



April 7, 2020

NEWS ABOUT TOWN (Updated)

We are very sad that we were unable to hold our Spring Conference this year. Postponing our conference due to the COVID-19 Virus was a difficult but necessary decision in order to be sure that our members and their families could focus on their health and safety. We have already confirmed our dates for the Spring of 2021 (April 30 ó May 1, 2021).

In light of these trying times, we are delaying the mailing our membership invoices which are usually sent on April 1. Our invoices for this year will not be sent until May 1 with a due date of June 1. We hope that this will assist our members in these difficult times.

In addition, if you would like to share your firm's link to any published COVID-19 advisories or share any information regarding how your firm is dealing with these unprecedented times, please feel free to email the information to Marion. She will compile a list of the links and or articles and we will get it out to all members so that they can obtain information on what other member firms are doing to assist clients during these difficult times.

On a happier note, we look forward to seeing everyone at our upcoming Fall Member Conference event scheduled to take place on October 3 ó 4, 2020 at the King and Prince Resort located on St. Simons Island, Georgia, Nevada. Our Registration Forms for this event will be emailed to all members in early August.

As follow-up to our request for referral information, reports indicate that many of our member firms have experienced referrals-in as well as sent referrals-out. We need to keep this effort going by continuing to encourage our members to take advantage of the experience, wisdom and esprit de corps that exists within the organization and to make our colleagues in our respective firms aware of who Business Counsel is and how it can be of assistance to clients in many locations.

We are pleased and excited to announce that our Spring of 2021 Conference event will take place on April 30 & May 1, 2021 at the Lowes Ventana Canyon Resort located in Tucson, Arizona.

News to Share

Many of our member firms reported several items of interest and we have noted them below for your information.

Beiten Burkhardt – Beiten Burkhardt Advises Merck On An Innovation Project:

Munich, March 9, 2020 - The science and technology company Merck has concluded a cooperation agreement with the 3D printing specialist AMCM (Starnberg). The companies want to jointly develop 3D-printed tablets and are currently developing a GMP-compliant (Good Manufacturing Practice) tablet formulation and the manufacture of investigational medicinal products for clinical studies. Services for production on an industrial scale are to follow later. (Please go to <https://www.beiten-burkhardt.com/en/news> to view the entire press release.)

B-Avocats SàRL - b-avocats is active in all areas of business law. Our lawyers serve our clients by providing them with information and advice, and by defending their interests throughout a long-term engagement.

Our clients benefit from a close working relationship with our lawyers.

- Anticipate expectations and detect emerging requirements;
- Have in-depth knowledge of an organization's activities and business, as well as the economic and social environment;
- Develop and propose innovative solutions;
- Be available and be involved.

For more information please go to <https://www.b-avocats.com/en/about-us>

Bryan Cave Leighton Paisner - BCLP Response to COVID-19 / *March 12, 2020* - Coronavirus: As you all are well aware, the spread of the Coronavirus (COVID-19) is rapidly escalating around the world, and it continues to affect our firm, our clients and our communities in evolving ways. First and foremost, the well-being of our colleagues and clients is paramount as we collectively respond to the developing COVID-19 outbreak. (Please go to www.bclplaw.com to view the entire press release.)

See Also: *Competition law in the time of COVID – Co-Authored by Dave Anderson – March 17, 2020* **Summary:** The global COVID-19 pandemic is placing an unprecedented strain on healthcare systems round the world. At the same time, the knock on effects of the pandemic are hitting businesses and public authorities hard. As a result, the European Commission has made a number of announcements relating to how it will handle state aid and merger control matters during this time. These announcements will affect emergency funding to companies and M&A deals. (Please go to <https://www.bclplaw.com/en-GB/thought-leadership/competition-law-in-the-time-of-covid.html> to view the entire article.)

Day Pitney – Coronavirus Outbreak May Also Put Attorneys At Greater Risk For Cyber Infection – March 23, 2020: On March 18, Kermit Wallace (Day Pitney Parsippany, NJ office) spoke with Law.com about the ever-growing concerns of cyber scams as COVID-19 continues its assault. Many law firms have issued work from home policies to prevent their staff from getting infected, but this comes with its own shortcomings. Many attorneys and staff may become targets of phishing campaigns, looking to take advantage of the disruption in our everyday lives. Wallace was quoted in the article, warning attorneys to be mindful of what notifications you are getting and from what sources they are coming. (Please go to www.daypitney.com to view the entire press release.)

