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“RIP AND TERR” CLAIMS: THE CGL POLICY AS PERFORMANCE BOND
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SAFETY IN NUMBERS – MOST INDEPENDENT PHYSICIANS CAN’T AFFORD TO GO IT ALONE ANYMORE
By Kate Heptig • Rivkin Radler LLP

INSURANCE IMPLICATIONS OF ARTIFICIAL INTELLIGENCE IN THE FOOD INDUSTRY
Kent M. Bevan • Dysart Taylor Cotter McMonigle & Montemore, PC

SURETY BONDS – THEY’RE NOT JUST FOR CONSTRUCTION PROJECTS ANYMORE
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WHAT ARE THE DAMAGES? REMEDIES IN NON-COMPETE CASES
By Christopher H. Lee • Cooch and Taylor, P.A.

NUANCES OF DEFENDING CASES INVOLVING TRANSPORTATION NETWORK COMPANIES
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Tyson Freeburg, Woodruff Sawyer • Andrew Godfrey, Kelly Santini LLP
Andrea Rescigno – Legalitax

DISCOVERY CHALLENGES IN CROSS-BORDER LITIGATION AND INVESTIGATIONS
By Drew Macaulay, Consilio

**DEPARTMENTS:**

FROM THE CHAIR’S DESK ............................................................ page 1
FIRMS ON THE MOVE ................................................................. page 24
FACES OF USLAW ........................................................................ page 26
SUCCESSFUL RECENT USLAW LAW FIRM VERDICTS / TRANSACTIONS ........................................ page 28
PRO BOND SPOTLIGHT ................................................................. page 30
ABOUT USLAW ............................................................................ page 31
USLAW NETWORK SOURCEBOOK ............................................ page 34
SPOTLIGHT ON CORPORATE PARTNERS ..................................... page 38
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Please connect with us, participate in our programs and take advantage of the many complimentary USLAW resources. Let us know how we can help you. In the meantime, please enjoy this issue of USLAW Magazine and thank you for your support.

Sincerely,

Dan L. Longo

USLAW NETWORK Incoming Chair
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Courts nationwide have grappled with coverage for “rip and tear” claims like the one against Zappo in the hypothetical below. The purpose of this article is to introduce and discuss the key concepts and rationales courts employ when addressing such claims, apply them to the hypothetical, and to ask whether modern trends in this area risk transforming the CGL policy into a performance bond.

THE HYPOTHETICAL
Zappo Electrical Contracting Corp. wired the new student union building at State University, including laying wire under the computer lab. After the wiring was completed, other trades closed the walls and put down a beautiful terrazzo floor, covering the wires. Later, the furniture and computer equipment were moved in, but the computers would not boot up. After a round of nondestructive testing, it was discovered that something was wrong with the wiring, now hidden by the beautiful terrazzo floor. State University demanded that Zappo fix the wiring or face legal action. Zappo would have to break through the floor to fix the wiring, however.

Zappo forwarded State University’s demand to its liability insurer. Jim Juster, the claims professional, was pretty certain that there was no coverage for Zappo’s faulty workmanship. After all, a liability policy is not a performance bond! What got Jim scratching his head, though, was the damage to the terrazzo floor. The floor was third-party property being damaged due to the Zappo’s fault. Could that portion of State University’s claim possibly be covered?

PROPERTY DAMAGE CAUSED BY AN OCCURRENCE
This first question to consider in any “rip and tear” claim is whether there is an “occurrence” of “property damage” such that would be covered under the standard CGL insuring agreement, where “property damage” means physical injury to tangible property of a third party and “occurrence” means an “accident, including continuous or repeated exposure to substantially the same general harmful conditions.”

Most state courts recognize a well-settled rule that the issuer of a commercial general liability policy is not a surety for a construction contractor’s defective work product. Initially, this rule was based on the view that the standard CGL insuring agreement was never intended to provide indemnification to contractors from claims that their work product was defective. Rather, the “purpose of a commercial general liability policy . . . is to provide coverage for tort liability for physical damage to others and not for contractual liability of the insured for economic loss because
the product . . . is not what the damaged [party] bargained for.”

This economic loss doctrine stands on the principle that purely economic loss (i.e., loss of the benefit of the parties’ bargain) is contractual in nature and does not equate to tort damages for physical injury to tangible property. In other words, courts declining CGL coverage on this basis take the view that such claims are fundamentally contractual in nature and as such can never arise from an “occurrence,” defined as an “accident.” This is not a universal view, however, with other courts reasoning that the crucial inquiry is whether the claim is based in tort versus contract, but rather whether the claim is one for damages arising from “property damage” caused by an “occurrence.”

Many courts also recognize an “occurrence” of “property damage” where the insured’s defective work product is a mere component of and causes damage to a larger structure. Application of this rule requires a finding that the insured’s defective work is having a deleterious effect on other components of the construction, which is the “occurrence” rather than the defective work itself. While courts continue to differ on whether the insured’s faulty workmanship can constitute an “occurrence” in itself, it is virtually universal to require at least the possibility of third-party “property damage” to trigger coverage. Under both constructions of an “occurrence,” then, mere repair or replacement of the insured’s own defective work does not constitute covered “property damage” for purposes of CGL coverage; there must be involvement of other property.

**“BUSINESS RISK” EXCLUSIONS**

In addition to considering whether “rip and tear” expenses are within the CGL insuring agreement, consideration must also be given to whether the policy’s “business risk” exclusions apply to bar coverage for expenses occasioned by the insured’s defective work. The overall effect of the “business risk” exclusions is to bar coverage for repair and replacement of the insured’s defective work, with variations noted below.

Of the standard “business risk” exclusions, the one barring coverage for damage to “impaired property” may be the closest fit with most “rip and tear” scenarios, because (as in the hypothetical) the claim arises not from property that is physically damaged but rather from non-defective work that must be removed to afford access to faulty work needing repair. Notably, the typical exclusionary wording requires that damage to “impaired property” arise from “a defect, deficiency, or inadequacy” in the insured’s work or from the insured’s “delay or failure to perform a contract or agreement according to its terms.” This wording dovetails with those court rulings holding that the contractual nature of the claim does not preclude an “occurrence” based solely on the insured’s faulty workmanship.

Also, potentially relevant are the standard exclusions barring coverage for “property damage” to property arising from the insured’s ongoing operations, including damage to property that must be restored, repaired, or replaced because the insured’s work was incorrectly performed on it. These exclusions could bar coverage for “rip and tear” claims to the extent the insured’s defective work was detected before all of the insured’s work was completed.

In addition, “rip and tear” facts may invoke the exclusion for property damage to “your [i.e., the named insured’s] work,” defined to include both operations performed by and materials supplied by the insured. Pursuant to this exclusion, coverage would be barred for damage to the insured’s work but not to other property damaged by the insured’s work.

Finally, the so-called “sistership” exclusion bars coverage for costs incurred to withdraw the insured’s work or product from the market “or from use.” It is at least arguable that removing the insured’s defective work “from use” by ripping it out of the overall structure is within the exclusionary wording.

**RESOLVING ZAPPO’S CLAIM**

Having reviewed the key concepts, what can we say about Zappo’s claim? Assuming coverage is governed by the law of a state holding that the insured’s faulty workmanship constitutes the “occurrence,” the question still remains whether deliberate destruction of the terrazzo floor equates to covered “property damage.” The answer will likely be yes based a literal reading of the policy wording because—though intentionally done—ripping up the floor constitutes physical injury to tangible property of a third party (State University). The impaired property exclusion will not apply on these facts because the floor is physically damaged (albeit intentionally). The ongoing operations exclusions will not apply because the insured’s work on the floor has been completed. Coverage will not be barred by the “your work” exclusion or the “sistership” exclusion because the terrazzo floor is not Zappo’s work.

Although some courts today would adopt these principles to find coverage for “rip and tear” claims, the question remains whether this result is ultimately to be preferred. Enforcing “property damage” coverage for non-accidental destruction of non-defective property ignores two venerable insurance tenets, fortuity and the moral hazard. Clearly, neither faulty workmanship nor the deliberate destruction of property is fortuitous. While the notion of the moral hazard may sound quaint in today’s world, it cannot be gainsaid that allowing a contractor to obtain coverage for faulty workmanship incentivizes shoddy work (at least absent market forces). When courts following this trend continue lip service to the old saw that a CGL policy is not a performance bond, the maxim rings hollow indeed.

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Almost every aspect of healthcare in the United States is in a state of transition. While popular media tends to zero in on a few hot topics, such as the Affordable Care Act (ACA) and the rising cost of coverage for consumers, the conversation often leaves out one critical contingency of the healthcare delivery system – providers. Healthcare systems are consolidating, non-traditional parties are making inroads into the space, and models of patient care and reimbursement are moving away from the traditional fee-for-service model toward value-based care.

How can an independent physician possibly compete with hospitals and other super-sized provider entities when now, more than ever, innovation, scale, and data/metrics are critical to providing effective patient care? Enter the independent physician super-group, a business model that lies somewhere between complete independence and employment; namely, the consolidation of multiple solo practitioners or small practice groups into a larger but still physician-owned medical group.

BUSINESS COMPETITION AND THE INDEPENDENT PHYSICIAN

Many physicians will tell you that they were called to the practice of medicine through an underlying desire to help people. While the stated goal is admirable, and the value of physicians’ contributions to their community really goes without saying, the reality is that the practice of medicine is a business. All professionals, including physicians, have to make a decision between employment and business ownership. The benefits of business ownership may make owning one’s own practice more attractive; there is, theoretically, more autonomy in decision making, increased flexibility in work hours and greater control over economics. Some physicians, however, prefer to focus on patient care instead of running
a business and seek more certainty around their compensation, choosing, as a result, to be an employed physician.

The Centers for Medicare & Medicaid Services (CMS) began to emphasize value-based healthcare approximately 10 years ago. The idea was to reward healthcare providers with incentive payments for the quality of care they give to their patients, as opposed to the fee-for-service model, which compensates physicians based on the frequency and type of their patient visits. In the years that followed, there were further developments in value-based care, including increased incentives for the use of electronic health records (EHR) and the ACA’s emphasis on quality care through incentive-based rewards to healthcare providers. Private insurance carriers also followed suit, creating provider contracts and models of reimbursement that emphasized quality over quantity of care.

In order for providers to demonstrate quality patient care, they must be able to provide the payers with evidence of outcomes. Capturing and manipulating data into usable forms, and having sufficient sample sizes to produce meaningful and statistically significant results, each becomes critical as a result. How can a solo practitioner or small independent medical practice possibly compete for reimbursements with hospitals and larger healthcare conglomerates, which have significantly more resources, if the solo practitioner is also responsible for clinical patient care during office hours and administering an office?

