incarceration. Plaintiffs also argued that expedited removal is not required by law and that the government could issue a Notice to Appear and at the same time parole the women and children into the U.S. while they undergo their removal proceedings in immigration court at a later date. Plaintiffs pointed out that the government has in fact paroled in some children and women, at least for a period of time in July while they await their removal proceedings.

The judge very quickly denied the government's request for oral argument and signaled that she is ready to rule on the case. A decision is expected by August 24. Assuming the order is issued for the plaintiffs, the government can appeal but it is not expected to do so. Instead, it is believed that the government may respond to pressure from advocates and members of Congress who have called for the end of family detention and will comply with the judge's order in the case. Stay tuned.

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DHS to Implement Additional Security Measures to Visa Waiver Program

The Department of Homeland Security will be introducing a number of additional or revised security criteria for all participants in the Visa Waiver Program (VWP). These criteria will apply to both new and current members of the program:

- requiring use of e-passports (passports containing an electronic chip that holds the same information that is printed on the passport's data page as well as biometric identifier) for all VWP travelers coming to the United States.
- requiring use of the INTERPOL Lost and Stolen Database to screen travelers crossing a visa waiver country's borders.
- seeking permission to expand the use of U.S. federal air marshals on international flights from visa waiver countries to the United States.

ESTA travelers are encouraged to make sure that their visa waiver passports are compliant.

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WHO'S WHO LEGAL

Jim Tom Haynes, Joy Alegria Haynes, and Amy Novick are listed in *International Who's Who of Business Lawyers* (2015) as among the best immigration lawyers in the District of Columbia.

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Green Cards with "Signature Waived" Are Acceptable for I-9 Purposes

USCIS has clarified that permanent resident cards that say "signature waived" are acceptable documents for Form I-9, Employment Eligibility Verification, as long as they are unexpired and reasonably appear to be genuine and relate to the person presenting them. Since February 2015, USCIS has been waiving the signature requirement for foreign nationals entering the United States for the first time as lawful permanent residents after obtaining an immigrant visa abroad.

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CBP Testing New Technology to Collect Biometric Data from Departing Foreign Nationals

U.S. Customs and Border Protection (CBP) has begun testing a mobile device to collect biometric data from a limited number of foreign national air travelers departing the United States. Officers will compare biometrics collected via the handheld device to the biometrics collected when the traveler entered the United States. The testing will begin at Hartsfield-Jackson Atlanta International Airport and will be expand this fall to Chicago, Dallas, Houston, Los Angeles, Miami, Newark, New York, San Francisco, and Washington-Dulles. The project is expected to run through June 2016. After this period, CBP will use the results to determine its future plans for biometric exit.

During testing, CBP officers will be stationed at the passenger-loading bridge of selected flights departing the United States with a handheld biometric device. CBP officers will scan selected foreign national air travelers' fingerprints and passports using the device. The traveler's data will be matched to their entry data and then stored in data systems managed by DHS. Only non–U.S. citizens will be included in the testing.

Several federal statutes mandate DHS to biometrically record the entry and departure of foreign visitors. The CBP's entry/exit strategy is designed around three goals: "identify and close the biographic gaps and enhance the entry-exit system; perform targeted biometric operations; and transform the entry/exit process through the use of emerging biometric technologies."

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Nepalese Nationals Awarded Temporary Protected Status (TPS)

On June 24, DHS designated Nepal for Temporary Protected Status (TPS) for 18 months based on the conditions resulting from the devastating 7.8 earthquake that struck that nation on April 25, 2015, and the subsequent aftershocks. The TPS designation for Nepal is effective June 24, 2015, through December 24, 2016. The designation means that, during the designated period, eligible nationals of Nepal (and people without nationality who last habitually

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resided in Nepal) will not be removed from the United States and may receive work authorization. The 180-day TPS registration period began June 24, 2015 and runs through December 21, 2015. To be eligible for TPS, applicants must demonstrate that they satisfy all eligibility criteria, including that they have been both "continuously physically present" and "continuously residing" in the United States since June 24, 2015. Applicants also undergo thorough security checks. Fee-waiver requests are available, but USCIS will reject any TPS application that does not include the required filing fee or a properly documented fee-waiver request.

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News in Brief

The following additional items may be of interest to our readers:

8/18/15 was TPS Registration Deadline for Eligible Nationals of Liberia, Guinea, and Sierra Leone: USCIS reminds the public that that 8/18/15 was the deadline for eligible nationals of Liberia, Guinea, and Sierra Leone to register for Temporary Protected Status (TPS), which runs from 11/21/14 through 5/21/16. The deadline was extended from 5/20/15. For more information on eligibility, registering, and fees and fee waivers, see the www.uscis.gov/tps.

DHS Announces Trilateral Agreement to Expand Trusted Traveler Programs: A new agreement signed by Homeland Security Secretary Jeh Johnson and his Canadian and Mexican counterparts will make it easier for eligible travelers in the United States, Mexico, and Canada to apply for expedited screening programs at international airports. Eligible travelers will be able to apply for each program beginning in 2016.

Derivative Citizenship Requirements Violate Equal Protection, Says Second Circuit: The U.S. Court of Appeals for the Second Circuit held that the more stringent physical presence requirements for derivative citizenship placed on unwed citizen fathers than on unwed citizen mothers under the 1952 immigration law violates the Fifth Amendment's guarantee of equal protection.

Citizenship Discrimination Claims Against City of Eugene and Staffing Company Settled: DOJ recently announced a couple of settlement agreements resolving citizenship discrimination claims. First, DOJ settled a case with Eugene, Oregon, to resolve allegations that the city violated the anti-discrimination provision of the Immigration and Nationality Act (INA) by improperly restricting law enforcement positions to U.S. citizens at the time of hire and excluding any applicants who were not U.S. citizens. The city of Eugene had required its law enforcement personnel to be U.S. citizens at the time of hire even though Oregon law requires police officers to be citizens within 18 months of hire. Second, DOJ settled a case with Priority Fulfillment Services, Inc., and PFSweb, Inc., after the company rejected valid Puerto Rican birth certificates and required individuals to present naturalization documents to prove their citizenship status, even though Puerto Ricans are U.S. citizens by birth.