Downey Brand ó COVID-19 Update: A Message to our Clients and Friends - *March 14, 2020*
Scott L. Shapiro, Managing Partner

To our clients and friends:

As we continue to track evolving COVID-19 (coronavirus) developments, we wanted you to know we are committed to providing you with uninterrupted legal services. We also wanted to share with you the actions we are taking to protect the health and well-being of our employees, clients, and colleagues.

Our attorneys are closely monitoring the legal implications for businesses, individuals, and public agencies in responding to COVID-19 and have been responding to a broad range of client questions. We have also begun offering [webinars](#) on the topic. Through all of this, we are committed to providing you with ongoing and seamless support as we navigate these challenging times. (Please go to <https://www.downeybrand.com/press-releases/a-message-to-our-clients-and-friends/> to view the entire press release.)

Godfrey Kahn ó Antitrust enforcers issue guidance on COVID-19 collaborations ó

March 27, 2020 - The 2019 novel coronavirus (COVID-19) pandemic is unprecedented in many respects, from stay-at-home orders and school and business closures to immense strain on health care systems. Additionally, critical medical supplies, including ventilators, masks and gowns reportedly are in increasingly short supply, and there is high demand for COVID-19 tests, laboratories that can quickly process the tests and development of an effective vaccine. Businesses are closely examining whether they may be able to meet these new demands, including through collaborative efforts with other businesses, some of which are competitors. This

collaboration, however, requires careful evaluation of potential antitrust risks. Fortunately, antitrust agencies in the U.S. and around the world have been quick to respond to these concerns and issue guidance intended to encourage collaboration that meets the unique needs of the present health crisis while staying compliant with applicable antitrust laws. (Please go to <https://www.gklaw.com/NewsUpdatesPressReleases/Antitrust-enforcers-issue-guidance-on-COVID-19-collaborations.htm> to view the entire article.) (Please also see [https://www.gklaw.com/ COVID-19.htm](https://www.gklaw.com/COVID-19.htm) for additional information.)

Hill Ward Henderson ó The impacts of the Coronavirus Disease 2019 (COVID-19) to most industries are far-reaching. Hill Ward Henderson's COVID-19 Response Team is a cross-disciplinary group of lawyers that is closely monitoring the legal implications the outbreak has on your business.

Our lawyers continue to advise clients on the significant legal challenges facing companies and businesses and can provide comprehensive guidance. (Please go to <https://www.hwlaw.com/practice-areas/COVID19-Response-Team> to view additional articles and information.)

Ice Miller – The Impact of COVID-19 on Environmental Enforcement - On *March 26, 2020*, the United States Environmental Protection Agency ("EPA") announced a broad, but temporary, policy of enforcement discretion in reaction to the employee shortages and work challenges faced by many industries and laboratories. The policy applies retroactively to March 13 to acts or omissions during its term and may be terminated on at least seven days' notice by a posting at <https://www.epa.gov/enforcement/enforcement-policy-guidance-publications>. The EPA may also update this policy and provide additional enforcement guidance for specific programs.

General Scope and Conditions. If the conditions discussed below are met, the EPA generally does not expect to seek civil penalties for violations of routine compliance monitoring, integrity testing, sampling, laboratory analysis, training, reporting or certification obligations. The EPA also generally does not expect to require "catch-up" monitoring or reporting for requirements with an interval of three months or less. For semi-annual and annual obligations, the EPA expects affected entities to schedule late monitoring or submit late reports as soon as possible. Because many training classes are offered online, the EPA does not expect training deadlines to be impacted by COVID-19 and related travel restrictions or social distancing constraints. (Please go to <https://www.icemiller.com/ice-on-fire-insights/publications/the-impact-of-covid-19-on-environmental-enforcemen/> to view the entire article.)

March 26, 2020 – Ice Miller Grows Intellectual Property Practice with Preeminent Life Sciences Team

Ice Miller is pleased to announce the addition of nine new team members to its Intellectual Property Practice Group. Based in the Firm's Philadelphia office, these individuals merge their science and technology backgrounds with the practice of law to provide clients with a range of complex legal services, including patent preparation and prosecution, licensing and patent due diligence. (Please go to www.icemiller.com to view the entire article.)

Jaburg Wilk ó On March 19, 2020, Arizona Governor Doug Ducey issued an executive order aimed at restraining the spread of COVID-19 which limits many business operations in Arizona.

Impacted small businesses are wondering how they are going to manage and keep their business viable with these operational restrictions.

The Small Business Administration (SBA) is offering an economic disaster relief program. It provides targeted, low-interest loans to small businesses and non-profits that have been impacted by COVID-19. It provides working capital of up to \$2 million to assist small businesses in overcoming the temporary loss of revenue. (Please go to <http://www.jaburgwilk.com/covid> to view the entire article.)