And it’s not just hospitals and other consolidated healthcare providers who are creating this competitive pressure. In recent years, organizations not traditionally associated with healthcare have disrupted the market. For example, in January 2018, Amazon, Berkshire Hathaway, and J.P. Morgan announced that they wanted to do something about the problem of rising healthcare costs for their 1.2 million combined employees, as well as the perceived lack of care improvement. This trio created Haven. While details remain somewhat vague, many in healthcare are expecting Haven to build a risk-based, clinically integrated network of providers and perhaps also to contract directly with hospitals as a payer.

**THE “ALMOST INDEPENDENT” MODEL**

Physicians often cling to independence well beyond the point that it makes financial sense to do so, fearful of becoming a cog in a hospital’s wheel of employees. The physician-owned super-group is the sometimes-overlooked opportunity that may combine the best of both worlds.

“Now, even the most ardent support-

ers of complete independence need to reconsider their stance,” says Dr. Simon Prince, founder and CEO of PRINE Health Medical Group, PLLC, a newly formed New York medical group focusing on primary care and chronic kidney disease.

The impetus for the creation of PRINE was this desire to remain independent but also competitive in the market.

“I have explained to my fellow docs, just like the movie, ‘Almost Famous’ – we may need to aspire to be ‘Almost Independent,’” he says. “Now, it is about consolidating in a more physician-friendly, kinder, gentler manner. It is about achieving enough scale to have a voice, enough infrastructure to support operations, and just enough independence to keep on going.”

**CHALLENGES AND OPPORTUNITIES**

A larger medical practice, comprised of physician owners, permits those physicians to come together to achieve more efficiency, better quality of care, greater payer reimbursements, and better work-life balance. These physicians can use each other as a clinical resource, covering each other’s patients both in the office and while on-call in hospitals. A larger number of aligned providers affords significantly more leverage when negotiating reimbursement rates with payers and vendors. The increased revenue brought into the practice through a combination of greater patient volume and better reimbursement rates then allows the practice to invest in better technology, such as a more sophisticated EHR system which can more easily synthesize patient data to demonstrate quality to CMS and private payers. In addition, the practice can support additional personnel who can focus on things like clinical care coordination, billing and collections, and compliance risk management.

The benefits of joining a consolidated but autonomous medical practice does, however, come with certain costs, and doing so requires some risk tolerance. Combining separate legal entities in any industry requires the engagement of professional advisors, such as attorneys and accountants, to work through issues such as employment/ payroll; employee health and welfare and retirement benefits; tax and accounting matters; and indemnification among the parties for potential historical liabilities. This can be an even more complex undertaking in the medical industry. In addition to the areas mentioned above, the movement to a new legal entity requires the practice to: enter into new payer contracts; re-credential its providers with payers and potentially healthcare facilities; integrate existing patient medical records into a unified EHR; and adopt uniform quality, compliance and clinical standards, protocols, and procedures.

And perhaps the most obvious question on the mind of a physician who is considering joining forces with some of his or her potential competitors is, what happens if it doesn’t work out? The unwinding of a medical practice requires working through many of the same issues described above, but in reverse order. But on this side of the process, there are patient relationships and continuity-of-care issues to consider. There also could be potentially significant costs incurred to put things back the way they were, or just walk away to become employed by a larger provider. Additionally, restrictive covenants, which serve to protect the members of the group from unfair competition when a member departs the practice, may come into play so it may be impractical to resume one’s practice in its prior form after leaving the new group.

Physicians and their advisors must go into the process of consolidating into a newly formed super-group with their eyes wide open. The physicians need to be mindful of each other’s perspectives, experiences, and concerns, and all parties must be patient, as the process will take months from start to finish, and perhaps even a year or longer. The governing documents (e.g., shareholders agreement, limited liability company agreement) should be carefully thought through and discussed among the parties, and must be detailed in addressing common issues that arise among business owners, including the dissolution of the business. Both strong leadership and the development of trust among the group of new physician partners are critical to the success of the venture. The physicians must be able to view the formation process, and make the necessary decisions along the way, simultaneously through their own lens as an individual and through the lens of the entity as a whole.

While it may be easier or more comfortable to maintain the status quo, it is becoming increasingly clear that failing to address the realities of a more competitive provider environment may actually result in costlier outcomes for providers.

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Kate Heptig is a partner in Ricker Radler LLP’s Corporate, Health Services, and Tax Practice Groups. She focuses on transactional tax law and executive compensation; general business law relating to corporations, LLCs, and partnerships; and ERISA/employee benefits matters, a specialty in which she earned her LLM.
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<tbody>
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<td>Years making connections</td>
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<td>Practice Groups</td>
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<td>USLAW’s rapid response</td>
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<td>Educational Offerings and Conferences</td>
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According to the Pew Research Center, Artificial Intelligence (AI) already affects the lives of more than half the world’s population in some way, and its influence is continuing to spread. This is especially true of the food industry, where AI is being used in many applications to increase food processing safety and efficiency. Insurers and insurance lawyers who serve the food industry need to be well-versed in this technology as it develops.

But what is AI, exactly? Simply put, AI is a term used to describe when machines or computers mimic human cognitive abilities, including learning and problem solving. In the context of the food industry, and specifically pertaining to insurance matters, AI can reduce the likelihood of claims and legal liability. Here’s how:

**Benefits of AI in the Food Industry**

Food industry companies operate in an environment with tight margins and the looming, ever-present threat of crisis.

“Every year there are deaths and there’s significant financial damage to the
overall industry as a result of these situations,” according to Mark Leblanc, head of crisis management in North America for Swiss Re Corporate solutions. “One of the biggest challenges we face in this whole space is that the entire market is driven by human error. Accidents happen, food processing facilities are messy places.”

AI can help reduce liability for food companies in the areas of quality control and crisis management.

**Quality control**

AI can be used in conjunction with robot technology to ensure the safety of food products before they leave the assembly line and reach consumers. Examples include:

- Detecting microscopic bacteria and foreign contaminants such as metals and plastics in food products before they leave assembly lines. This includes sample testing to find contaminants in terms of parts per million and even parts per billion, and searching large batches in ways that would be impossible for humans to achieve.
- Picking and properly labeling containers while also verifying that the correct label is used so that people with allergies can avoid food products that might be dangerous to them. AI and robots can check more than 200 labels per minute virtually error-free, far surpassing the capabilities of human quality control.
- Using facial recognition to trace livestock throughout a food processing facility to identify those who might have a disease and separating them before they’re turned into food products.
- Ensuring personal hygiene in food service and manufacturing settings by using cameras, facial-recognition, and object-recognition software to detect employees who are in compliance with food safety regulations.
- Cleaning processing equipment using Clean-In-Place (CIP) technology to detect contaminants inside of machines where it would be undetectable by human beings and then cleaning it without having to dismantle the machine.

**Crisis management**

AI-driven processes can reduce the potential for human error and can also reduce the likelihood of crises or lessen their negative impact when they occur.

“What they’re beginning to use it (AI) for is a way to trace where the product is going, people’s reaction to that product, so that they can nip the issue in the bud, and if need be, the company can proactively intervene and either stop the product from further distribution, contact customers, do a press release, and essentially cut it off at its knees before it gets out of control,” said Leblanc.

For example, police in Lufkin, Texas, recently identified a teen who was seen in a viral video shared on social media licking a tub of Blue Bell ice cream and then putting it back on a store shelf in a local Walmart. By using AI-driven search processes, Blue Bell was able to identify the store where the incident occurred and coordinate with Walmart and local law enforcement to find the contaminated ice cream and apprehend the culprit. The teen now faces serious charges related to food tampering. As a result, both Blue Bell and Walmart were able to avoid a public health and public relations crisis before it seriously affected the value of their brands.

Another example of AI being used to avoid a crisis was when Amazon pulled an energy drink off the market after someone wrote on social media, “Gave me energy for my workouts but also wreaked havoc on my digestive tract.” Amazon was using AI to track social media related to its products and was thus able to intervene quickly before a crisis developed.

**DRAWBACKS OF AI IN THE FOOD INDUSTRY**

In addition to the benefits it provides, AI also comes with several disadvantages. First, it’s not infallible, and computers, robots, and software programs always have the possibility of malfunctioning, breaking down, or simply not working as intended. When this happens, fixing the problem might not always be easy and can often be difficult. Furthermore, AI-driven machines and processes can take human jobs. Indeed, one of the primary benefits of AI is that it can create efficiencies that would reduce or eliminate the need for food companies to hire people in the first place. This is offset somewhat by the fact that AI can actually increase the demand for jobs pertaining to the design, control, and maintenance of such technology. However, these jobs tend to be higher-skilled and more specialized than the jobs that AI replaces, so it’s not a one-to-one ratio in terms of jobs lost compared to jobs created by AI in the food industry.

**HOW FOOD INDUSTRY COMPANIES CAN GET STARTED WITH AI**

Food companies that wish to explore how they can benefit by implementing AI technology should first consider what their specific goals are and how AI can help them achieve them. They should also consider what the potential costs would be and determine whether the potential benefits are worth the risk. It would also be advisable to hire a consultant or expert in AI with specialized experience in the food industry who can provide guidance and oversee the process of implementing AI within their organization. Finally, there should be a clear means of measuring success which should be periodically reviewed by the company’s top-level executive management.

The rise of AI has many implications for the food industry. By being well-informed of the benefits, drawbacks, and challenges of AI, food industry companies, insurers, and insurance lawyers can make the best decisions for themselves and their organizations.
In today’s increasingly competitive commercial environment, companies are required to manage a variety of competing and often substantial financial obligations. In many instances, companies are often required to post security for these financial commitments. Required security can take the form of a variety of security instruments, including cash escrows, letters of credit or surety bonds. Increasingly, surety bonds, which have been traditionally used in the construction industry, are proving to be a flexible and cost-effective alternative to cash escrows and letters of credit for companies that must post security for their financial obligations. Surety bonds in the form of a lease guarantee bond can be used to guarantee a variety of obligations where letters of credit or cash escrows are currently utilized. Surety bonds offer several advantages over letters of credit, including the following: (i) surety bonds afford potential cost savings; (ii) surety bonds are typically classified as off-balance sheet or contingent liabilities; and (iii) surety bonds offer better protection for the issuing company.

A surety bond is defined as an instrument under which one party guarantees to another that a third party will perform a contract or an underlying obligation. More specifically, a surety bonding arrangement involves a promise by which a surety, i.e., an insurance company, becomes accountable to another person, i.e., the obligee, for the debt, obligation or conduct of a third person, i.e., the principal. As a three-party agreement, the benefit of the bond inures to the obligee, but allows the principal to obtain work, or to satisfy statutory or legal requirements while also serving as a form of guarantee when required or needed.