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Haynes Novick Immigration Update (formerly, *Amy's Immigration Update*)
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Newsletter design by RPA

Daniel Mills

From: Charles Fleischer <CFleischer@ofqlaw.com>
Sent: Monday, March 31, 2014 9:34 AM
Subject: Winter 2014 issue of Employer Alerts
Attachments: NewsLtr 14-3.pdf

Attached is the Winter 2014 issue of EMPLOYER ALERTS, featuring these articles:

- **Employee May Refuse FMLA Leave**
- **EO Claim Does Not Excuse Document Theft**
- **Should You Have a Mandatory Arbitration Policy?**
- **Fuzzy Termination Date Foils Summary Judgment**
- **Drug and Alcohol Testing In Maryland**
- **Hacked Emails Support Denial of Disability Benefits**
- **Bulletin Board**

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WHAT'S INSIDE: ◆ Mortgage Recording Tax ◆ Estoppel Certificates ◆ Spotlight on the Retail Lease ◆ First of the JOBS Act Rules Published by SEC ◆ Curiosity ◆ Copyright Update

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Copyright Update

The U.S. Supreme Court in *Kirtsaeng v. John Wiley & Sons* in March 2013 examined the First Sale Doctrine in what has been described by the *ABA Journal* as a "high stakes copyright battle affecting much of the U.S. economy."

Kirtsaeng was a student from Thailand who needed to pay for his college tuition at Cornell and his post-graduate studies at USC. He coordinated with his family and friends in Thailand to purchase and send him low-priced textbooks that John Wiley & Sons made and sold in Thailand. Then, Kirtsaeng resold them in the United States at a profit. Wiley sued Kirtsaeng, claiming his importation of books was infringing the "importation" provision of Section 602 of the U.S. Copyright Act, which says that "importation into the United States without the authority of the owner of copyright under this title, of copies…of a work that have been acquired outside the United States is an infringement of the exclusive right to distribute copies…under section 106…."

Kirtsaeng argued that he was protected by the First Sale Doctrine found in Section 109 of the Copyright Act. Section 109(a) says, "Notwithstanding the provisions of Section 106(3) (the section that grants the owner exclusive distribution rights), the owner of a particular copy or phonorecord lawfully made under this title…is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord." He argued that once Wiley sold the books in Thailand, purchasers of the books could dispose of them in any manner, including bringing them to the U.S. and reselling them at a profit. Kirtsaeng argued that "lawfully made under this title" under Section 109(a) applies to copyrighted works made both inside and outside the United States.

The Supreme Court agreed: "We ask whether the 'first sale' doctrine applies to protect a buyer or other lawful owner of a copy (of a copyrighted work) lawfully manufactured abroad. Can that buyer bring that copy into the United States (and sell it or give it away) without obtaining permission to do so from the copyright owner? Can, for example, someone who purchases, say at a used bookstore, a book printed abroad subsequently resell it without the copyright owner's permission? In our view, the answers to these questions are, yes. We hold that the 'first sale' doctrine applies to copies of a copyrighted work lawfully made abroad."

No doubt, this ruling will have economic implications for publishers, movie companies, and software firms who used to rely on the importation clause of Section 602 of the Copyright Act. ◆

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Be sure to visit the Firm's website at **www.jjshermanlaw.com**

Vendor Contracts and Termination Rights

Ask a general counsel what is the first legal term to look for when reviewing a vendor contract, and the lawyer likely will answer "termination rights." Chances are, at some point during the term of a vendor contract between your company and a third-party vendor, your business team will ask, "How do we get out of this contract?" If your vendor fails to materially perform its obligations under your contract or is otherwise in default, then you may have the right to stop payment and terminate the contract under contract law. But what if the vendor is performing its obligations (more or less) and your team simply is not satisfied with the level of service, the cost, or otherwise is looking to move to a different vendor? If termination rights are spelled out in the vendor contract, your company will be well-prepared for this scenario.

J.J. Sherman

Termination Rights Vary.

A standard form vendor contract that runs for a set term may not give the customer the right to end the contract before its expiration. Instead, it may provide that, except to the extent set forth in the agreement, neither party has the right to cancel or terminate the agreement, and the parties remain fully responsible for all obligations and amounts payable under the agreement for the entire term. To preserve an exit strategy, it is important for a customer to negotiate an express right to terminate prior to the expiration of the term.

Negotiated clauses will vary depending on the size and nature of the vendor contract. Some allow either party to terminate upon 30 days' notice; others

permit the customer to terminate with notice to the vendor and upon payment of a termination fee. Customers also bargain for an express right to terminate if the vendor fails to meet certain performance standards or if certain unacceptable events occur. For instance, in a co-location agreement between a data center and a customer, the customer will negotiate

To preserve an exit strategy, it is important for a customer to negotiate an express right to terminate prior to the expiration of the term.

the right to terminate if there is a physical breach of the licensed space, a theft of the customer's equipment or similar security breach. Ultimately, it is essential that the business team and the lawyer negotiating the vendor contract on behalf of the customer work together to clearly define what events or service failures should trigger a termination right.

Request an Orderly Transition.

If you're negotiating an express termination right, ask the vendor to assist with an orderly transition to the new vendor upon exercise of your termination right. Your vendor's cooperation will prevent unnecessary business disruption during the transition period to your new vendor.

Seek a Release.

You and your vendor may grant each other a mutual release from any further obligations under the vendor contract effective upon termination, except, of course, for transition assistance and any indemnity that might survive termination.

While negotiating your next vendor contract, seek termination rights if you wish to preserve an exit strategy. ◆

J.J. Sherman counsels clients in the areas of commercial real estate, commercial contracts, social media and entertainment law. She can be reached at jj@jjshermanlaw.com.