Lind Jensen Sullivan & Peterson COVID-19/Corona Virus Business Interruption Insurance: Expectations, Legal Considerations, and Claims Handling Widespread Business Income Loss The economic loss caused by the COVID-19/Coronavirus pandemic is and will be devastating to many businesses. The governmental and societal response has been fluid. Every day, sometimes every hour, more detrimental developments occur. The NBA was the first professional sports league to cancel games and indefinitely postpone its season. Other professional sports leagues soon followed suit and have essentially cancelled their seasons, causing a significant loss of revenue to businesses associated with the sports leagues, i.e., restaurants, bars, hotels, advertisers, sports memorabilia stores, parking lots, etc. (Please go to <http://www.lindjensen.com/covid-19-business-interruption-insurance/> to view the entire article.)

March 23, 2020 DHS Given Power to Waive or Modify Requirements by Executive Order Employment Update As Minnesota takes steps to respond to the COVID19 pandemic, measures are being taken to provide relief to employers and service providers throughout the state. On March 21, 2020, Governor Walz issued two new Executive Orders that gives the Department of Human Services the power to modify and waive existing requirements to allow in-state programs to better provide service to those in need. (Please go to <http://www.lindjensen.com/dhs-given-power-to-waive-or-modify-requirements-by-executive-order-employment-update/> to view the entire article.)

Locke Lord *March 2020* - Richard Reibstein, a Partner in Locke Lord's Labor and Employment Practice in New York and co-head of the Firm's Independent Contractor Misclassification and Compliance Practice, authored an article for the National Association of Catering and Events focused on how the Coronavirus Aid, Relief and Economic Security (CARES) Act and the Families First Coronavirus Response Act (FFCRA) benefit independent contractors in the industry. Reibstein notes the CARES Act entitles individuals to pandemic unemployment assistance if they are able and willing to work or telework for pay but are unable to do so due to a broad range of reasons related to the COVID-19 pandemic. He goes on to outline the specific eligibility requirements.

Reibstein also discusses paid sick time made available to independent professionals through the FFCRA for up to ten days where the individual is unable to work because they are subject to a government quarantine or order of isolation related to COVID-19; have been advised by a health care provider to self-quarantine; or are experiencing symptoms of Coronavirus and seeking medical attention. (Please go to <https://www.nace.net/independent-catering-and-event-professionals-eligible-for-unemployment-assistance-under-federal-cares-act-stimulus-bill/> to view the entire article.)

Potter Anderson – COVID-19 Resources for Clients and Friends

Corporate - The disruptive impact of COVID-19 on the public markets has prompted a number of questions from clients about their ability to preserve capital if they already have declared a cash dividend. Potter Anderson collaborated with other major Delaware firms on a memo that addresses what steps a board of a Delaware corporation might consider in those circumstances. The memo is available for download here: <https://www.potteranderson.com/newsroom-news-Guidelines-for-Payment-of-Dividends-during-the-COVID-19-Pandemic.html>

Employment - Potter Anderson's labor and employment team put together a compilation of resources for companies with COVID-19 employment issues in Delaware, including informational alerts and guidance on new legislation. The employment law resources are available here: <https://www.potteranderson.com/covid-19-resources-for-employers.html>

Insurance - The head of Potter Anderson's insurance practice recently published an article in *Delaware Business Times* about whether, and to what extent, various types of coverage will apply to virus-related claims. The article is available online here: <https://delawarebusinesstimes.com/news/insurance-policy-cover-covid/>

Vendor Contracts - One of Potter Anderson's partners has an article in the upcoming edition of *Delaware Business* magazine, titled "The Legal Consequences of Significant Disruption on Your Contracts." The article is available online here: <https://www.potteranderson.com/newsroom-news-COVID-19-The-Legal-Consequences-of-Significant-Disruption-on-Your-Contracts.html>

Other Recent Publications on Delaware Law - To mark the 32nd annual Tulane Corporate Law Institute held in the spring of 2020, Potter Anderson's top-ranked corporate practice produced *Delaware Corporate Law 2019 Year in Review*, which highlights significant developments and top cases from the past year. The publication is available online here: <https://www.potteranderson.com/newsroom-publications-Delaware-Corporate-Law-2019-Year-in-Review.html>

Potter Anderson partners wrote an overview of Delaware litigation for the *International Comparative Legal Guide to Litigation & Dispute Resolution 2020*. The chapter is available for download here: <https://www.potteranderson.com/newsroom-publications-2020-Delaware-Chapter-of-ICLG-Litigation-Dispute-Resolution.html>

Reeg Lawyers ó We are working closely with the Stites Harbison firm in a matter involving 3 large document projects from 3 facilities totaling millions of pages of documents. We are using 2 of the Stites firm's offices.