Surety bonds can take two broad...
forms: contract bonds and commercial surety bonds. Contract bonds involve the guarantee of performance of an underlying contract and payment to subcontractors, suppliers and laborers. For construction project owners, completion of the project within the budget is the primary goal. When it comes to limiting the financial exposure of contractor default, choosing the best form of risk management can make a big difference. Contract surety bonds are most often issued in the context of bid bonds, performance bonds and payment bonds. A performance bond protects the owner, i.e., the obligee, from the non-performance and financial exposures, including liens for non-payment should the contractor default. The labor and materials payment bond protects subcontractors, laborers, and material suppliers against non-payment of the contractor.

Commercial bonds guarantee performance of obligations that generally do not arise from contracts and include several distinct classes of bonds: contract bonds, court bonds (both judicial and fiduciary varieties), license and permit bonds, and federal and public official bonds. Beyond that, there are all kinds of miscellaneous bonds, including lease bonds. Lease bonds, although underwritten as a miscellaneous commercial surety bond, serve essentially as a financial guarantee required by landlords.

A common scenario occurs when a lessee consents to a very long-term commercial real estate lease agreement and the obligee i.e., the landlord, has concerns regarding the lessee’s operational continuity and financial stability. Lease guarantee bonds are commonly used where the landlord is expending significant sums to make leasehold improvements in furtherance of a lease to incentivize a tenant to enter into a long-term lease arrangement. Lease guarantee bonds are generally drafted to reflect the specifics of the real estate deal and because there is a substantial component of financial guarantee risk involved, underwriting is critically important.

It is important to remember that surety bonds are not insurance but rather a third-party guarantee. One of the key ways surety bonds differ from insurance policies is that with insurance there is an assumption that losses will occur and the risk is spread among many individuals paying experience rated premiums. An insurer typically does not expect to recover losses resulting from many types of claims. On the other hand, sureties operate on the general principle that every bonded individual or business will perform as promised. There is no specific transfer of risk between the principal and the surety. Rather, the principal retains all responsibilities as it relates to the obligee. In addition, the premium charged for a surety bond is a fee for services, including investigating the applicant and handling the transaction. From an underwriting perspective, there is a fundamental assumption that there will be no loss. If the surety pays a loss on a bond, it will seek a remedy or recourse against the principal under its indemnity agreement and expect to be made whole again.

Another key element is that suretyship underwriting principals are more analogous to banking than insurance. A surety bond is underwritten by the surety company on the credit worthiness and the capacity of the principal to fulfill the underlying obligation. The surety company will also only entertain clients and principals who have the character and management integrity to fulfill the primary obligation. More specifically, in a typical surety underwriting scenario, the surety assesses the principal's financial capacity, capabilities and character to perform its obligation under the indemnity agreement. Depending on the type and term (length) of the bond, certain prerequisites may be more important than others. For example, due to the pure financial guarantee language of lease guarantee bonds, the principal’s creditworthiness and financial strength is an absolute prerequisite for the surety underwriter to be comfortable that the principal is and will continue to be profitable for the number of years that the bond will be in effect. Typically, for most bonds, surety underwriters will need to look at the complete credit profile of the principal, including but not limited to: company organization chart, including breakdown of ownership; CPA-prepared fiscal year-end financial statements; copies of bank lines of credits; and possibly personal financial statements of the stockholders in order to assess the overall surety risk profile of the principal.

No underwriter ever intends that a surety bond run on forever. Whatever the principal’s obligation is, it should be capable of eventual fulfillment in due course. Surety underwriters cannot be expected to guarantee any person’s or firm’s financial responsibility in perpetuity, unless there is full collateral. Therefore, whether or not a bond can be cancelled is an important underwriting factor to be considered. The right to cancel does not mean the surety can be excused from liability for acts of its principal that occurred while the bond was in effect. It does mean, however, by simply giving reasonable written notice to the obligee, a surety can be relieved from liability in the future. Such a clause is advantageous because circumstances change.

In order to determine whether a bond can be cancelled or the surety needs to withdraw, the bond form must be reviewed closely. It usually indicates how the surety can terminate its liability. For example, some bonds are cancelled by the surety, giving the obligee a 30-, 60- or 90-day written notice via certified mail. If the bond does not include a procedure, it will reference laws or statutes that contain the cancellation requirements. Some bonds are simply non-cancelable and the exposure remains with the surety until the obligation has been met or the surety has remedied a default. The obligation of a bond requires the partners to possess a knowledge of the law governing the bond, the bond form, and any regulation or statute(s) promulgated by the enforcing authority. If a bond is required by statute or ordinance, it is generally impossible to understand the surety’s obligation without studying the underlying law.

Surety bonds in a commercial context are increasingly a viable alternative especially for businesses that maintain large cash deposits and where the firms are required to post security for financial obligations such as lease obligations, utility deposits and/or environmental financial assurances. Similarly, a surety bond can be used by any business or company that needs to post counter-party security for financial obligations tied to insurance programs. Treasurers, CFOs, risk managers and corporate counsel should be mindful of the flexibility and increasing use of surety bonds in the commercial arena. While there is an increase in the issuance of surety bonds in both construction and commerce, commercial surety in particular has expanded significantly. Indeed, it is fair to say that surety is not just for “construction” anymore.
Let’s say you’re the CEO of a mid-sized technology company that needed to fill an account executive position in Metro City, USA. You sifted through hundreds of resumes, conducted dozens of phone interviews and chose three finalists for in-person interviews. Upon the conclusion of those interviews, you offered your ideal candidate the position, which she happily and enthusiastically accepted. A week later, she met with your head of human resources to complete the new employee information packet. In that packet was a document titled “Confidential Information and Non-Compete Agreement.” Your new employee read it, denied the assistance of independent counsel to review it and signed it, along with the numerous other documents put in front of her. You spent the next six weeks training her on your technology, developed over many years at a cost of millions of dollars. Then, you sent her out into the field to begin calling on prospects. All was good with the world.

Eight months later, your new employee informed you that she was leaving your company for “personal reasons.” You conducted an exit interview, reminded her of her contractual obligations and wished her well, disappointed it didn’t work out. Two weeks later, you got a call from a trusted customer informing you that your former employee was now working for one of your competitors, promoting a product that was in direct competition with the one she promoted for you. You filed suit against her to enforce the terms of the Non-Compete Agreement, and the court issued a temporary restraining order and preliminary injunction which prohibited her from continuing to compete against you. Over the next several months, you continued to litigate the case against her seeking damages and a permanent injunction. At summary judgment, the court ruled that your former employee did indeed breach her contractual obligations. However, the court struggled to determine the proper measure of damages and requested further discovery and a trial on damages only.

Does this sound familiar? It very well might as this scenario is played out all over the country each year. Courts have long grappled with the enforcement of non-compete agreements but often more important to businesses and former employees everywhere, courts have struggled to determine the proper measure of damages when it is determined that an employee has indeed breached their non-compete agreements.
Typically, available remedies in breach of non-compete agreement cases are injunctive relief, actual damages and in some cases, liquidated damages.

**INJUNCTIVE RELIEF**

In our scenario above, the court has already provided some injunctive relief while it took the time to reach a decision on the merits. Initial injunctive relief in the form of a temporary restraining order is a remedy of very short duration, sometimes less than 10 days, usually only requiring a plaintiff to show it has a colorable claim and will suffer immediate irreparable injury if such an order is not issued.

For a plaintiff to get injunctive relief of longer duration, it will want to move for a preliminary injunction. Two almost universal considerations of courts as to whether a preliminary injunction is appropriate are that the plaintiff will suffer irreparable harm and there is a substantial likelihood of success on the merits. Many courts also require the moving party to demonstrate that a balancing of the equities tips in its favor. Jurisdictions across the country differ in which element holds the most importance in the analysis. Some states, like New York, find that irreparable harm is the most important factor while other states, like Massachusetts, find that success on the merits is the most important factor. Often, preliminary injunctions are issued for the duration of the litigation.

The ultimate form of injunctive relief, the permanent injunction, requires the plaintiff to prevail on the merits and is often issued when a plaintiff cannot be adequately compensated with monetary damages as a result of defendant’s breach.

In breach of non-compete cases, plaintiffs will often move for the issuance of a temporary restraining order and a preliminary injunction at the same time. The purpose of this is to ensure that while the case is being litigated on the merits, the defendant cannot cause the plaintiff any further harm than has already allegedly been caused. If the plaintiff prevails on the merits at trial, the court may issue injunctive relief which essentially enforces the terms of the non-compete starting as of the day of the order. In the scenario above, if the court found that the plaintiff prevailed on the merits nine months after the case was filed and preliminary injunctive relief was awarded, the court might very well enforce the terms of the non-compete starting on the day it issued its final judgment. The end result of this is that the breaching party may be bound to the terms of the non-compete for a duration longer than is set forth in the agreement itself.

**MONETARY DAMAGES**

What happens when injunctive relief is insufficient, and the harm has already been done? This is an area that has confounded courts across the country because assigning a monetary damages figure can be incredibly difficult and, in many cases, requires the assistance of experts.

Typically, plaintiffs in non-compete cases are entitled to seek monetary relief in the amount of lost profits sustained during the applicable period of anti-competitive behavior. The lost profits must have been contemplated by the parties when the contract was formed, must be the probable result of the breach and must be demonstrable with reasonable certainty. While the lost profits need not be proven with absolute certainty, the evidence must establish a basis for the assessment of damages with a fair degree of probability. In other words, speculation on damages will not suffice.

As one can imagine, proving damages in breach of non-compete cases could be difficult. Determining the impact of the anti-competitive behavior may require extensive investigation and analysis of information from non-parties, e.g., the customers, using subpoenas and depositions. The impact of such investigation might be hugely detrimental to the relationship between the plaintiff and its customers. Moreover, analysis and interpretation of the information received from these investigations of potentially numerous customers would undoubtedly require the retention of an expert, or possibly many experts. The cost of proving damages alone might be more than the damages suffered.

In the scenario above, the plaintiff would need to find out how many of its customers (and possibly prospective customers, depending on the language of the non-compete) the former employee had prospected and whether any of those customers had chosen to abandon the plaintiff’s products for the competitors because of such prospecting. Then, the plaintiff would have to determine the dollar value those losses represent and present that information to the court in such a way that makes sense. To do so, the plaintiff would be paying experts significant amounts of money while angering its former or prospective customers at the same time.