Dealing with Contract Overflow? Law Offices of J.J. Sherman, P.C. is available to assist in-house counsel with the creation of standard form agreements as well as the review and negotiation of vendor contracts and sales contracts. We also can provide coverage to an in-house legal team when a lawyer takes a leave of absence.

IN THIS ISSUE:

Endorsements in Social Media

In this digital age, employers expect their employees to use social media for personal and professional purposes and also assume their employees are likely to make statements online about their company's products or services. Indeed, many employees working in marketing and business development actively promote their company's products and services through social media outlets. With this in mind, now is a good time to review the Federal Trade Commission's (FTC) Guidelines Concerning the Use of Endorsements and Testimonials, which applies to all media including blogs, message boards, remark boards, list servs and other forms of social media.

The FTC Guidelines preach three basic truth-in-advertising principles: (1) Endorsements must be truthful and not misleading; (2) If the advertiser doesn't have proof that the endorser's experience represents what consumers will achieve by using the same product or service, the advertisement must clearly and conspicuously disclose the generally expected results in the depicted

circumstances; and (3) If there is a connection between the endorser and the marketer of the product or service that is likely to affect the weight or credibility given to the endorsement, the connection must be disclosed. This means that employees who comment on their employer's products or services via social media should disclose their employment relationship.

The FTC defines an "endorsement" as any advertising message (oral or written) that consumers are likely to believe reflects the opinions, beliefs, findings or experience of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser. Here are some examples that might occur in the workplace based on guidance and rulings from the FTC:

Example 1: An employee's Facebook page identifies the company where the employee works. Is the employee required to make additional disclosure when the employee writes on Facebook about how terrific the company's products or services are? According to the FTC, the answer is "yes." The reader might not realize that the products or services endorsed by the employee on Facebook are sold by the employee's company.

Example 2: An online message board designated for discussions of retail trends in Southern California is frequented by those involved in the Southern California retail industry. An employee of a leading retailer posts messages on the discussion board promoting the company's stores, without disclosing a connection to the retailer. Is disclosure of the relationship required? According to the FTC, the answer is "yes." Knowledge of this person's employment likely would affect the weight or credibility of the endorsement. Therefore, the person should clearly and conspicuously disclose the employment relationship to readers of the message board.

Example 3: A public relations firm is hired to promote the brand of a retailer with several locations in Washington, D.C. As part of its campaign, the firm's employees pose as ordinary consumers and post online reviews of the retailer's brand. Is this permitted? According to the FTC, the answer is "no." The employees of the public relations firm are not average consumers; they must disclose the material connection between the public relations firm and the retailer.

To avoid potential liability... educate your employees and the companies promoting your goods and services about the FTC's Guidelines Concerning the Use of Endorsements and Testimonials.

What amount of disclosure is required? The FTC does not mandate specific language, but it does give general guidance. The language does not need to be "legalese." It can be as simple as "I work for this company" or "This company hired me to promote their product." The FTC does say disclosure of the material connection should be part of the message or endorsement. Accordingly, a "click through" button that says "Legal Disclosure" is not sufficient. Similarly, general disclosure on a home page such as "I have been hired to promote many of the products I discuss on this site" is not sufficient. In a platform like Twitter, where the message is limited to 140 characters, drafting disclosure that is part of the message can be difficult. According to the FTC, for Twitter, a short hashtag such as #paid ad or #paid or #ad might be effective to give people the disclosure they need.

Best Practices for Endorsements in Social Media. To avoid potential liability for misleading or unsubstantiated representations and for failure to disclose a material connection, educate your employees and the companies promoting your goods and services about the FTC's Guidelines Concerning the Use of Endorsements and Testimonials. In addition, review your company's social media guidelines. Often, they require any employee commenting on his or her employer and the products or services offered by the employer to say, "These are my opinions and do not represent the company's positions, strategies or opinions." ◆

Supplier Diversity Announcement

As a 100 percent woman-owned business certified by the Women's Business Enterprise National Council (WBENC), we are proud to serve as a diversity supplier and help our clients achieve their commitment to diversity. We recognize that businesses gather strength from difference.

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Spotlight on the Retail Lease

Gross Sales

A retail tenant negotiating a letter of intent for a new lease will focus on the percentage rate of "net sales" it must pay as percentage rent to the landlord once the annual breakpoint is reached. During lease negotiations, it is equally important for the retail tenant to pay attention to the definition of "net sales." To avoid paying percentage rent on amounts that the retail tenant does not actually receive, amounts that the retail tenant is not entitled to keep or amounts that are unrelated to the merchandise or services sold, the tenant will need to add exclusions to the landlord's definition of "net sales." Some common exclusions include: cash or credit refunds to customers; tenant's accounts receivable consisting of bad checks and bad debts on credit sales and credit card charges; sales, use, excise, retailers, occupation or similar taxes imposed on the sale of merchandise or services; charges paid to credit card companies by tenant; and gift certificates until redeemed. ◆

The Confidentiality Agreement

It's standard procedure. A prospective buyer considering the purchase of a property or a business will ask the seller for information relating to the property or business that the seller considers confidential. Similarly, a landlord contemplating a lease with a new tenant will ask the potential tenant for its financial statements, which the tenant may consider confidential. Before you provide confidential information to a potential counterparty, if you wish the recipient to keep the information confidential, ask them to enter into a confidentiality agreement. Here are some of the points commonly addressed in a confidentiality agreement:

1. **Agree to keep information confidential.** A recipient should agree that all confidential information it receives will not be disclosed to any other person or entity and will be treated by the recipient as confidential and with the same degree of care that the recipient bestows upon its own confidential information.
2. **Exceptions when disclosure is permitted.** Generally, recipients are permitted to disclose confidential information to employees and representatives (including attorneys, accountants and financial advisors) who have a "need to know" the confidential information, so long as those individuals undertake to keep the information confidential. Recipients also are allowed to disclose confidential information in response to a valid court order or as required by law, so long as the disclosing party is notified and provided an opportunity to seek a protective order against the disclosure. In addition, disclosure is permitted if the recipient can show that the confidential information is generally available to the public, was in the recipient's possession prior to the disclosure by the disclosing party or was developed by the recipient independently.
3. **The disclosing party controls the confidential information.** At the request of the disclosing party, the recipient should return all copies of the confidential information it received (including electronic files) or destroy all copies it received and confirm in writing that the confidential information has been destroyed.
4. **Not a license to use the confidential information except to consider whether or not to do the deal.** A confidentiality agreement does not grant a license or rights in or to the confidential information, except for the limited right of the recipient to use the confidential information to evaluate the potential deal. Generally, the confidential information is provided "as is" and the disclosing party makes no representation or warranty of any kind, with respect to suitability, accuracy or non-infringement of third-party rights.
5. **No obligation to close the deal.** The purpose of a confidentiality agreement is to allow the parties to exchange information necessary to evaluate a potential transaction. The parties should be under no obligation to proceed with any business relationship.
6. **Right to injunctive relief.** Since the disclosing party will be irreparably injured if the confidential information is disclosed, the recipient should agree that money damages would not be a sufficient remedy for any breach and that, in the event of a breach for disclosure of confidential information, the disclosing party would be entitled to injunctive relief, specific performance and any other equitable remedy without the posting of a bond, in addition to any other legal or equitable remedies.

Check with your attorney to understand what you should include in, or exclude from, your confidentiality agreement for any particular transaction. ◆

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We actively are working with clients doing business in California and are expanding our practice into the Washington, D.C. market in order to cater to clients doing business on the East Coast.

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Copyright Update

Rising star writers, songwriters and composers, early in their careers, will assign the copyright in their original works to publishers at less than stellar economic terms. Years later, they may wish they owned the copyrights to their works. That's where Section 203 of the Copyright Act comes into action. Beginning January 1, 2013, authors of copyrighted works may terminate copyright grants signed after January 1, 1978 if 35 years have passed. Section 203 of the Copyright Act permits authors to terminate "exclusive or non-exclusive grants of transfer or license of copyright" that were signed by the author on or after January 1, 1978, after 35 years.

Termination rights must be exercised in a 5-year window period. Use it or lose it.

Under Section 203, an author can terminate a grant at any time during a 5-year period beginning at the end of 35 years from the date of execution of the grant, or if the grant covers the right of publication, beginning at the end of 35 years from the date of publication of the work or at the end of 40 years from the execution of the grant, whichever term ends earlier. To exercise termination rights, the author must deliver a statutory termination notice to the copyright holder at least 2 years (and not more than 10 years) before the termination date, and the termination notice must be recorded with the U.S. Copyright Office.

For example, if an author signed a copyright grant on April 15, 1980, the termination period would run between April 15, 2015 and April 15, 2020, and the author would be required to deliver a termination notice no earlier than April 15, 2005 and no later than April 15, 2018. If an author fails to deliver a termination notice in the statutory termination period, the copyright remains with the grantee.

Section 203 does not apply to works made for hire, grants made by will or derivative works made prior to the termination date. It also does not affect foreign rights in a copyrighted work. Termination rights under Section 203 are not waivable; they can't be contracted away.

If you are an author considering your termination rights, check the dates of your initial copyright grants. Your window period is limited, and the statutory notice provisions must be followed to the letter. If you are a publisher, be prepared to negotiate (again) for some of your key catalogue works in the coming years and watch for works that may be on the market beginning in 2013. ◆

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Daniel Mills

From: ZwillGen PLLC <zwillgen=gmail.com@mail95.us2.rsgsv.net> on behalf of ZwillGen PLLC <zwillgen@gmail.com>
Sent: Thursday, May 30, 2013 3:02 PM
To: Daniel Mills
Subject: Posts from Law Across the Wire and Into the Cloud for 05/30/2013

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Our Latest Posts...

- China as Cyberscourge
- Georgetown Cybersecurity Law Institute, Part 2
- Live from the Georgetown Cybersecurity Law Institute
- FTC Sends "Friendly" Reminders to Numerous Businesses About Looming COPPA Deadline

China as Cyberscourge

MAY 30, 2013 12:17 PM | RANDY SABETT

The momentum (or rhetoric machine?) has built up to the point where everyone is pointing fingers at China as the ultimate "cyberscourge," while China continues to refute those claims. In just the past few days, Sen. Carl Levin sent a letter to President Obama voicing his opinion that the US

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Georgetown Cybersecurity Law Institute, Part 2

MAY 28, 2013 09:31 AM | RANDY SABETT

DAY 1, WEDNESDAY AFTERNOON (5/22) Cybersecurity Policy Update. The Wednesday afternoon session at the Georgetown Cybersecurity Law Institute began with a policy update led by Stewart Baker. He led off with the statement that the biggest thing in cybersecurity policy was the issuance of the Executive Order. Jessica Herrera-Flanigan followed

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Live from the Georgetown Cybersecurity Law Institute

MAY 22, 2013 02:47 PM | RANDY SABETT

Today, the Georgetown Law School launched the first day of its two-day inaugural Cybersecurity Law Institute. I am involved in the sessions today and will be speaking tomorrow on a panel at 10:50A.M. addressing various new developments, including talking through some of the potential exposure a company might face when

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FTC Sends “Friendly” Reminders to Numerous Businesses About Looming COPPA Deadline

MAY 17, 2013 12:22 PM | JON FRANKEL

The FTC recently announced that more than 90 businesses located in the U.S. and abroad, including mobile applications, were sent “educational” letters reminding them of the looming July 1, 2013 deadline to comply with the new COPPA rules. While the FTC made clear that these letters only were directed to

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Daniel Mills

From: Kymberly Jackson <phxfirm@gmail.com>
Sent: Wednesday, March 06, 2013 2:41 PM
To: Daniel Mills
Subject: Newsletter March 2013 - The Phoenix Law Firm

The Phoenix Law Firm

Helping clients get a fresh start in a compassionate, professional & confidential manner.

