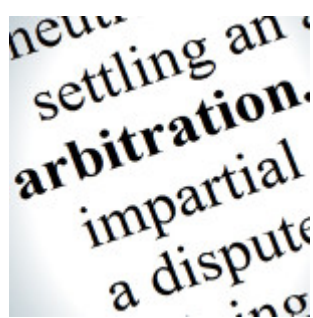


Enforce Arbitration Agreement or Waive Right to Arbitrate Trade Secret Misappropriation Claims



A recent federal court denied an employer's motion to compel arbitration, finding that it waived its right to arbitration by engaging in litigation.

[George L. Kanabe](#), a partner in the San Francisco office of Orrick, Herrington & Sutcliffe LLP, [discusses](#) three key lessons the ruling provides for plaintiff-employers.

Kanabe reports that the ruling noted, "[t]here is no other reasonable interpretation of plaintiff's untimely demand for arbitration than as a deliberate tactic to test the judicial waters but then, when those waters did not flow the direction plaintiff intended, to change routes in hopes of finding a different current."

[Read the article.](#)

[Keys to Negotiating Indemnity Agreements](#)

The effective management of indemnification and related insurance obligations is an active agenda item for top-level business leaders, including any CFO, CEO and general counsel, points out James Buldas in [an article](#) on the website of Business Insurance.

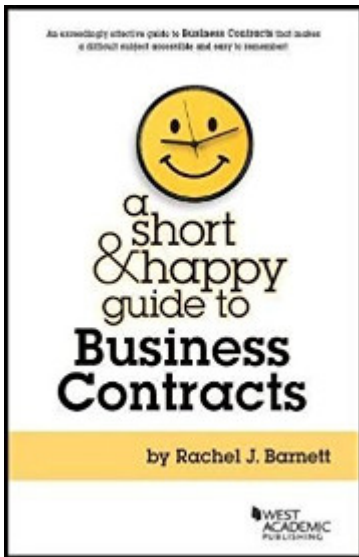
“It is, therefore, imperative, whether you are a Fortune 500 company or a small business, that your company’s risk management and legal departments strategically manage indemnification and insurance obligations to minimize the always increasing cost-of-business demands,” writes Buldas, a partner at Pietragallo Gordon Alfano Bosick & Raspanti L.L.P. in Pittsburgh.

His article covers the language of the indemnity agreement, selecting the governing law, specificity in insurance obligations, requesting the appropriate additional insured endorsement, and communication between legal and risk management departments and brokers.

[Read the article.](#)

[3 Practical Business Contract](#)

Tips From Travelzoo GC Rachel Barnett



Rachel Barnett, general counsel of travel deal publisher Travelzoo, is the author of a new book, “The Short & Happy Guide to Business Contracts,” which modernizes contract law and applies legal concepts to the real corporate world.

In [an article](#) on Above the Law’s website by [Olga V. Mack](#), Barnett discussed three of the most important clauses readers can learn from her book.

Those include “The ‘gotcha’ moment: non-solicitation clauses,” “The one to watch: termination clauses,” and “The messy edit: mutual indemnification clauses.”

[Read the article.](#)

How to Build a Solid

Contractual Risk-Transfer Program



The use of subcontractors helps to ensure construction projects are completed in a timely and efficient manner, but it also creates a wide range of contractual risks, cautions Tommy Williams, USI Uniondale vice president, in [an article](#) for Property Casualty 360^o.

“Without a properly structured risk-transfer program, a general contractor (GC), owner or property manager would assume financial responsibility unnecessarily for losses caused by a third party, who is contractually obligated to control or prevent those losses. The financial impact could be significant – more so in certain jurisdictions,” he explains.

His article discusses the basics of contractual risk transfer, common subcontractor policy exclusions, and the need for expert advice.

[Read the article.](#)

How Boards Must Think Differently in Today's Digital Landscape



The evolving digital landscape continues to challenge many sitting directors with the various transformation and security issues it presents, according to [Boardroom Resources](#). Boardroom discussions can no longer ignore the rise of the digital consumer, which has begun to affect industries far beyond just retail or business-to-consumer. These challenges are accompanied by many opportunities for directors to improve board and company performance.

In [a video](#), Alex Schmelkin, board member with Essendant and founder & CEO of Cake & Arrow, is given an interesting task: If you could design a digital training program for today's board members, what would it look like? Host TK Kerstetter asks Schmelkin how he would both define 'digital' and communicate its current and future impact for today's directors.