**LIQUIDATED DAMAGES**

Because of the difficulty ascertaining damages in non-compete cases, many businesses have included liquidated damages provisions in their non-compete agreements. The purpose of these provisions is to attempt to predict damages in the event of a breach, typically in the form of a fixed amount. Courts across the country have found such provisions to be valid when the amount fixed is a reasonable forecast of just compensation for the harm and the harm is such that it is incapable or very difficult to determine. Importantly, courts have held that “reasonableness” of liquidated damages is not determined retroactively by their correspondence with actual damages, but by reference to the prospective difficulty of estimating the possible damages that would flow from a breach. The greater the difficulty of estimating damages, the greater the range of reasonableness used in assessing a liquidated damages provision. However, liquidated damages provisions which are unconscionable, contrary to public policy or grossly disproportionate to the loss from the breach will be found unenforceable if challenged.

Let’s return to our scenario above. Recall that the court found that the former employee did indeed breach her contractual obligations. Additional discovery commenced, and the court conducted a trial on damages only. There are four potential outcomes, absent a valid liquidated damages provision. First, the plaintiff fails to prove monetary damages but the court issues judgment enforcing the terms of the non-compete starting on the day of the judgment. Second, the plaintiff, through expert testimony, proves monetary damages and the court issues judgment awarding the damages in the amount proven at trial. Third, the plaintiff proves monetary damages and the court issues judgment awarding monetary damages and enforcing the terms of the non-compete. Lastly, and least desirable from the plaintiff’s perspective, plaintiff fails to prove monetary damages, the court deems any further injunctive relief impractical so, after all the expense and hassle of litigation, awards plaintiff nominal damages of $1.00. As with any litigation, a careful cost/benefit analysis is critical when deciding whether to pursue these types of claims.

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As ride shares become more prevalent, it follows that Transportation Network Companies (TNCs) will become an increasingly popular target for litigation. While liability issues may be clear-cut in a simple auto negligence matter, liability for TNCs becomes murky when drivers engage in separate misconduct such as driving under the influence or engaging in sexual assault. In most states, common defenses in these matters include (1) a lack of an employment relationship between the TNC and driver, (2) assertions that the driver's conduct is outside the scope of employment, and (3) assertions that TNCs cannot be held liable for negligent hiring or supervision if they did not, and reasonably should not have known about prior misconduct.

**DRIVERS ARE INDEPENDENT CONTRACTORS**

In California, while a corporation may be held vicariously liable as a principal for the torts of its agents, the converse is true that if an individual is deemed to be an independent contractor and not an agent or employee, vicarious liability will not attach. Typically in cases involving TNCs, California courts have held that the tortfeasor’s employment status is a question of fact.

The factors a court uses to determine independent contractorship include: (1) the right to control the work; (2) the alleged employee’s opportunity for profit or loss depending on his managerial skill; (3) the alleged employee’s investment in equipment or materials required for his task; (4) whether the service rendered requires a special skill; (5) the degree of permanence of the working relationship; and (6) whether the service rendered is an integral part of the alleged employer’s business. For TNCs, the important factors favoring an independent contractor designation include the fact that typically, drivers are paid per ride (as opposed to a salary), drivers provide their own vehicles and auto insurance, and drivers can choose their own hours and length of work. It is often highlighted as one of the perks to working for TNCs that drivers can be their own boss and make money on their own terms.

In a recent case involving a Grubhub driver who also worked for Lyft and Uber, the Ninth Circuit Court found that the factor of at will termination does not weigh in favor of an employment relationship because the right was mutual. In further
support of a defense to the control argument, the Ninth Circuit held that a mutual termination provision with 30 days’ notice and a one-year term was consistent with an independent contractor relationship because “the designated impermanency of the relationship supports a finding of independent contractor status.”5 That being said, California cases have cited factors such as the company controlling rates and routes, and imposing rules regarding the cleanliness of vehicles as well as prohibited contact with customers as indicative of an employee relationship.6

Alternatively, in states such as Nevada, drivers for TNCs are classified as independent contractors working commercially when they carry paying passengers. As such, TNCs have a benefit from the outset that there is no employer/employee relationship presumed.7

As various jurisdictions differ on this issue, TNCs should monitor case law across the country and weigh the options of adjusting policies to further support the position that the drivers are independent contractors in the states where the issue is a question of fact.

**DRIVER’S CONDUCT IS OUTSIDE THE COURSE AND SCOPE OF EMPLOYMENT RELATIONSHIP**

A second defense available to TNCs when a driver engages in misconduct, is the argument that the driver’s tortious actions were outside the course and scope of the employment relationship. In determining whether an individual’s actions were within the course and scope of his employment relationship, California courts have held that “respondeat superior liability does not attach simply because employment brought the employee and victim together at a certain time and place. The employee’s activities must be inherent in, typical of or created by the work so that it is a foreseeable risk of the particular employment.”8 Typically, whether the tort occurred within the scope of employment is a question of fact.

In cases of intoxicated drivers, factors to consider include whether the incident occurred during working hours9 and whether the alcohol consumption was done in a manner which benefitted the employer.10 In the cases of sexual misconduct, factors to consider include whether the TNC app was in use at the time of the assault11 and whether the sexual assault is determined to be incidental to the operation of the business.12

**TRANSPORTATION NETWORK COMPANIES CANNOT BE HELD LIABLE FOR NEGLIGENT HIRING WHERE A DRIVER DOES NOT HAVE A KNOWN HISTORY OF MISCONDUCT**

A third defense TNCs may rely on in cases of driver misconduct is the defense that the company should not be liable for negligent hiring where there is no known history of misconduct. For example, in California in the *Doe v. Uber Techs., Inc.* matter, the Court granted Uber’s motion to dismiss as to one driver when Plaintiffs did not allege that anything existed in the driver’s background that Uber knew or should have known and that should have prevented Uber’s approval of the driver. However, the motion to dismiss was denied as to the second driver where a 7-year background check revealed no misconduct, but the driver had a domestic violence conviction 12 years earlier. In some jurisdictions, TNCs face additional requirements for operation, including insurance coverage and fingerprint-based background checks. Thus, in order to decrease liability for negligent hiring and supervision claims, TNCs must comply with extensive background check requirements.

More states are now requiring TNCs to conduct background checks on each driver applicant and also requiring that they perform an additional check every so often. However, some of these same states allow for the sealing of certain criminal records statutory time limits. Thus, even by employing these additional measures to verify driver backgrounds, an added layer of uncertainty still exists. As such, TNCs should conduct comprehensive background checks on potential drivers to ensure that any potential past misconduct is known prior to permitting the individual to become a driver.

**ADDITIONAL CONSIDERATIONS REGARDING PUNITIVE DAMAGES**

In certain circumstances, an employer may be liable for punitive damages based upon an employee’s wrongful actions such as when the employer had advance knowledge that the employee was unfit, the employer expressly authorized or ratified the conduct or the employer is personally guilty of oppression, fraud or malice.

A common defense to suits that allege driver misconduct is that the Plaintiff’s claims arise solely from the misconduct of the driver. Thus, employers should take prompt steps to stop the behavior to avoid the perception of inadequate investigation. By ride share companies promptly responding to allegations of driver misconduct, they can avoid exposure to liability.

**CONCLUSION**

As Uber, Lyft, and other TNCs continue to increase in popularity, so does the litigation surrounding their use. One would be amiss to simply consider this ever-developing type of litigation to be no different than any other traditional case. Defense counsel must be aware of the fact-sensitive liability defenses, and the companies should take proactive steps to limit liability based on the emerging case law.

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3. See *S. G. Borello & Sons, Inc. v. Department of Industrial Relations*, 769 P.2d 399, 407 (Cal. 1989) (internal cross-reference omitted.)
7. See *NVS 706A.090*.
10. See *Id.*
12. See *Id.*
When you consider a deal outside of the U.S., you must familiarize yourself with differences in legal system. Contractual behaviors and market conditions, including instructing local counsel, familiarizing yourself with a different legal system, different contractual practices and different enforcement mechanisms. Transaction insurances are becoming increasingly common tools to reduce M&A deal risks.

However, these products are widely misunderstood. It is vital that, before you pay the premium, you fully understand the product and obtain value for it. Transaction insurances have unlocked many an impasse on M&A deals but are also changing behaviors and risk tolerances.

There is a growing and concerning complacency in the market that it is not necessary to fully negotiate the deal, because the risk will be covered by the policy: this is simply not the case, as anyone who has sat on an underwriting call will testify.

This article represents an overview of transactional insurance on M&A deals, drawing upon current and emerging trends on both sides of the Atlantic.
TRANSACTION INSURANCE, SO YOU MEAN R&W INSURANCE?

Not quite. In the U.S. and Canada, the product is called representation and warranty insurance (RWI), reflecting the fact that buyer protections are usually presented in the form of a series of representations. By contrast, in Europe the product is called warranty and indemnity insurance and requires a contractual warranty claim to be brought for proven losses. These differences in terminology are reflected in differing risk coverage and, when combined with a less litigious culture, lead to very different cover premiums. You will find European cover costs to be significantly lower than those in North America.

WHEN MIGHT A TRANSACTION INSURANCE BECOME APPROPRIATE?

• High deal value
• High complexity
• Seller wants to distribute cash immediately (e.g. a fund)
• Expectation gaps on buyer protections
• Multiple vendors
• Alternative to a retention or escrow
• Parties need to rely on the strong covenant of an insurer

ADVANTAGES OF TRANSACTION INSURANCE

There is a perception that obtaining transaction insurance on M&A deals increases cost and time. In fact, experience shows that it can actually accelerate deals getting to closing, ending often soul-destroying and negative negotiation where lawyers hunker down in the negotiating process.

RWI allows the buyer to rely on a policy that offers more protection than what the seller may be willing or able to offer via traditional indemnification and may extend the survival period of the reps, offer higher limits of indemnification, and provide a buyer the opportunity to file a claim with an insurer as opposed to suing the management team they just acquired in the event of a breach.

One of the reasons RWI is rising in popularity is its flexibility, through delivering benefits to each the buyer and seller, regardless of which party is the named insured or pays for the premium. RWI policies offer the most protection when the terms of the transaction agreement are balanced as a result of comprehensive, but reasonable, negotiation and don’t heavily favor one party over the other. Further, the policy can be tailored to match the risk profile of the transaction. For example, if the target has significant IP exposure, when a breach would exceed the general indemnity cap, a policy holder can purchase a separate, higher limit for those provisions.

RISKS WHICH REMAIN WITH THE SELLER

The insurer perceives risks, their materiality and whether or not these should be borne, very differently from the parties. Underwriters will not simply agree to cover the negotiated SPA. Instead, a key part of obtaining the policy is a granular analysis of each warranty and a schedule setting out whether each is:
• covered;
• not covered; or
• modified.

This is where things can become a little metaphorical. You will have a choice to renegotiate the warranty or proceed on the basis of a non-real scenario, like a hypothetical lease on a rent review.

