Continued from previous page.

But we are currently experiencing another type of Force Majeure event that is affecting the entire World – the Coronavirus pandemic.

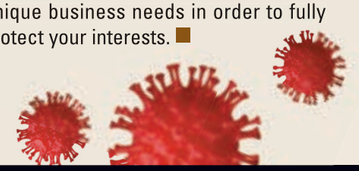
FORCE MAJEURE

This normally ignored clause covers a situation when one of the parties is unable to perform its obligations under a contract due to unforeseen matters out of that party's control. Typical matters include weather conditions [tornado, hurricane, floods (also called "acts of God" events)], labor strikes, or terrorism/civil disorder. But we are currently experiencing another type of Force Majeure event that is affecting the entire World – the Coronavirus pandemic. Major events and conventions are being cancelled. Some events are now going forward without spectators who had paid for their tickets. There are numerous categories of affected parties involved in now-terminated events including, but not limited to, the actual contracting parties, promotors, sponsors, participants, vendors, attendees, spectators, and all of the employees of these parties. As an example, take a look at a hotel that has sold out its rooms to a sponsor for a major event that has been cancelled. Few, if any, of the rooms will be utilized by the sponsor. The Force Majeure clause could state that the sponsor (1) receives a full or partial refund of any monies pre-paid, (2) receives a credit toward a future booking for any monies pre-paid, or (3) receives no refund and no credit. If you are the hotel, you are in a much better position with option (2) and especially option (3). But if you are the sponsor, you obviously want option (1), but would reluctantly settle for option (2).

ENTIRE AGREEMENT/ INTEGRATION/MERGER

This clause is a rather non-descript, but important clause that is included in nearly every contract. It is vital when a party signs a contract that the party can rely on the fact that the contract only covers the provisions written into it and will constitute the whole agreement between the parties. When written properly, this clause can prevent a party from asserting that there are other verbal or written promises or agreements (email, texts, or conversations) that are not contained in the contract that should be part of the executed contract. A vital situation for this clause to be included is for the protection of an employer in an employment contract where one party, normally the employee, claims they had been promised more compensation or benefits than what the contract specifies. This clause can prevent the employee from presenting evidence of other possible conversations or writings and changing the terms of the executed employment agreement.

As you can see with a very quick review of just two of the numerous boilerplate clauses, these clauses are extremely important to understand and need to be properly negotiated based on your unique business needs in order to fully protect your interests. ■



Actual resolution of legal issues depends upon many factors, including variations of fact and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking any action on matters covered by this newsletter. Nothing herein should be construed to create or offer the existence of an attorney-client relationship.

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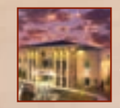

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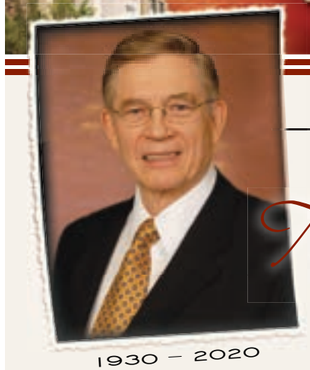

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MESSAGE FROM MARK A. HUTCHISON

WE HONOR THE FAMILY, LIFE, AND LEGACY OF

Thomas L. Steffen

On the evening of September 1st, Thomas L. Steffen, Senior Counsel of the Firm, passed away peacefully. Tom is John's father. Many in Nevada and throughout the country know and remember Tom as one of most influential and consequential lawyers in Nevada's history. He graduated with honors from George Washington Law School in 1965, where he began his career as a contract negotiator for the Bureau of Naval Weapons. After decades as a highly sought-after and successful trial lawyer, Tom served as Associate Justice and then Chief Justice of the Nevada Supreme Court from 1982 to 1997. Jim Randall served as his law clerk. Mike Wall served as senior staff and counsel to him on the Court.

For many years, lawyers have told me that Tom Steffen was one of the finest lawyers to ever practice in the State. His many published opinions are to this day standards of judicial excellence in sound legal reasoning and persuasive analysis.

But some of us who knew Tom Steffen beyond the law can attest to his moral character and courage, his basic human kindness, his great affection and sacrifice for his family, and his deep love for the country and the State he served for so long. I have many fond memories of Tom. Here are two of them. When we started the Firm nearly 25 years ago, he was a partner in a small office building on 4th Street and Bonneville in downtown Las Vegas. He invited two of the tenants in that small building to vacate the space for which they were paying Tom full rent and offered the space at a steep discount to two young and nearly broke lawyers with young families struggling to make ends meet as they started a new law firm. Years later, when I needed help in preparing the most important trial examination of my career, Tom jumped in and spent two months combing through a giant record to help craft a deadly cross-examination of the key witness in the case. An examination that would consume nine days at trial before a jury with dozens of exhibits offered and admitted.

I don't believe that we will soon see his likes again. Godspeed and God bless you, Tom Steffen. We will sorely miss you. ■

The Firm Names Seven Attorneys as Senior Counsel

Mark A. Hutchison and John T. Steffen are pleased to announce that seven of the Firm's attorneys have been named Senior Counsel. The attorneys are Thomas L. Roberts, David M. Doto, Kevin J. Blair, Jacob A. Reynolds, Kimberly Marsh Guinasso, Todd W. Prall, and Sandra S. Robertson.