Solcargó ó SOLCARGO *March 26, 2020 Restructuring Mechanisms in Mexico in Insolvency Scenarios*: The current economic and commercial impasse caused by administrative orders to combat the Covid-19 pandemic has the potential to generate a chain of payment defaults

worldwide. In Mexico, insolvent companies have four options to restructure their debt, two out of court and two before federal courts.

Each of these options differs in the circumstances in which they arise (financial difficulties or outright insolvency), the parties involved (creditors and debtors only or also visitors, receivers and judges), the protection against creditors that debtors are entitled to and the extent of it. (Please go to https://www.solcargomx.com/Comunicado_3.html to view the entire press release.) (Please also see https://www.solcargomx.com/blog_1.html for additional information.)

Solomon Ward ó *March 26, 2020* - During these trying and difficult times everyone's top priority should be the safety and wellbeing of themselves, their family, and their community. As you, our valued clients, also attempt to navigate the legal implications of the crisis and government responses, particularly in relation to employment, we have created a brief summary of the Emergency Family and Medical Leave Expansion Act (EFMLEA) and Emergency Paid Sick Leave Act (EPSLA), within the Families First Coronavirus Response Act (FFCRA). Helpful Fact Sheets and FAQs regarding the FFCRA have been published by the Department of Labor and can be found here: <https://www.dol.gov/agencies/whd/pandemic>.

Emergency Family and Medical Leave Expansion Act (EFMLEA) ó The statute takes effect April 1, 2020 and will remain in effect until December 31, 2020. Employers will be reimbursed in the form of refundable tax credits for any payments made to employees under this statute. (Please go to www.swsslaw.com to view the entire article.)

Stites Harbison ó *March 27, 2020* – *By Jennifer J. Cave, Louisville, KY office of Stites Harbison.* The United States Environmental Protection Agency (EPA) announced on March 26, 2020 that it is temporarily suspending its enforcement of environmental legal obligations during the COVID-19 pandemic. EPA's temporary enforcement discretion policy applies to civil violations during the COVID-19 outbreak. The policy addresses different categories of noncompliance differently. For example, EPA has indicated that it does not expect to seek penalties for noncompliance with routine monitoring and reporting obligations that are the result of the COVID-19 pandemic but does expect operators of public water systems to continue to ensure the safety of drinking water supplies. The policy also describes the steps that regulated facilities should take to qualify for enforcement discretion. The policy does not provide leniency for intentional criminal violations of law. The policy also does not apply to activities that are carried out under Superfund and RCRA Corrective Action enforcement instruments as EPA has indicated that these matters will be addressed under a separate policy. (Please go to <https://www.stites.com/resources/client-alerts/epa-suspends-enforcement-activities-and-ky-dep-considering-additional-accommodations-for-regulated-entities-impacted-by-covid-19> to view the entire article.)

Turner Padgett ó *March 26, 2020* ó *By Mark Goddard and Reggie Belcher, Columbia, SC.*

"COVID-19: Response Tips For Small Businesses," In an article published on March 25, 2020 by *Charleston Business Magazine, Columbia Business Monthly and Greenville Business Magazine*, Columbia-based Shareholders Mark Goddard and Reggie Belcher discuss tips for small business to respond during the ever-evolving COVID-19 outbreak.

“With this ever-changing environment, small businesses are suddenly faced with unanticipated financial and employment scenarios, that until this week, were likely not in anyone’s worst case scenario contingency plans,” explain Goddard and Belcher. “However, there are resources available to small businesses and their employees that are being introduced on a daily basis.” (Please go to <https://www.turnerpadget.com/covid19-response-tips-for-small-businesses-charleston-business-magazine-columbia-business-monthly-and-greenville-business-magazine> to view the entire article.)

Varnum – *Helping companies navigate legal and business issues arising out of the COVID-19 virus.* As concerns over the coronavirus escalate and reverberate through the marketplace, Varnum has formed a cross-disciplinary task force to guide clients through the myriad business challenges that the COVID-19 virus has created, including with respect to legal and operational planning involving supply chain, labor and employment, health care, education, immigration, restructuring, litigation and lending and public finance.

Our task force is led by senior members of the firm, all of whom bring substantial experience in dynamic, sensitive and multi-faceted situations similar to the current environment. We offer a comprehensive approach to strategic legal and business advice, helping anticipate potential challenges while addressing market conditions. In order to provide clients with impactful analysis on core areas of focus for our task force, we have created a series of advisories. (Please go to <https://www.varnumlaw.com/services-practices-coronavirus-task-force> to view advisories.)