It is vital to work with your broker and to draft the stock purchase agreement in such a way that it is clear that the seller will bear risks not covered by insurance (insurers generally exclude cover for unspecified environmental and tax risks, certain deal-specific indemnities). It is also important to remember that insurance is unlikely to be effective in relation to criminal liability as a matter of public policy.

GETTING THE POLICY IN PLACE

You cannot speak to your broker too soon. The broker understands the current market and where risk appetite lies, even with a forward view as to attitudes 4-6 months ahead, when the deal will close. For example, many environmental risks will not be covered by the product and certain specific tax risks (in particular, for tax planning) are likely to be excluded. This allows you to go into the negotiation fully armed with an understanding of what you can get covered by insurance and the areas where you will require the seller to go on risk. Your broker can also offer advice on the diligence that underwriters will expect to see given the risk profile of your transac-

tion. For example, if the target has unaudited financials, the underwriters will most likely require a quality of earnings report prepared by an auditor and this can take a few weeks to prepare.

Experience shows that it takes 5-6 weeks to select an insurer, negotiate terms and the cover schedule with its legal team and take on board the insurer’s comments on the SPA. Accordingly, the reality is that transaction insurance represents no delay to a deal, because it can be run in parallel with the due diligence, negotiation and disclosure processes. It is vital to ensure that you have effective transaction and project management in place, otherwise you will experience inevitable delays.

The decision to purchase an RWI policy is often made once negotiations have stalled and the transaction is well underway. While not ideal, underwriters can and will get a policy in place within a fortnight. Additionally, you can even place a policy for a transaction after closing but at that point the terms of the agreement are final, so the underwriters’ flexibility on certain terms will be limited.

THE ADVANTAGES FOR A SELLER

Generally, in M&A transactions, the representations and warranties are about the buyer’s desire to understand the target company that it has seen in the due diligence review process, to ensure the portrait remains true at closing and to attribute risk if this is no longer the case.

The seller is generally looking to avoid giving assurances on issues it does not have direct knowledge or experience of, particularly risks that are already known to the buyer.

Where the parties end up as to the apportionment of risk is often a function of different elements, including the bargaining power of the parties, the skill of their advisors, the depth and breadth of the due diligence review that was conducted and the time period available for the due diligence review.

In this context, the advantages for the seller of transaction insurance are multiple. For instance, the policy may be used to:
(i) extend the scope of certain representations or warranties to bridge the gap between the needs and expectations of buyer and seller;
(ii) bridge the gap between the seller and the buyer regarding the amount of the holdback of part of the purchase price payable at closing and the duration of such holdback; and
(iii) resolve issues of joint and several liability, which can become problematic where
there are shareholders with different levels of knowledge of, or investment in, the target company.

**THE ADVANTAGES FOR A BUYER**

The buyer is risking its capital and wants to hold some back rather than have to sue (potentially many individual shareholders) for a breach when the asset does not live up to the promises made. However, often the seller is not prepared to give the comfort the buyer needs.

As a result, for the buyer, the advantage of transaction insurance is that it can deliver the certainty to complete. In addition, insurance (and the involvement of an objective third party analyzing the deal in a different way to the parties) can help ease the potential conflicting interests that arise in certain types of transactions where one or more of the sellers are:

- insolvent or financially distressed;
- employees of the seller;
- being hired to manage the purchased business post closing; or
- rolling over a portion of their ownership interest into the buyer.

**POTENTIAL PITFALLS**

Despite the potential advantages, the use of insurance is not without risks and there are optimal size parameters within which this product works best.

It is not uncommon for sellers to indemnify against issues that are known to the buyer, and such matters to not be insurable. It is best to involve your broker as soon as possible.

The contract of insurance itself can be a pitfall. These are not the type of documents transactional lawyers are expert in analyzing. Simply lining up the definitions and the carve-outs and exclusions in the policy with the purchase agreement can be challenging, hence the need to work with a good broker, who will usually deploy a transaction team, including legally qualified experts in these products.

Many underwriters have pre-negotiated base forms. Prior to the release of the first draft policy, your broker should be pushing the underwriter to use the most recently negotiated policy form to avoid unnecessary revisions.

It is important for parties to understand that these insurances are not a cure all and risks remain with buyer and seller as allocated under the contract or by law.

For example, there is often a deductible, which means that the seller will have to cover a portion of the loss claimed in addition to having paid the premium (assuming it was not paid by the buyer or split between the parties).

In addition, there will be certain types of liability that are excluded from the policy. There are, however, other transactional insurance products available in the market to address some of these issues such as a tax opinion or contingent liability policy. A tax opinion policy will cover certain tax treatments that are standard exclusions in an RWI policy. Additionally, other transactional insurance products will cover known risks and are commonly used outside the context of a transaction.

Understanding the scope of the remaining risk and communicating this to clients is an important responsibility of the M&A attorney. No attorney will be thanked by his or her client where the client believes cover has been obtained, but the policy does not pay out on the specific risk in question.

**THE CURRENT STATE OF THE PRODUCT**

Transaction insurances have long been used to plug title issues on real estate deals. They are now becoming a standard consideration on complex or expensive M&A deals. It is now becoming standard practice to insure deals involving:

- competing bids;
- private equity exits;
- real estate special purpose entities; and
- trading businesses unless the transaction is between industry players.

However, some parties still do not wish to incur the costs and alter the risk profile in the way an insurance product does.

**A SALUTARY LESSON FOR THE FUTURE**

The increased use of transactional insurance does not eliminate risk from a transaction. It simply changes that risk. Transaction insurances can unlock a number of impasses in a deal. However, it is important to learn the lessons of the last decade when monoline insurance wrappers over collateralized debt obligations collapsed. The insurance is only as good as the financial strength of the insurer.

**OUR KEY RECOMMENDATIONS ARE**:

- negotiate a comprehensive M&A deal with the counterparty;
- go into the negotiation having fully explored the options with your broker; and
- if the insurance does not cover this risk, ensure that the seller remains on risk and not limited to a nominal $1 of liability.
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USLAW Transportation and Logistics Exchange
(Includes Risk and Claims Track and Workers’ Compensation Track)
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**FEBRUARY 26, 2019**
USLAW EduNet Webinar
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USLAW EduNet Webinar
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**MARCH 20, 2019**
USLAW Dinner at ABA Transportation MegaConference
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New Orleans, Louisiana

**MARCH 28 – 30, 2019**
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Nashville, Tennessee

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*#MeToo*

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INTRODUCTION

The need for multinational corporations to gather and review documents from different jurisdictions for investigation and litigation purposes is not a new phenomenon, but the associated challenges continue to intensify. Corporations that operate across borders must be ready to overcome a variety of legal, logistical and linguistic hurdles, and all too often in circumstances where time is tight, and budgets stretched.

BETWEEN A ROCK AND A HARD PLACE

Legal challenges to conducting discovery exercises overseas include personal data privacy, banking secrecy, “blocking” statutes and state secrets legislation. Of these, data protection legislation is the most commonly encountered issue, where the data that the company needs to collect, review and produce originates in a jurisdiction where the rights of the data subject (most often an employee) are protected in relation to data that identifies them. Again, this is not a new challenge, but one where the risks of non-compliance have dramatically increased in Europe with the introduction of the General Data Protection Regulation and its associated fines based on a percentage of global turnover.

It is not only personal data privacy that causes delays and additional cost in cross-border discovery exercises. In some jurisdictions, notably Switzerland and Singapore, legislation has been enacted to enforce the protection of data concerning legal entities such as corporations. Depending on the jurisdiction, this can include information about the company’s customers and other third parties and as such, names, signatures, bank account details and contact information (for example, email addresses or telephone numbers) may also be deemed private and protected from disclosure.

In addition, corporations with overseas subsidiaries are expected to provide discovery even when the act of doing so may conflict with a local blocking statute, such as the French Blocking Statute of 1968 (as amended in 1980). In the case of France, the criminal sanctions for contraventions of the Blocking Statute are significant but...
are rarely enforced, so while the chance of a fine or imprisonment is low it remains a difficult decision to make for a corporation when a U.S. court expects discovery of documents originating in France.

In each of these contexts, conflicts arise because the ability of the company to collect and transfer data to another jurisdiction are limited by law, even though there are pressing legal reasons to follow that course of action. When these legal restrictions are raised as an objection to providing discovery from a particular jurisdiction, U.S. courts are frequently unsympathetic, and will often decide that the interests of the U.S. justice system override any risks borne by the company providing documents.

Corporations undertaking cross-border discovery exercises will find that deadline pressures can be exacerbated by delays while they take advice from data privacy counsel, the company’s data protection officer or, in certain situations, negotiate with a works council. If it is subsequently decided that the data cannot leave its country or region of origin to be processed elsewhere then a corporation will normally have to contract with a local service provider for eDiscovery services and potentially document review. Under GDPR, the contracting process for engaging a supplier to which data is going to be transferred would need to include creating a Data Processing Agreement, a Record of Data Processing and reviewing the potential supplier’s “Technical and Organizational Measures” to ensure that data that moves to the provider is adequately protected both contractually and from unauthorized access. Finally, while it is not always necessary, transfers of documents containing personal data outside the EU frequently necessitate redactions of that personal data. All of the above points lead to an increase in overall cost and the time required to complete the exercise which can be in short supply during an investigation or litigation.

LOGISTICS AND LINGUISTICS

It is not just legal restrictions on movement of data that stand in the way of a company trying to comply with U.S. discovery obligations that involve overseas data. The discovery process requires the cooperation of a range of stakeholder groups, including corporate IT, internal and external counsel, data protection officers, information security teams, eDiscovery specialists and others.

Where an exercise involves data across a number of countries and time zones the coordination of each of these groups becomes much more challenging, particularly since members of the project team (such as local IT staff) may be unfamiliar with discovery processes and/or may not speak English as their native language, increasing the chance of key information being lost in translation and mistakes being made.

Staying with the languages theme, the existence of documents in multiple languages in the data to be collected, searched, reviewed and produced will add further complexity to an already challenging process. While the “lingua franca” of many U.S. corporations is English, it remains normal to see collected data in non-English speaking countries contain many different languages. While processing software has evolved to the point where searches can be run in almost any language, choosing the words to search for remains a challenge. It is not simply a matter of translating specific search terms in English into a range of target languages as in many cases a literal translation will not accurately retrieve potentially relevant documents (for example “backhander” in English could mean a blow with the back of the hand, an uncomplimentary remark or a bribe).

Picking the right translation for the specific context requires a more sophisticated approach, in which linguistic and legal experts collaborate to define the best search strategy to retrieve documents of interest. Again, this process adds time and expense to the overall budget. Once potentially relevant non-English documents have been identified, sourcing lawyers proficient in each language to review them can be a final challenge.