This issue:

- **Life After Bankruptcy – How to Rebuild with Purpose**
- **Small Business Spotlight - Credit with Chris, Credit Counselor**
- **Helpful Links Related to This Month's Newsletter**
- **Community Service**
- **Newsletter Archive**

Life After Bankruptcy – How to Rebuild with Purpose

Once you get your bankruptcy protection and earn your discharge you have a fresh start. The next question is how to make the best use of your fresh start?

This article is intended to spread knowledge and to help "bankruptcy survivors" proactively address post-bankruptcy credit challenges, avoid common mistakes, and to help individuals (re)build healthy relationships with creditors.

Learn to Distinguish "Credit" from "Debt"

It's not credit, but the buildup of burdensome debt and its cumulative costs that caused your financial problems. For 99% of us establishing "good credit" is an indispensable part of becoming financially stable and building wealth.

Good credit translates into greater financial opportunities. Good credit leads to lower-cost loans, lower insurance rates, and it can help you to avoid or minimize various down-payments and deposits (e.g., residential lease deposits, cable contract deposits, etc.).

It may seem that avoiding credit is a foolproof way to avoid negative credit reporting, but creditors who participate in the credit reporting process must report positive credit behavior along with any negative behavior. Moreover, positive credit reporting is the only way for you to improve your credit history. Avoiding credit will only delay your rebuilding your positive credit history and score. Thus, instead of avoiding credit, focus on how you will manage debt.

Your goal then, is to put yourself in a position to be approved for and seize new credit opportunities. The next step is to responsibly maintain this new line of credit so that your positive re-payment practices help to raise your credit score. Finally be patient; month-by-month your scores will begin to improve.

Timely Pay Lingering Debts:

Priority debts are not dischargeable in bankruptcy (e.g., most IRS debts, most state/local tax debts, back alimony/support, criminal fines, etc.). In addition student loan debts are not dischargeable under current bankruptcy law.

If you are responsible for these kinds of debts it's very important that you contact your creditors, develop a re-payment plan and make timely re-payments. You do not want "late payment" reports to negatively impact your credit history after you've earned your bankruptcy discharge. If repaying these debts is still a financial burden for you after your discharge, contact your bankruptcy attorney in order to determine whether a (another) voluntary Chapter 13 may help you.

Finding Good lenders

There are several companies that offer credit to individuals with a bad credit history or who have recently come through the bankruptcy process. The problem is that most of these companies charge incredibly high interest rates (I've seen higher than a 50% interest rate).

Be forewarned that some of the more blood-thirsty lenders are going to actually look for ways to apply these high lender rates and/or other burdensome fees against you (e.g., late fees, over-the-phone-payment fees, etc.); it's a troublesome, but common way of increasing company revenue. I've even known companies that send intermittent billing statements as a way of increasing their chance to charge you late fees and/or raise their interest rates.

When looking for a credit card you must do your homework, research companies, compare products/lending companies, read all of the fine print, keep good records, and remember that the responsibility of on-time payments is yours alone, regardless of how badly your lender may behave.

If you get a credit card, leave it at home. Be very thoughtful about how you use it and minimize the opportunity for impulse purchases.

One of the best ways to use a credit card as a tool to rebuild your credit history is to use it as a tool to consolidate fixed-monthly payments, not as a credit card.

You can sign-up for online payments using your credit card to pay for your basic and fixed monthly expenses (e.g., rent, mortgage, utilities, car payment, etc.), and then just make one on-time payment to your credit card company. Your credit card need not see the light of day – ever – but it can work for you to help you rebuild your credit history.

A good option is a "secured credit card." These cards are secured the amount that you pre-pay to your lender and which is used to set your credit limit. Be advised that secured credit cards are not the same as "prepaid (credit) cards" or "debit cards." If you get a secured credit card, you will want to make sure that your lender has fair interest rates and that your payment history for this secured credit card reports to all three of the credit reporting bureaus: Experian, Equifax and Transunion.

Review Your Credit Report

Within 30 – 45 days of your bankruptcy discharge request or purchase a copy of your consolidated credit report. You can get a full credit report for free, but you are more likely to get an accurate and more user-friendly report through a reputable fee-based company. For information on how to get a free credit report you may visit the Federal Trade Commission website here: www.consumer.ftc.gov/articles/0155-free-credit-reports.

Once you receive your credit report do two things: (1) make sure that every one of the debts that was included in your bankruptcy petition is listed on your report as included in your bankruptcy; and (2) review the "public records" section to make sure that your bankruptcy is also listed on your report. This is how you make sure that all debts that were supposed to be discharged by your bankruptcy are in fact, discharged. It's important to keep you bankruptcy records handy in case you need to follow-up with anyone. Contact your bankruptcy attorney immediately if you find any discrepancy.

If your credit report includes an account that's not yours, you don't recognize or that lists a debt or late-payment that contradicts your recollection of the facts: (1) file a formal dispute with the appropriate credit reporting bureau(s); (2) contact the lender directly and try to resolve the matter; and (3) get any resolution in writing.

While these sites are often updated and their processes may change, you should be able to find out how to dispute erroneous information on your credit report by going to site of the relevant credit reporting agency(ies) and by an intra-site search for "dispute." I've included the links here in order to get you started: Transunion (www.transunion.com); Equifax (www.equifax.com/home/en_us); and Experian (www.experian .com).

Release Any Fear or Shame

In my experience most debtors who allow shame to influence their decision about whether to file for bankruptcy protection haven't yet filed. My clients who have filed or who have already

received their discharge are far too happy enjoying their new-found sense of RELIEF than to be bothered by these unproductive and misleading thoughts.

The fact of the matter is that if you are a debtor who is or soon will be facing financial struggle, you fall in one of two categories: (1) the type of debtor who decides to take a logical and legal approach to safeguarding themselves against creditor harassment and even more financial stress; or (2) the type of debtor who doesn't.