"These fine attorneys have tremendous experience and have provided our clients with the highest quality legal services for years," noted John. "They represent clients from both of our offices, in Las Vegas and Reno."

"Welcoming these individuals to the Senior Counsel level recognizes their significant contributions not only to the Firm, but to all the many clients they have served," said Mark. "We couldn't be more proud to have them as part of our team."

Read more about all of the Firm's attorneys and their practice areas at hutchlegal.com.

Thomas L. Roberts

David M. Doto

Kevin J. Blair

Jacob A. Reynolds

Kimberly Marsh Guinasso

Todd W. Prall

Sandra S. Robertson

NEW FEDERAL OVERTIME RULES TAKE EFFECT

Employers should know that the federal Fair Labor Standards Act (FLSA) requires workers to be paid a federal minimum wage and that wage workers and certain "non-exempt" salaried workers who work more than 40 hours in a week receive overtime pay at one and a half times their normal rate for each extra hour.

During the Obama administration, the U.S. Department of Labor proposed new regulations to double the minimum salary level under which salaried "white collar" workers (in other words, managers and professionals) would be entitled to overtime pay from $23,000 a year to $47,000. (The threshold hadn't been raised since 1975.) The proposed regulations also presented a new test designed to stop employers from misclassifying workers as "managers" exempt from overtime laws when they really weren't. The goal was to extend overtime protections to more than four million new workers. But the proposed regulations caused an uproar in the business community. Lawsuits suggested the Labor Department didn't have the authority to make the change, and the regulations were never implemented.

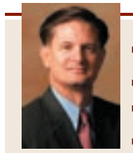
The Labor Department under President Trump worked on its own version of new overtime rules, which took effect Jan. 1. Because the changes could impact how your company assigns duties and approaches hiring and payroll management, it's important to be aware of what the new rules say.

Under the new rules, salaried executive, administrative and professional employees must be paid at least $684 a week, or $35,568 per year, to be exempt from overtime, significantly less than the Obama-era proposal, but still an increase. Up to 10 percent of that may come from nondiscretionary bonuses (bonuses based on a set of objective criteria), incentive payments and commissions, as long as those payments are received at least once a year.

The new rules define "executive," "administrative" and "professional" employees exempt from overtime:

- An "executive" employee is someone whose main responsibility is managing the company or one of its departments. He or she also must regularly direct the work of at least two full-time employees and have either authority over hiring, firing and promotions or significant input into such decisions.
- An "administrative" employee is someone who does office work related to general business operations and/or customers. To be exempt, an administrative employee's work must involve decision-making and independent judgment on significant matters.
- A "learned professional" is someone whose work requires advanced knowledge in a field of "science or learning" and involves the constant exercise of discretion and judgment.

You should contact an employment attorney versed in all the ins and outs of the new regulations to help you evaluate your workforce, including which workers you currently classify as "exempt" from overtime requirements, to make sure they still qualify. For workers who do not qualify, you need to decide whether to give them a raise so they qualify as exempt or to reclassify them as "non-exempt" and pay them overtime. There are other issues to consider as well. If you reclassify workers as non-exempt, will they see it as a demotion, impacting morale in your workplace? Might you consider hiring more workers instead of paying overtime to existing workers who didn't previously qualify? And if you do this, do you run the risk of expanding your workforce to the point that you're subject to the Affordable Care Act and the Family and Medical Leave Act, when you previously were not? Obviously there's no one-size-fits-all approach. That's why it's so important to talk to an employment lawyer to discuss the decisions you will need to make regarding your organization. ■



Kevin J. Blair

IT'S JUST BOILERPLATE LANGUAGE...OR IS IT?

By Kevin J. Blair

"It's just boilerplate language." Over my 28 years as a transactional attorney, there have been too many times to remember that I've heard that statement from either a client or the other party's counsel. Every client will thoroughly review and negotiate the key business terms of a contract. But there are incredibly important legal concepts that are covered with boilerplate language that can quickly turn a winning situation into a losing one. I have even had contracts where the negotiations of the boilerplate clauses take nearly as much time as the negotiations with the principal terms of the contract. Here is a list of some of the most common boilerplate clauses found in most contracts:

- Jurisdiction
- Governing Law
- Arbitration/Mediation/Court
- Attorney Fees/Court Costs/Costs
- Assignments
- Successors & Assigns
- Entire Agreement/Integration/Merger
- Waiver
- Force Majeure
- Joint & Several Liability
- Limitation of Liability/Damages
- Time is of the Essence
- Headings
- Counterparts
- Amendments
- Severability
- Notice
- Relationships
- Jury Trial Waiver
- Indemnification
- Warranties
- Confidentiality

It would take substantial time to highlight the importance of each of these clauses, so I will give a quick review of two clauses that are frequently overlooked that demonstrates the importance of negotiating these clauses in future contracts.

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