PLANNING IS EVERYTHING

Corporations that regularly come up against these issues will usually have a defined set of processes for discovery exercises. Often termed a “playbook,” this document will guide project stakeholders through the company’s preferred workflows for identifying, preserving, collecting, processing, hosting, reviewing and producing documents. Where particular jurisdictions present a challenge for data privacy reasons, the playbook can include company policies, arrived at through consultation with privacy counsel, that define how personal data will be treated in each jurisdiction. This may include determinations of whether or not consent is to be sought (and it is not always necessary or advisable to do so) as well as the processes which the legal team and any external service provider will follow to minimize the impact of the exercise on the rights of the data subject, such as in-country processing, hosting and review or agreed measures for filtering and redaction of personal or sensitive personal data. In situations where banking secrecy is an issue, similar approaches to managing personal data can be used, but it is worth noting that the redaction stage can be even more extensive (and therefore time consuming and costly) than simple personal data redactions.

The playbook will usually be distributed to key personnel across the enterprise as well as “go-to” outside counsel in the relevant jurisdictions. Follow-up training sessions can help to ensure that concerns are addressed and those who are unfamiliar with the eDiscovery process have a chance to learn and ask questions in a less pressured situation than a live project. In this way, the playbook and associated rollout training sessions ensure that all participants have a common understanding of approved project workflow and their role within the process as well as any interdependencies that may exist between stakeholders’ roles.

The playbook will also normally contain contact details for key members of staff in different departments and jurisdictions at the corporation, facilitating project start up, communication and ongoing management. It may also extend to include contact details for the corporation’s approved service providers for data collection, eDiscovery processing and hosting, translation services and document review.

CONCLUSION

With increasing globalization and the focus of data protection authorities on ensuring data subjects’ rights in relation to their data are enforced, the challenges of cross-border eDiscovery will continue to intensify over time. Corporations that invest the time in building internal processes and procedures to respond to these challenges will be able to significantly reduce the risk and cost involved in handling these exercises, as well as increasing the speed with which they can respond. An effective global discovery playbook will guide project stakeholders through the options for data collection, processing, hosting and review, ensuring that best practices adopted by the corporation are used consistently on a global basis or adapted for a specific jurisdiction where necessary.

Drew Macaulay is a managing director at Consilio in London, where he advises the firm’s global clients on the technical and workflow aspects of large-scale regulatory and internal investigations and litigation disclosure exercises, as well as compliance with the relevant privacy legislation and procedural rules.
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**Firms on the Move**

Victoria M. Almeida of Adler Pollock & Sheehan P.C. in Rhode Island was elected vice president of the Rhode Island Bar Foundation. Victoria also serves on its Executive and Finance Committees and is past president of the Rhode Island Bar Association. The Rhode Island Bar Foundation is the charitable arm of the Rhode Island Bar Association — a non-profit organization that uses programs and grants to improve the justice system in the State of Rhode Island.

Flaherty Sensabaugh Bonasso PLLC attorney Caleb Knight was selected by the American Health Lawyers Association (AHLLA) to serve a third term on its Young Professionals Council. AHLLA is the nation’s largest educational organization devoted to legal issues in the healthcare field. The Young Professionals Council is the governing body that provides insights and direction to the American Health Lawyers Association’s Board of Directors. The Council also coordinates networking events and oversees other initiatives of interest for young professional members.

Franklin & Prokopik’s Imoh Akpan’s nomination for membership into the prestigious Federation of Defense and Corporate Counsel (FDCC) has been unanimously approved by their Board of Directors. The Federation is a distinguished composition of legal community members who are at the forefront of defending clients in civil lawsuits.

Jones, Skelton & Hochuli’s Stephen Bullington has been elected into the American Board of Trial Advocates (ABOTA), a national association of experienced trial lawyers and judges. ABOTA and its members are dedicated to the preservation and promotion of the civil jury trial right provided by the Seventh Amendment to our United States Constitution.

Nicolas Martino and Kimberly Page of Jones, Skelton & Hochuli in Arizona have been named to the Arizona Association of Defense Counsel Young Lawyer’s Division (AADCYLD) 2019-2020 Board of Directors. Nic will serve as Community Outreach Chair and Kimberly will serve as CLE Chair and Board Secretary. The AADC YLD Board includes attorneys from throughout Arizona, practicing in every substantive area within the defense bar.

John Gregory of Jones, Skelton & Hochuli in Arizona has been elected to the Arizona Association of Defense Counsel (AADC) Board of Directors. John has been a member of the AADC since 2014. He served on the Young Lawyers Division Executive Board from 2014-2018, and as president from 2017-2018.

Moses Winston, an associate with Modrall Sperling in New Mexico, has been named to The ALS Association New Mexico Chapter’s Board of Directors. Moses’ term follows that of Alex Walker, a Modrall Sperling shareholder who served on the chapter’s board from 2012 through 2018. The work of the organization is extremely important to Modrall Sperling, which lost a beloved friend and partner, Doug Schmebeck, in 2016 after a valiant battle with the disease.

Stuart Butzier of Modrall Sperling in New Mexico has been elected vice president of the Rocky Mountain Mineral Law Foundation. He is a long-time RMMLF Member and former Trustee and Secretary. Stuart currently serves as Modrall Sperling’s vice president, managing director of its Santa Fe office, head of the Natural Resources Department, and chair of the Mining Practice Group. Stuart was named Natural Resources Lawyer of the Year by the Natural Resources, Energy, and Environmental Law Section of the State Bar of New Mexico in 2018.

Chad W. Pekron of Quattlebaum, Grooms & Tull PLLC in Arkansas has been appointed to the Arkansas State Board of Education by Governor Asa Hutchinson. Chad’s seven-year term will expire in 2026. The Arkansas State Board of Education is a nine-member board composed of two members of each of the state’s four congressional districts and one member selected at-large. Composed of business and community leaders, the Board is the policy making body for public elementary and secondary education in Arkansas.

John E. Tull III of Quattlebaum, Grooms & Tull PLLC in Arkansas served on the faculty of the International Association of Defense Counsel’s 47th Annual Trial Academy being held July 27-August 2, 2019, at Stanford Law School. The IADC Trial Academy is one of the oldest and most respected programs for developing defense trial advocacy skills.

Ruth E. Robinson of SmithAmundsen LLC in Illinois received the 17th Circuit Professionalism and Civility Award presented by the Winnebago County Bar Association. S-E-A, USLAW’s official technical forensic engineering and legal visualization services partner and a recognized worldwide leader in forensic analysis, investigation and product testing has, once again, expanded its Health Sciences Practice with the addition of a toxicology capability. Coinciding with this new important investigative service, the firm has added two renowned investigators—Michael (Mike) Wernke and Matthew (Matt) Brittain—to its growing organization. Wernke is a toxicologist and pharma-cologist; Brittain is a toxicologist with a specialty background that includes extensive experience in agriculture. Both Wernke and Brittain will be based in the Columbus headquarters campus. For more information, visit www.SEAlimited.com
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Karen Painter Randall of Connell Foley LLP in New Jersey has been appointed for the third time to the Cybersecurity Legal Task Force by the president of the American Bar Association (ABA). Karen was first appointed to the Cybersecurity Legal Task Force in 2017 and will continue as a member for another one-year term commencing with the adjournment of the 2019 Annual Meeting.

On July 12, 2019, attorneys and staff at Dysart Taylor Cotter McMonigle & Montemore, P.C. participated in a service event for NourishKC, which operates a community kitchen in a restaurant-like atmosphere. The group acted as servers, hosts, bussers, and the cleaning crew during the lunch meal service.

On August 7, 2019, a group of volunteers from Franklin & Prokopik visited the Ronald McDonald House, near its main office in Baltimore city, to participate in its McBlitz Day volunteer opportunity. Volunteers helped clean the kitchens and play area and were treated to a tour of the brand-new house that opened just this past spring. The new Ronald McDonald House is now able to lodge 20 more families than the previous house could accommodate. The Ronald McDonald House relies on volunteers, donations, and fundraising to provide a home away from home for families while their children are undergoing treatment at local hospitals. Volunteers prepare meals on site, clean the facility, host craft and entertainment nights, among other activities. The house also offers shuttles to nearby hospitals and shopping centers. To learn more about the mission of the Ronald McDonald House, please visit the website at https://rmhcmaryland.org/.

Lisa Langevin, a partner at Kelly Santini LLP in Ottawa, Ontario, Canada, and a member of the USLAW NETWORK Board of Directors, participated in the 2019 Renault World Gaelic Games in Waterford, Ireland, from July 29-August 2, 2019. She was more than just a participant; she was named team captain for the Eastern Canadian Ladies Gaelic Football Team. Lisa was one of the oldest competitors at the World Games at the age of 44. The women played nine games over a period of four days and finished with a 5-4 record losing in the playoffs to Australasia. Lisa has been playing Gaelic Football for more than 25 years and has competed on the Canadian Team on two prior occasions.

Gaelic Football is the national sport of Ireland and combines a variety of sports including basketball, soccer and volleyball. The intent of the Renault World Gaelic Games is to showcase the extent to which the passion and participation for Gaelic Games has now spread far beyond Ireland. More than 97 teams participated in the Renault GAA World Games, including teams from Europe, United States, South Africa, Argentina, Canada, Britain, Australasia, India, Asia and the Middle East.
Attorneys and staff from Lewis Roca Rothgerber Christie’s Denver office, along with summer associates from all offices, came together with the City of Denver to beautify Zuni park in a day of service. The group helped weed and mulch the park’s trees, helping to retain water and improve appearance. Together, the group spread two dump-truck loads of 200 gallons of mulch. City representatives explained, “Denver Parks and Recreation relies heavily on volunteers to help maintain our parks and trails” and “[It is because of valued volunteers like [Lewis Roca] that we are able to continue to offer the services of Denver Parks and Recreation to our citizens.” After a few hours of hard work, the team was able to celebrate their efforts with a BBQ picnic.

Several Poyner Spruill attorneys and staff attended the 3rd annual Claire’s Army Gala, which is the signature fundraiser for Claire’s Army, a local nonprofit helping families fighting childhood cancer. The firm has partnered with Claire’s Army for several years and Karen Chapman (far right in the picture) serves as vice president and sits on the Board of Directors. (Pictured, from left to right: Sarah DiFranco, Missy Jaskolka, Susan Washington-Yow, Brandi Hobbs, Nina Long, Karin Norman, and Karen Chapman.)