Bankruptcy is a common-sense approach to financial insolvency. Within the last 12 months alone the well-known corporate behemoths Kodak, Hostess and Readers' Digest have all filed for bankruptcy protection, as have the cities of Stockton, Harrisburg and Central Falls. Individuals who have benefited from bankruptcy protection include celebrities such as Rush Limbaugh, Larry King, Donald Trump and even Casey Anthony.

Most of us don't have near the resources of any one of these household names and we are forced to do much more with much less. We should therefore, use all available, legal, ethical and responsible tools to manage through financial challenges. Keep in mind that you are far more of a burden to society if you allow yourself to slip into complete financial ruin, than you are if you design a proactive plan and use bankruptcy to protect your remaining assets. These assets can in-turn be used to rebuild your future.

Start or Resume Saving Money:

Savings accounts allow you to build a cash reserve that you can use instead of relying on credit and instead of suffering any further financial disasters. I am not a financial planner but most of my friends who are financial planners suggest that each of us have cash saved that equals six months of all of our expenses.

In order to help yourself accomplish this goal open a segregated savings account, save regularly, and don't touch this money unless you have an emergency situation. If you do have an emergency situation replenish these funds as quickly as possible.

You should also have savings for down-payment purposes. You may want to buy a home or a car and the higher your down-payment, the lower your interest rate will be. In most cases you will need to have a sufficient down-payment before you can even qualify for a loan.

You can also help yourself by researching and finding which financial institution pays the best compound interest rate (APY). You may find higher rates of return through credit unions and/or online banks.

Invest:

The easiest and most cost-efficient way to invest is to participate in employer-provided investment plans, especially if your employer offers matching funds. When done properly the funds that you invest in a qualifying retirement account decrease your taxable income. Savings figures for 2013 are as follows: if you are under 50 years old, you can contribute a maximum of $17,000 toward a qualified retirement plan, and if you are 50 or older, you can make an additional "catch-up contribution" of as much as $5,500, for a total of up to $22,500.

Insure:

You are on your way back to financial stability, but in the unlikely event of something happening to you in the meantime, you want to make sure that you and your loved ones are covered. It's entirely likely that the cushion you expected to provide was depleted during your financial turbulence. Insurance is the best way to bridge your transition. You should consider disability and life insurance. You will likely get better rates if insurance is offered by your employer. If you decide or need to get private insurance, term insurance is cheaper and will allow the greatest insurance coverage at the lowest cost while whole-life insurance policies can be used for insurance and savings purposes.

* * *

Hopefully this article had something for everyone, and especially for: (1) those who are in the process of getting or who have already gotten their bankruptcy discharge; and (2) those who are considering bankruptcy, but fear life "on the other side."

Group #1 is already feeling relief and freedom and will use this information as part of their growing sense of empowerment. Group #2 should feel relieved to know that there is in fact, life after bankruptcy – a better life. Everyone however, must plan and commit to credit-worthy practices.

Good luck!

Small Business Spotlight - Credit with Chris, Credit Counselor

The Phoenix Law Firm has had the pleasure of working with Credit Counselor, Chris Bridges, in helping people improve their financial health and credit scores. Chris owns "Credit with Chris" which is a platform that provides credit consulting to help consumers learn how to safely build and maintain good credit. Chris is committed to sharing information about credit management and the impact it has on our lives. Chris' goal is to change generations by increasing credit scores one point at a time. Chris regularly shares information through blogging, social media, consultations and public speaking. If you are interested in credit counseling and/or having Chris Bridges speak at your upcoming event, please contact Chris at 877-896-2831 or visit www.creditwithchris.com.

Chris recently invited me as a guest on her radio talk show to talk about bankruptcy! She asked good questions and together we provided good information about bankruptcy protection. Find the recording to this show by following this link: http://www.blogtalkradio.com/creditwithchris/2013/01/13/bankruptcy-isnt-a-dirty-word.

Helpful Links Related to This Month's Newsletter:

10 Things Credit Reporting Bureaus Won't Tell You: http://articles.marketwatch.com/2013-02-15/finance/37114953_1_credit-bureaus-credit-scores-consumer-data-industry-association/2

Credit Counselor for Help with Credit Repair and Credit Management: http://www.creditwithchris.com/

Bankruptcy and Morality: http://getoutofdebt.org/33451/is-bankruptcy-sinful-and-bad-or-right-and-moral-an-examination

Recommended Insurance Provider: I have known Kirk Blackman for over 20 years and I recommend his services for a variety of insurance needs. You can learn more about Kirk's services here: http://www.blackmanfs.com/

Community Involvement:

The Phoenix Law Firm participated in President and Mrs. Obama's National Day of Service as part of the 2013 inaugural activities. For our part we reported to the Martin Luther King Jr. Memorial Library in Washington, DC, in order to assist the library staff clean and organize several shelves of periodicals. It felt good to do some meaningful work and to honor Dr. Martin Luther King, Jr.'s legacy before we got to the business of celebrating the inauguration.

Newsletter archive:

February 2013 - *Bankruptcy & Tax Refunds*: http://www.icontact-archive.com/HOqa_ck1M1lYiGCygmlANoO9497fey8B?w=2

January 2013 - *No Shame in Bankruptcy - Use Logic*: http://www.icontact-archive.com/HOqa_ck1M1lYiGCygmlANiwP6jRURy8U?w=2

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If you have any questions or comments, feel free to contact The Phoenix Law Firm (TPLF) at (202)573.9499 or visit www.phxfirm.com. TPLF proudly represents debtors of the District of Columbia and in the state of Maryland. TPLF is a debt relief agency. TPLF helps people file for bankruptcy relief under the Bankruptcy Code.