In the video discussion, Schmelkin outlines several approaches that boards can take to better understand the "end user" no matter the organization or industry.

[Watch the video.](#)

[A Primer on Deal Structure and Its Implications on the Sale of a Business](#)

The success of the sale of a business often hinges on the chosen form and exit strategy, writes [Jeremy S. Piccini](#) of Bertone Piccini LLP in [an article](#) on the website of NJBiz.

The benefits of pursuing one strategy over another vary depending on the goals of the business owner, but some of the most important factors of each include tax consequences, third-party costs, and the degree of autonomy that the seller has over the future of their business, Piccini explains.

He discusses a few examples of the ideal target purchasers for a sale, including strategic competitors, private equity buyers, and employee stock ownership plans.

[Read the article.](#)

[Apple's New GC Welcomed With Multimillion-Dollar Bonus](#)

Package



Apple's incoming chief lawyer Katherine Adams has received a bonus package in the form of restricted stock units, or RSUs, according to a mandatory disclosure filed with the U.S. Securities and Exchange Commission this week, reports [Mac Rumors](#).

"Based on Apple's closing price of \$169.08 on Wednesday, each portion of 57,482 RSUs is worth slightly over \$9.7 million for a potential total value of \$19.4 million," writes [Joe Rossignol](#). "The amount could be higher or lower based on Apple's performance."

Adams, formerly senior vice president and general counsel of Honeywell, is Apple's new general counsel and senior vice president of Legal and Global Security, reporting to CEO Tim Cook and serving on Apple's executive team.

[Read the Mac Rumors article.](#)

Prominent Trial Lawyer Dead

After 'Battle With a Mental Health Issue'

Steve Mostyn, a top Democratic donor and prominent Houston trial lawyer who made his fortune suing insurance companies on behalf of homeowners after hurricanes, has died at 46.

Amber Mostyn, his wife, released a statement saying her husband died after "a sudden onset and battle with a mental health issue." She did not disclose the cause of death," reports [*The Texas Tribune*](#).

KTRK, the Houston ABC television affiliate, [reports](#) that Mostyn died at his home Wednesday night, and, according to authorities, he took his own life.

Tribune reporters [Morgan Smith](#) and [Jay Root](#) write that Mostyn and his wife, also an attorney, have long been considered the state's most powerful Democratic backers, spending millions on Democratic campaigns in Texas and beyond.

[Read the Texas Tribune article.](#)

Another Client Close to

Firing Boies After Weinstein Revelations

Now even a pro bono client feels compelled to fire David Boies after revelations of the famed litigator's role in attempting to hide Harvey Weinstein's alleged history of sexual harassment and assault.

The *Tampa Bay Times* [reports](#) that the City of St. Petersburg, Florida, is heading toward ending its relationship with Boies.

[Charlie Frago](#) writes that Boies and his firm Boies Schiller Flexner had offered their services to the city in a challenge to *Citizens United v. Federal Elections Commission*, the 2010 U.S. Supreme Court ruling that removed restrictions on how much outside groups can spend on elections.

One city council member reacted to the revelations of Boies' actions: "I find this reprehensible and will absolutely NOT vote to accept Boies' offer to represent the city of St. Petersburg pro bono on the campaign finance issue."

[Read the Tampa Bay Times article.](#)

Ware, Jackson, Lee, O'Neill,

Smith & Barrow on 2018 Best Law Firms List



Ware, Jackson, Lee, O'Neill, Smith & Barrow, LLP has been named in *U.S. News and World Report* and *Best Lawyers* list of "[Best Law Firms](#) for 2018."

According to *U.S. News and World Report*, "Firms included in the 2018 'Best Law Firms' list are recognized for professional excellence with persistently impressive ratings from clients and peers. Achieving a tiered ranking signals a unique combination of quality law practice and breadth of legal expertise."

The firm received recognition for a variety of litigation areas, including construction, mass torts, commercial, labor and employment, environmental, and trusts and estates.

[Read more about the recognition.](#)

Wall Street Penalties Have Fallen in Trump's First Year,

Study Says



Jay Clayton

In its latest fiscal year, Wall Street's top regulator sought the smallest amount of penalties since 2013, a drop that took place as the agency went months without permanent leadership and could show a softer approach to policing wrongdoing, [Bloomberg reports](#).