Rivkin Radler in Uniondale, New York, showed strength in numbers and support for We Care, the charitable arm of the Nassau County Bar Foundation. Aside from donating to the golf outing itself, numerous Rivkin attorneys attended the event, including Evan Krinick, Bill Savino, Norman Tolle, Stu Gordon, Matt Spero, and Sean Simensky. It’s expected that the outing raised more than $100,000, which will be given in charitable grants to those in need in Nassau County. (Pictured: Stu Gordon and Sean Simensky)

Simmons Perrine Moyer Bergman PLC in Iowa supports United Way’s Sweeping for Change. The United Way of East Central Iowa and Cedar Rapids Curling teamed up to host Sweeping for Change at the Cedar Rapids Ice Arena. Teams from area businesses spent the day learning about the sport of curling and competing for a traveling trophy. Simmons Perrine Moyer Bergman’s team, the Simmons Sweepers, finished in 4th place. Team members included attorneys Abe Carls and Crystal Pound and summer associates Joe Porter, Madison Schroeder and Rebekah Jalilian-Nosraty. (Photo: (L to R): Joe Porter, Abe Carls, Phil Burian, Rebekah Jalilian-Nosraty and Madison Schroeder)

Michelle Hernandez, a shareholder with Modrall Sperling in New Mexico, served as General Convention Chair of the 2019 International Association of Defense Counsel (IADC) Annual Meeting, held July 7-12 in Asheville, North Carolina. Michelle is an active member of IADC. She serves as a member of the IADC Diversity and Inclusion Committee, and is state and regional chair of its Membership Committee.

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Laffey, Leitner & Goode LLC in Milwaukee, Wisconsin, to the NETWORK. Laffey, Leitner & Goode LLC in Milwaukee, Wisconsin, to the NETWORK. Laffey, Leitner & Goode LLC in Milwaukee, Wisconsin, to the NETWORK. Laffey, Leitner & Goode LLC in Milwaukee, Wisconsin, to the NETWORK.

U SLAW NETWORK welcomes Laffey, Leitner & Goode LLC in Milwaukee, Wisconsin, to the NETWORK. Laffey, Leitner & Goode works in a cross section of industries, including banking, emerging technologies, franchising, manufacturing, non-profit, insurance and reinsurance, and transportation. For more information, visit www.llgmke.com.

Simmons Perrine Moyer Bergman in Iowa recently re-launched its website with a refreshing redesign and improved online user experience. Website visitors can view the unique history of Simmons Perrine Moyer Bergman PLC, have access to in-depth information about the firm’s 30 practice areas and attorneys experienced in those areas, read newly formatted attorney biographies, and learn about the firm’s approach to community involvement. Visit the firm’s website via www.spmblaw.com.

Traub Lieberman (www.traublieberman.com) in Hawthorne, New York, has relaunched a new, fully responsive website that boasts a clean design and intuitive navigation that directs web visitors to the information most relevant to their needs. Accessing attorney bios, practice areas and our blog content is easier than ever.

Same locations, brand new looks.
**RECENT USLAW LAW FIRM VERDICTS**

**Adler Pollock & Sheehan, P.C. (Providence, RI)**

Adler Pollock & Sheehan (AP&S) was retained by the former Wayland High School Athletic Director, Stephen Cass, to represent him in a lawsuit that he had filed against the Town of Wayland. Through prior counsel, Mr. Cass had filed a Complaint alleging retaliatory action against him by the Defendant as a result of his actions in pointing out policies, rules, and regulations violations. Mr. Cass filed a claim under the Massachusetts Whistleblower Protection Act.

The case was tried in the Massachusetts Federal District Court in Boston before Chief Judge Patti Saris. The case took eight trial days. At the end of the trial, the jury determined that Mr. Cass had been retaliated against in violation of the Massachusetts Whistleblower Protection Act. The jury awarded damages to him based on lost wages and emotional distress.

Assessing the strengths of Mr. Cass’s claims was a team effort. Various attorneys at AP&S, with experience in employment and labor law, were able to provide helpful background in analyzing the relevant circumstance. Ali Khorsand also provided valuable research, analysis and tactical considerations. Because the firm was not the original counsel in the case, the firm did not engage in the underlying discovery. Therefore, lawyers had to become quickly familiar with tens of thousands of documents and assess the significance of the most important of those documents to the allegations that were being asserted.

**Bingham Greenebaum Doll, LLP (Indianapolis, IN)**

Bingham Greenebaum Doll LLP obtained a favorable jury verdict for its client, Frederick Treadway, on a breach of fiduciary duty claim. Treadway, the founding owner of Specialty Systems, Inc. (“SSI”), a nationally recognized remediation and industrial cleaning company, offered ownership to two of his long-standing employees of SSI. To do so, SSI sold its assets to two newly formed entities that were equally owned by Treadway and his two former employees. Treadway took a large promissory note in return for the majority of the purchase price of the assets. Once the promissory note was paid, the two other owners amended the operating agreement to add “put” and “call” provisions to allow the new companies to purchase a member’s ownership at net book value, rather than fair value. The amendments created two classes of ownership – one consisting of Treadway’s units and the other consisting of their units. They also allowed for a right of first refusal to each other in the event their ownership interests were purchased but did not extend the same right to Treadway. The two former owners then called a special meeting of the two new companies and voted, over Treadway’s objection, to have the new companies call (i.e., forcibly purchase) Treadway’s ownership interest. After an eight-day jury trial, the jury entered a verdict in Treadway’s favor for the purchase price under the amended operating agreement and an additional $1,600,000 as damages on a breach of fiduciary duty claim. In total, Treadway received more than $5,000,000 from the litigation. Treadway was represented by Gregory Nebarger (lead counsel), D. Rusty Denton, Meaghan Haller, Briana Clark, and Alex Gude.

**Jones, Skelton & Hochuli P.L.C. (Phoenix, AZ)**

Jones, Skelton & Hochuli P.L.C. (JSH) attorneys obtain unanimous verdict for insurer and trucking company in wrongful death case (Boyd v. Allied Van Lines, Inc, et. al | Maricopa County Superior Court). JSH attorneys Jeremy Johnson, John Masterson and Alex LaCroix obtained a unanimous defense verdict in a wrongful death case with four statutory beneficiaries and complex issues of federal and state law. After a three-day trial, the jury deliberated for only 40 minutes before finding unanimously in favor of the defense.

The decedent was killed when defendant’s truck backed into him in October of 2016. The decedent’s surviving children brought suit, alleging that our defendants’ conduct caused the death of the decedent. Plaintiffs sought damages of $20,000,000 at trial.

The defense argued that there was no liability under the federal motor carrier safety regulations or at common law because the defendant did not control the driver when the accident occurred. Jeremy, John and Alex represented the insurer and the defendant trucking company while JSH appellate attorney Sean Moore provided supporting motion practice. In addition, the firm’s Litigation Support Team provided valuable trial prep and technology support before and during the trial.
In this matter, FCCL Partnership (“FCCL”) attempted to prevent CNRL from transporting CNRL’s bitumen on the Cold Lake Extension Pipeline (the “Pipeline”), owned by the Cold Lake Pipeline Limited Partnership (“CLPLP”). At the time of the application, FCCL was the sole user of the Pipeline and argued – among other things – that “irreparable harm” would befall them if CNRL utilized their contractual right to access the Pipeline. Conversely, CNRL and CLPLP argued, among other things: (i) FCCL had prior knowledge of CNRL and CLPLP’s transportation agreement, (ii) FCCL and CNRL had previously discussed marketing their co-mingled product, and (iii) FCCL and CNRL were already co-mingling their respective impugned bitumen blends on a separate but related pipeline.

The Honorable Madam Justice Goss agreed with CNRL and CLPLP, finding that FCCL failed to satisfy any of the requirements of the three-pronged test for interlocutory injunctions, including the relatively easy-to-satisfy first prong: is there a serious question to be tried? Parlee McLaws llp and their client, CNRL, were rewarded for their tireless efforts by this absolute dismissal of FCCL’s application, but also by the provision of costs in an amount many times the norm.

**Rivkin Radler LLP (Uniondale, NY)**
In a major victory for the insurance industry Andrew Carothers, M.D., P.C. v. Progressive Insurance Company, et. al.) the New York Court of Appeals, the highest court in New York, has affirmed the 2017 order of the Appellate Division upholding the trial verdict and judgment in favor of 54 NY automobile insurers and self-insurers in Andrew Carothers, M.D., P.C. v. Progressive Insurance Co. Rivkin Radler partner Barry I. Levy successfully argued the appeal before the Court of Appeals with the rest of Rivkin Radler’s team – partners Evan H. Krinick, Michael A. Sirignano, Cheryl F. Korman, and Stuart M. Bodoff. The Court of Appeals’ opinion preserves a 2008 jury verdict in favor of the insurers, which expunged approximately $20 million in pending claims against these members of the New York automobile insurance industry.

**SmithAmundsen LLC (Chicago, IL)**
Jamie S. Lane and Max Goodman of SmithAmundsen in Chicago obtained a defense verdict for a Fortune 500 company after a weeklong jury trial where the plaintiff asked for $3.3 million for breach of oral contract and unjust enrichment. The jury returned a $0 reward.

**Sweeney & Sheehan (Philadelphia, PA)**
J. Michael Kinsch of Sweeney & Sheehan in Philadelphia obtained a defense verdict for a ladder manufacturer in a product liability case following three days of trial in the Middle District of Pennsylvania. Plaintiff, an electrician, was injured following a fall from a fiberglass stepladder while attaching an exterior light to a building. Through their engineering expert, plaintiffs alleged that the ladder design was defective in that it allowed excessive flexibility that led to instability during use. The defense established that the ladder was not defective and did not cause the incident.

**Sweeny, Wingate & Barrow, P.A. (Columbia, SC)**
Martin S. Driggers, Jr. and Brandon R. Gottschall of Sweeney, Wingate & Barrow, P.A. in Columbia, South Carolina, went to trial in Richland County State Court in Columbia, South Carolina, in June 2019. The case was a medical malpractice matter involving a MOHS procedure performed by a dermatologist. The Trial Judge granted their Motion for Directed Verdict.
Parlee McLaws LLP (Edmonton, Alberta, Canada)

For Elen Bereket, William Peachman, Iain Walker and Michael Corbett of Parlee McLaws LLP, contributing their services to the CCDC (Civil Claims Duty Counsel Project) via Pro Bono Law Alberta, feels like a privilege.

“The opportunity to give back is something I'm grateful for,” says associate Walker, further stating, “I spend a lot of time working for wealthy, large companies, and the opportunity to help everyday people out who really need it, is very rewarding.”

The CCDC relies upon the volunteer efforts of local Edmonton law firms to provide legal assistance for individuals facing issues such as small claims and landlord tenant disputes. It's a service directed at low-income citizens who have been taken advantage of, or just need some direction with a legal issue. In addition to the ability to contribute to the greater good, volunteering with the CCDC is an ample opportunity to challenge the lawyers due in large part to the 20-minute consultation limit.

“I like the opportunity it affords me to think on my feet and come up with efficient and easy to follow potential solutions,” says associate Corbett.