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Vendor Contracts and Termination Rights

Ask a general counsel what is the first legal term to look for when reviewing a vendor contract, and the lawyer likely will answer "termination rights." Chances are, at some point during the term of a vendor contract between your company and a third-party vendor, your business team will ask, "How do we get out of this contract?" If your vendor fails to materially perform its obligations under your contract or is otherwise in default, then you may have the right to stop payment and terminate the contract under contract law. But what if the vendor is performing its obligations (more or less) and your team simply is not satisfied with the level of service, the cost, or otherwise is looking to move to a different vendor? If termination rights are spelled out in the vendor contract, your company will be well-prepared for this scenario.

J.J. Sherman

Termination Rights Vary.

A standard form vendor contract that runs for a set term may not give the customer the right to end the contract before its expiration. Instead, it may provide that, except to the extent set forth in the agreement, neither party has the right to cancel or terminate the agreement, and the parties remain fully responsible for all obligations and amounts payable under the agreement for the entire term. To preserve an exit strategy, it is important for a customer to negotiate an express right to terminate prior to the expiration of the term.

Negotiated clauses will vary depending on the size and nature of the vendor contract. Some allow either party to terminate upon 30 days' notice; others

permit the customer to terminate with notice to the vendor and upon payment of a termination fee. Customers also bargain for an express right to terminate if the vendor fails to meet certain performance standards or if certain unacceptable events occur. For instance, in a co-location agreement between a data center and a customer, the customer will negotiate

To preserve an exit strategy, it is important for a customer to negotiate an express right to terminate prior to the expiration of the term.

the right to terminate if there is a physical breach of the licensed space, a theft of the customer's equipment or similar security breach. Ultimately, it is essential that the business team and the lawyer negotiating the vendor contract on behalf of the customer work together to clearly define what events or service failures should trigger a termination right.

Request an Orderly Transition.

If you're negotiating an express termination right, ask the vendor to assist with an orderly transition to the new vendor upon exercise of your termination right. Your vendor's cooperation will prevent unnecessary business disruption during the transition period to your new vendor.

Seek a Release.

You and your vendor may grant each other a mutual release from any further obligations under the vendor contract effective upon termination, except, of course, for transition assistance and any indemnity that might survive termination.

While negotiating your next vendor contract, seek termination rights if you wish to preserve an exit strategy. ◆

J.J. Sherman counsels clients in the areas of commercial real estate, commercial contracts, social media and entertainment law. She can be reached at jj@jjshermanlaw.com.

Dealing with Contract Overflow? Law Offices of J.J. Sherman, P.C. is available to assist in-house counsel with the creation of standard form agreements as well as the review and negotiation of vendor contracts and sales contracts. We also can provide coverage to an in-house legal team when a lawyer takes a leave of absence.

IN THIS ISSUE:

Endorsements in Social Media

In this digital age, employers expect their employees to use social media for personal and professional purposes and also assume their employees are likely to make statements online about their company's products or services. Indeed, many employees working in marketing and business development actively promote their company's products and services through social media outlets. With this in mind, now is a good time to review the Federal Trade Commission's (FTC) Guidelines Concerning the Use of Endorsements and Testimonials, which applies to all media including blogs, message boards, remark boards, list servs and other forms of social media.

The FTC Guidelines preach three basic truth-in-advertising principles: (1) Endorsements must be truthful and not misleading; (2) If the advertiser doesn't have proof that the endorser's experience represents what consumers will achieve by using the same product or service, the advertisement must clearly and conspicuously disclose the generally expected results in the depicted

circumstances; and (3) If there is a connection between the endorser and the marketer of the product or service that is likely to affect the weight or credibility given to the endorsement, the connection must be disclosed. This means that employees who comment on their employer's products or services via social media should disclose their employment relationship.

The FTC defines an "endorsement" as any advertising message (oral or written) that consumers are likely to believe reflects the opinions, beliefs, findings or experience of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser. Here are some examples that might occur in the workplace based on guidance and rulings from the FTC:

Example 1: An employee's Facebook page identifies the company where the employee works. Is the employee required to make additional disclosure when the employee writes on Facebook about how terrific the company's products or services are? According to the FTC, the answer is "yes." The reader might not realize that the products or services endorsed by the employee on Facebook are sold by the employee's company.

Example 2: An online message board designated for discussions of retail trends in Southern California is frequented by those involved in the Southern California retail industry. An employee of a leading retailer posts messages on the discussion board promoting the company's stores, without disclosing a connection to the retailer. Is disclosure of the relationship required? According to the FTC, the answer is "yes." Knowledge of this person's employment likely would affect the weight or credibility of the endorsement. Therefore, the person should clearly and conspicuously disclose the employment relationship to readers of the message board.

Example 3: A public relations firm is hired to promote the brand of a retailer with several locations in Washington, D.C. As part of its campaign, the firm's employees pose as ordinary consumers and post online reviews of the retailer's brand. Is this permitted? According to the FTC, the answer is "no." The employees of the public relations firm are not average consumers; they must disclose the material connection between the public relations firm and the retailer.

To avoid potential liability... educate your employees and the companies promoting your goods and services about the FTC's Guidelines Concerning the Use of Endorsements and Testimonials.

What amount of disclosure is required? The FTC does not mandate specific language, but it does give general guidance. The language does not need to be "legalese." It can be as simple as "I work for this company" or "This company hired me to promote their product." The FTC does say disclosure of the material connection should be part of the message or endorsement. Accordingly, a "click through" button that says "Legal Disclosure" is not sufficient. Similarly, general disclosure on a home page such as "I have been hired to promote many of the products I discuss on this site" is not sufficient. In a platform like Twitter, where the message is limited to 140 characters, drafting disclosure that is part of the message can be difficult. According to the FTC, for Twitter, a short hashtag such as #paid ad or #paid or #ad might be effective to give people the disclosure they need.