Firm Prevails on Behalf of Plaza Towers in Two-Week Trial Against City of Grand Rapids

Following a two-week trial with eight witnesses including a host of experts, a jury returned a \$7.6 million verdict in the matter of *Plaza Towers Condominium Association v. City of Grand Rapids*. The verdict brings to a close the seven-year battle over responsibility for flood damage when the Grand River reached historic levels in 2013. Varnum represented the Plaza Towers Community in the matter.

Significant damage occurred in 2013 when water from the Grand River flooded the lower floor parking garage of the mixed-use Plaza Towers high rise. About 1000 residents were temporarily displaced when electricity to the building had to be shut off, and vehicles in the parking garage were under water. (Please go to <https://www.varnumlaw.com/newsroom-news-varnum-wins-7-6-million-jury-verdict> to view the entire article.)

Williams Kastner ó The outbreak of coronavirus COVID-19 is having a wide-range of public health and financial implications to businesses, governments and individuals across all industries. We have created a resource hub containing links to resources to help you plan and prepare moving forward in these unprecedented times.

We are closely monitoring the developing situation and will offer regular updates on public health and safety along with the legal and business perspectives related to the pandemic. (Please go to <https://www.williamskastner.com/practice-areas/covid-19-resource-center/> to view additional information.)

Williams Mullen ó "An Ounce of Prevention is Worth a Pound of Cure" - Commercial Contracts in the Era of Coronavirus (COVID-19) By: Edward T. White, Ken Shevlin & Harold E. Johnson
With the spread of Coronavirus (COVID-19) in the United States, many of our clients are facing the mass cancellation of events and damaging service interruptions. This disruption can cripple one's business, so clients are prudent to consider what they should do to mitigate the damages they face from the interruption caused by this global pandemic.

To that end, it is important to consider the effect that *Force Majeure* clauses have in existing and future contracts. A *Force Majeure* clause is a provision that parties may include in commercial agreements that addresses how a party may be excused from contractual obligations in the event that the performance of that agreement becomes impossible or impracticable due to unanticipated events that are beyond the party's control. (Please go to <https://www.williamsmullen.com/news/ounce-prevention-worth-pound-cure-commercial-contracts-era-coronavirus-covid-19> to view the entire article.) (Please also go to <https://www.williamsmullen.com/news/covid-19-grouped> to view other articles.)

Womble Bond Dickinson ó March 31, 2020 – *Negotiating Leases and LOIs During the Novel Coronavirus Pandemic, For Office Tenants: Part I* - by Julia Kreyskop

Delivery and Rent Commencement Part I

As companies struggle to adjust to the quickly changing business landscape during the novel coronavirus pandemic, those office tenants that continue letter of intent (LOI) and lease negotiations should pay particular attention to issues of timing. The challenges created by the novel coronavirus pandemic make it particularly imperative that tenants understand the interplay between delivery, construction, and rent commencement as they negotiate their leases. (Please go to <https://www.womblebonddickinson.com/us/insights/alerts/negotiating-leases-and-lois-during-novel-coronavirus-pandemic> to view the entire article) .

Negotiating Leases and LOIs During the Novel Coronavirus Pandemic, for Office Tenants: Part II - Space Buildout and Improvement Allowances – April 6, 2020

Office tenants negotiating letters of intent (LOIs) and leases during the novel coronavirus pandemic should pay particular attention to issues of timing for premises that are being improved in any fashion. Buildouts impact rent commencement and delivery, but typical lease terms do not always protect tenants in an equitable manner. With cash flow also being an issue during the pandemic, understanding how improvement allowances work is imperative. (Please go to <https://www.womblebonddickinson.com/us/insights/alerts/negotiating-leases-and-lois-during-novel-coronavirus-pandemic-office-tenants-part-ii-space-buildout-improvement-allowances> to view the entire article.)

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Business Counsel will be sending emails on a regular basis to all our members to continue the effort of constant contact and dialogue between our members. We want to be sure to keep Business Counsel in the spotlight to make all members and their colleagues aware of who we are and what we can do to assist all member firms cross-market their practices and firms across our organization.

I look forward to seeing you all at our upcoming conference scheduled to take place on October 26-27, 2020 at the King and Prince Resort located on St. Simons Island, GA.

Our best wishes to everyone to stay safe and well!

~Ken

J. Kenneth Carter, Chair
Business Counsel, Inc.