Elen Bereket was awarded the 2019 PBLA (Pro Bono Law Alberta) Outstanding Volunteer Award. In addition to, the volunteer lawyer who picked up a high number of shifts. Elen has stayed true to her commitment of ensuring that all citizens have the opportunity to access legal services. She confidently underscores, “Access to justice is an important pillar of our legal framework - we must give a voice to the voiceless.”

Poyner Spruill LLP (Charlotte, NC)

Poyner Spruill attorney J.M. Durnovich’s commitment to pro bono service speaks for itself. Despite his busy private practice, J.M. currently represents an inmate in a federal constitutional challenge over prison policies restricting certain religions. He serves as appellate counsel for children through North Carolina’s Guardian ad Litem program. He is a panel attorney for the North Carolina Appellate Pro Bono Program, which provides appellate representation to pro se litigants appearing before the State’s appellate courts. And he regularly serves as volunteer attorney for the Western District’s Pro Se Settlement Assistance Program, a court-wide program that provides pro se litigants the benefit of a free attorney at settlement conferences with district or magistrate judges.

In recognition of his public service, the North Carolina Supreme Court has named J.M. to the Pro Bono Honor Society every year since the Society’s inception.

Williams, Porter, Day and Neville PC (Casper, WY)

Stuart R. Day has been appointed as a commissioner of Equal Justice Wyoming, an organization dedicated to provided and supporting civil legal aid in Wyoming. He was also re-elected as president of the Board of Commissioners for 2019 and reappointed to another term on the Wyoming Access to Justice Commission for a term expiring on December 31, 2021. Finally, he was also appointed to the Wyoming Supreme Court Chancery Court Committee. The Chancery Court Committee is charged with carrying out the Wyoming Supreme Court’s task of creating a Chancery Court for the State of Wyoming ready to hear cases by 2022.

Mega-firms...big, impersonal bastions of legal tradition, encumbered by bureaucracy and often slow to react. The need for an alternative was obvious. A vision of a network of smaller, regionally based, independent firms with the capability to respond quickly, efficiently and economically to client needs from Atlantic City to Pacific Grove was born. In its infancy, it was little more than a possibility, discussed around a small table and dreamed about by a handful of visionaries. But the idea proved too good to leave on the drawing board. Instead, with the support of some of the country’s brightest legal minds, USLAW NETWORK became a reality.

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The commitment remains the same as originally envisioned. To provide the highest quality legal representation and seamless cross-jurisdictional service to major corporations, insurance carriers, and to both large and small businesses alike, through a network of professional, innovative law firms dedicated to their client’s legal success. Now as a diverse network with more than 6,000 attorneys from more than 60 independent, full practice firms with roots in civil litigation across the U.S., Canada, Latin America and Asia, and with affiliations with TELFA in Europe, USLAW NETWORK remains a responsive, agile legal alternative to the mega-firms.

Home Field Advantage.

USLAW NETWORK offers what it calls The Home Field Advantage which comes from knowing and understanding the venue in a way that allows a competitive advantage – a truism in both sports and business. Jurisdictional awareness is a key ingredient to successfully operating throughout the United States and abroad. Knowing the local rules, the judge, and the local business and legal environment provides our firms’ clients this advantage. The strength and power of an international presence combined with the understanding of a respected local firm makes for a winning line-up.

A Legal Network for Purchasers of Legal Services.

USLAW NETWORK firms go way beyond providing quality legal services to their clients. Unlike other legal networks, USLAW is organized around client expectations, not around the member law firms. Clients receive ongoing educational opportunities, online resources including webinars, jurisdictional updates, and resource libraries. We also provide a semi-annual USLAW Magazine, USLAW DigiKnow, which features insights into today’s trending legal topics, compendiums of law, as well as annual membership directory. To ensure our goals are the same as the clients our member firms serve, our Client Leadership Council and Practice Group Client Advisors are directly involved in the development of our programs and services. This communication pipeline is vital to our success and allows us to better monitor and meet client needs and expectations.

USLAW Abroad.

Just as legal issues seldom follow state borders, they often extend beyond U.S. boundaries as well. In 2007, USLAW established a relationship with the Trans-European Law Firms Alliance (TELFA), a network of more than 20 independent law firms representing more than 1000 lawyers through Europe to further our service and reach.

How USLAW NETWORK Membership is Determined.

Firms are admitted to the NETWORK by invitation only and only after they are fully vetted through a rigorous review process. Many firms have been reviewed over the years, but only a small percentage were eventually invited to join. The search for quality member firms is a continuous and ongoing effort. Firms admitted must possess broad commercial legal capabilities and have substantial litigation and trial experience. In addition, USLAW NETWORK members must subscribe to a high level of service standards and are continuously evaluated to ensure these standards of quality and expertise are met.

USLAW in Review.

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• Efficient use of legal budgets, providing maximum return on legal services investments
• Seamless, cross-jurisdictional service
• Responsive and flexible
• Multitude of educational opportunities and online resources
• Team approach to legal services

The USLAW Success Story.

The reality of our success is simple: we succeed because our member firms’ clients succeed. Our member firms provide high-quality legal results through the efficient use of legal budgets. We provide cross-jurisdictional services eliminating the time and expense of securing adequate representation in different regions. We provide trusted and experienced specialists quickly.

When a difficult legal matter emerges – whether it’s in a single jurisdiction, nationwide or internationally – USLAW is there. Success.

For more information, please contact Roger M. Yaffe, USLAW CEO, at (800) 231-9110 or roger@uslaw.org
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USLAW NETWORK offers legal decision makers a variety of complementary products and services to assist them with their day-to-day operation and management of legal issues. The USLAW SourceBook provides information regarding each resource that is available. We encourage you to review these and take advantage of those that could benefit you and your company. For additional information, contact Roger M. Yaffe, USLAW CEO, at roger@uslaw.org or (800) 231-9110, ext. 1.

USLAW is continually seeking to ensure that your legal outcomes are successful and seamless. We hope that these resources can assist you. Please don’t hesitate to send us input on your experience with any of the products or services listed in the SourceBook as well as ideas for the future that would benefit you and your colleagues.

**EDUCATION**

It’s no secret – USLAW can host a great event. We are very proud of the industry-leading educational sessions at our semi-annual client conferences, seminars, and client exchanges. Reaching from national to more localized offerings, USLAW member attorneys and the clients they serve meet throughout the year not only at USLAW-hosted events but also at many legal industry conferences. CLE accreditation is provided for most USLAW educational offerings.

USLAW NETWORK undoubtedly has some of the most knowledgeable attorneys in the world, but did you know that we also have the most valuable corporate partners in the legal profession? Don’t miss out on an opportunity to better your legal game plan by taking advantage of our corporate partners’ expertise. Areas of expertise include forensic engineering, legal visualization services, court reporting, jury consultation, courtroom technology, forensic accounting, structured settlements, eDiscovery, cyber security and data forensics, and investigation.

**USLAW NETWORK**

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USLAW regularly produces new and updates existing Compendiums providing a multi-state resource that permits users to easily access state common and statutory law. Compendiums are easily sourced on a state-by-state basis and are developed by the member firms of USLAW. Some of the current compendiums include: Retail, Spoliation of Evidence, Transportation, Construction Law, Workers’ Compensation, Surveillance, Offer of Judgment, Employee Rights on Initial Medical Treatment, and a National Compendium addressing issues that arise prior to the commencement of litigation through trial and on to appeal. Visit the Client Resources section of uslaw.org for the complete USLAW compendium library.

STATE JUDICIAL PROFILES BY COUNTY
Jurisdictional awareness of the court and juries on a county-by-county basis is a key ingredient to successfully navigating legal challenges throughout the United States. Knowing the local rules, the judge, and the local business and legal environment provides a unique competitive advantage. In order to best serve clients, USLAW NETWORK offers a judicial profile that identifies counties as Conservative, Moderate or Liberal and thus provides you an important Home Field Advantage.

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USLAW DigiKnow is USLAW’s bi-weekly digital e-newsletter featuring insights and perspectives on today’s trending legal issues. Articles and posts are written by USLAW member attorneys who are subject matter leaders from our nearly 20 substantive USLAW Practice Areas and the USLAW membership in general. Through USLAW DigiKnow, we share legal, legislative and jurisdictional news as well as promote upcoming USLAW events and webinars that might be of interest to you and your colleagues. It is an excellent resource to keep abreast of new case law, important verdicts and other pending legislation.
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We pack light. Take USLAW with you wherever you go with two important USLAW mobile applications. Get USLAW information fast by downloading USLAW 24/7. As well, USLAW Events is our Client Conference mobile app that archives all of the presentation materials, among several other items, from past USLAW Conferences. USLAW apps are available on iPhone/iPad, Android (by typing in keyword USLAW) and most Blackberry devices.

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In today’s digital world there are many ways to connect, share, communicate, engage, interact and collaborate. Through any one of our various communication channels, sign on, ask a question, offer insight, share comments, seek advice and collaborate with others connected to USLAW. Please check out USLAW on Twitter @uslawnetwork and our LinkedIn group page.

USLAW MAGAZINE
USLAW Magazine is an in-depth publication produced twice annually and designed to address legal and business issues facing commercial and corporate clients. Released in Spring and Fall, recent topics have covered cyber security & data privacy, medical marijuana & employer drug policies, management liability issues in the face of a cyberattack, defending motor carriers performing oversized load & heavy haul operations, employee wellness programs, social media & the law, effects of electronic healthcare records, patent troll taxes, allocating risk by contract and much more. USLAW Magazine+, a digital-only magazine, was added in summer 2019 with digital-only issues scheduled for each summer and winter.

USLAW EDUNET
A wealth of knowledge offered on demand, USLAW EduNet is a regular series of interactive webinars produced by USLAW practice groups. The one-hour programs are available live on your desktop and are also archived at USLAW.org for viewing at a later date. Topics range from Medicare to Employment & Labor Law to Product Liability Law and beyond.

The Class Action Attack upon the Motor Carrier Industry: Defending against Independent Contractor Classification Claims, and Wage and Hour Cases
USLAW MEMBERSHIP DIRECTORY
Each year both print and online versions of our membership directory is produced. Here you can quickly and easily identify the attorney best-suited to handle your legal issue. Arranged by state, listings include primary and alternate contacts, practice group contact information as well as firm profiles.

RAPID RESPONSE
The USLAW NETWORK Rapid Response App locates USLAW attorneys quickly when timeliness is critical for you and your company. Offered for Transportation, Construction Law and Product Liability, this resource provides clients with attorneys’ cell and home telephone numbers along with assurance that USLAW will be available 24/7 with the right person and the right experience. Available at uslaw.org and the USLAW 24/7 App.

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