Best Practices for Endorsements in Social Media. To avoid potential liability for misleading or unsubstantiated representations and for failure to disclose a material connection, educate your employees and the companies promoting your goods and services about the FTC's Guidelines Concerning the Use of Endorsements and Testimonials. In addition, review your company's social media guidelines. Often, they require any employee commenting on his or her employer and the products or services offered by the employer to say, "These are my opinions and do not represent the company's positions, strategies or opinions." ◆

Supplier Diversity Announcement

As a 100 percent woman-owned business certified by the Women's Business Enterprise National Council (WBENC), we are proud to serve as a diversity supplier and help our clients achieve their commitment to diversity. We recognize that businesses gather strength from difference.

Law Offices of J.J. Sherman, P.C. is on the Minority and Women-Owned Law Firm Outside Counsel List of the FDIC.

Spotlight on the Retail Lease

Gross Sales

A retail tenant negotiating a letter of intent for a new lease will focus on the percentage rate of "net sales" it must pay as percentage rent to the landlord once the annual breakpoint is reached. During lease negotiations, it is equally important for the retail tenant to pay attention to the definition of "net sales." To avoid paying percentage rent on amounts that the retail tenant does not actually receive, amounts that the retail tenant is not entitled to keep or amounts that are unrelated to the merchandise or services sold, the tenant will need to add exclusions to the landlord's definition of "net sales." Some common exclusions include: cash or credit refunds to customers; tenant's accounts receivable consisting of bad checks and bad debts on credit sales and credit card charges; sales, use, excise, retailers, occupation or similar taxes imposed on the sale of merchandise or services; charges paid to credit card companies by tenant; and gift certificates until redeemed. ◆

The Confidentiality Agreement

It's standard procedure. A prospective buyer considering the purchase of a property or a business will ask the seller for information relating to the property or business that the seller considers confidential. Similarly, a landlord contemplating a lease with a new tenant will ask the potential tenant for its financial statements, which the tenant may consider confidential. Before you provide confidential information to a potential counterparty, if you wish the recipient to keep the information confidential, ask them to enter into a confidentiality agreement. Here are some of the points commonly addressed in a confidentiality agreement:

1. **Agree to keep information confidential.** A recipient should agree that all confidential information it receives will not be disclosed to any other person or entity and will be treated by the recipient as confidential and with the same degree of care that the recipient bestows upon its own confidential information.
2. **Exceptions when disclosure is permitted.** Generally, recipients are permitted to disclose confidential information to employees and representatives (including attorneys, accountants and financial advisors) who have a "need to know" the confidential information, so long as those individuals undertake to keep the information confidential. Recipients also are allowed to disclose confidential information in response to a valid court order or as required by law, so long as the disclosing party is notified and provided an opportunity to seek a protective order against the disclosure. In addition, disclosure is permitted if the recipient can show that the confidential information is generally available to the public, was in the recipient's possession prior to the disclosure by the disclosing party or was developed by the recipient independently.
3. **The disclosing party controls the confidential information.** At the request of the disclosing party, the recipient should return all copies of the confidential information it received (including electronic files) or destroy all copies it received and confirm in writing that the confidential information has been destroyed.
4. **Not a license to use the confidential information except to consider whether or not to do the deal.** A confidentiality agreement does not grant a license or rights in or to the confidential information, except for the limited right of the recipient to use the confidential information to evaluate the potential deal. Generally, the confidential information is provided "as is" and the disclosing party makes no representation or warranty of any kind, with respect to suitability, accuracy or non-infringement of third-party rights.
5. **No obligation to close the deal.** The purpose of a confidentiality agreement is to allow the parties to exchange information necessary to evaluate a potential transaction. The parties should be under no obligation to proceed with any business relationship.
6. **Right to injunctive relief.** Since the disclosing party will be irreparably injured if the confidential information is disclosed, the recipient should agree that money damages would not be a sufficient remedy for any breach and that, in the event of a breach for disclosure of confidential information, the disclosing party would be entitled to injunctive relief, specific performance and any other equitable remedy without the posting of a bond, in addition to any other legal or equitable remedies.

Check with your attorney to understand what you should include in, or exclude from, your confidentiality agreement for any particular transaction. ◆

FIRM NEWS

Firm Expansion!
We actively are working with clients doing business in California and are expanding our practice into the Washington, D.C. market in order to cater to clients doing business on the East Coast.

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LAW REPORT

Copyright Update

Rising star writers, songwriters and composers, early in their careers, will assign the copyright in their original works to publishers at less than stellar economic terms. Years later, they may wish they owned the copyrights to their works. That's where Section 203 of the Copyright Act comes into action. Beginning January 1, 2013, authors of copyrighted works may terminate copyright grants signed after January 1, 1978 if 35 years have passed. Section 203 of the Copyright Act permits authors to terminate "exclusive or non-exclusive grants of transfer or license of copyright" that were signed by the author on or after January 1, 1978, after 35 years.

Termination rights must be exercised in a 5-year window period. Use it or lose it.

Under Section 203, an author can terminate a grant at any time during a 5-year period beginning at the end of 35 years from the date of execution of the grant, or if the grant covers the right of publication, beginning at the end of 35 years from the date of publication of the work or at the end of 40 years from the execution of the grant, whichever term ends earlier. To exercise termination rights, the author must deliver a statutory termination notice to the copyright holder at least 2 years (and not more than 10 years) before the termination date, and the termination notice must be recorded with the U.S. Copyright Office.

For example, if an author signed a copyright grant on April 15, 1980, the termination period would run between April 15, 2015 and April 15, 2020, and the author would be required to deliver a termination notice no earlier than April 15, 2005 and no later than April 15, 2018. If an author fails to deliver a termination notice in the statutory termination period, the copyright remains with the grantee.

Section 203 does not apply to works made for hire, grants made by will or derivative works made prior to the termination date. It also does not affect foreign rights in a copyrighted work. Termination rights under Section 203 are not waivable; they can't be contracted away.

If you are an author considering your termination rights, check the dates of your initial copyright grants. Your window period is limited, and the statutory notice provisions must be followed to the letter. If you are a publisher, be prepared to negotiate (again) for some of your key catalogue works in the coming years and watch for works that may be on the market beginning in 2013. ◆

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