"The U.S. Securities and Exchange Commission tried to obtain \$3.4 billion in fines and disgorgement from companies and individuals during the 12 months ended in September, according to data collected by Urska Velikonja, a Georgetown University law professor," write reporters [Matt Robinson](#) and [Benjamin Bain](#). "The SEC filed 612 enforcement cases, also the fewest in four years, Velikonja's research shows."

Velikonja points out that since Jay Clayton – the former Wall Street deals lawyer appointed by Trump – took over as SEC chair in May, the agency has pursued just two sanctions against large financial firms. But in the same period a year earlier, more than a dozen big financial companies faced SEC sanctions.

[Read the Bloomberg article.](#)

Biglaw Firm Throws Partner Under the Bus After Fox News Appearance

Mercedes Colwin, managing partner of Gordon & Rees's New York office and Fox News analyst, apologized for saying on a broadcast that women who claim to be victims of sexual harassment and assault usually do so for money, but she lost her management role anyway.

Newsweek [reports](#) that Colwin apologized on Twitter, saying she hadn't meant to "trivialize or minimize the impact of sexual harassment on any victims. ... I did not mean to imply, nor do I believe, that the victims of sexual assault within society are 'very few and far between.'"

[Above the Law](#) quoted from the firm's statement: "The partner in question has voluntarily stepped down from all management roles within the firm and she is committed to rectifying the hurtful impressions created by her remarks."

The firm's statement also says:

[T]he organization in no way endorses or agrees with any statements which could even remotely be interpreted as minimizing or trivializing the seriousness and gravity of sexual harassment or similarly predatory behaviors, and we renounce them in the strongest possible terms – in fact, contrary to what may have been inferred from what was said during the telecast, the sad reality is that the number of women who likely have not been exposed to such repugnant conduct over the course of their personal or professional lives is, unfortunately, few and far between.

[Read the Newsweek article.](#)

[Law Firms Jacking Up Rates, Demand Flat, Citi Survey Finds](#)

Bloomberg Law [reports](#) that law firm performance dropped off in the third quarter, as demand softened and collections started to lengthen, according to a new report by the Citi Private Bank Law Firm Group.

The survey of 183 law firms found that revenue growth fell to 3.6 percent through the first three quarters, down from 3.7 percent at this time last year, writes [Gabe Friedman](#). A Citi senior senior advisor said that the growth was driven by increased billing rates, and not demand or other factors, which may not bode well for law firms.

He also said that law firms increased billing rates by an average of four percent. That increase compares to a 3.2 percent rise at this time last year. It is more typical to see a 3 to 3.5 percent increase in billing rates, he said.

[Read the Bloomberg article.](#)

Assessing the Ability to Change Culture – Complimentary Article from NACD



The National Association of Corporate Directors has published a complimentary article titled “[Assessing the Ability to Change Culture](#),” providing a quick overview of best practices set forth in the *Report of the NACD Blue Ribbon Commission on Culture as a Corporate Asset*.

Most boards recognize that management’s actions create an organization’s culture, and that leaders should “walk the talk.” But few know what’s involved in assessing and changing culture in a rigorous, comprehensive, and data-driven way, NACD says on its website.

The article describes how boards should:

- Assess the company’s commitment to change along four key dimensions
- Oversee management in identifying and implementing needed interventions
- Seek to modify specific behaviors, not just instill values or tone from the top

[Download the article.](#)

Benchmark Report: Learn How Your Peers Manage Third-Party Risk



NAVEX Global has published its [2017 Third-Party Risk Management Benchmark Report](#) to document how practitioners are successfully conducting third-party risk management – including screening, monitoring and auditing techniques.

“Third parties can be unpredictable,” the company says on its website. “When managing hundreds or even thousands of third parties, keeping an eye out for red flags may seem a herculean task. Use the report to improve your own program outcomes, stop bad behavior in its tracks, and ensure you know how to spot the warning signs.”

The study, which includes information from more than 400 professionals, offers guidance on the approach to third-party risk management that organizations find most effective, how they are using outside providers to assist with third-party due diligence, if automated due diligence affects ROI, and more.

[Download the benchmark report.](#)

Here's How Trump Is Rapidly Reshaping the Judiciary

[The New York Times](#) lays out the plan the Trump team devised to fill the federal appeals courts with young and deeply conservative judges – a strategy that has started to show results.

Reporter [Charlie Savage](#) describes the plan: “Start by filling vacancies on appeals courts with multiple openings and where Democratic senators up for re-election next year in states won by Mr. Trump – like Indiana, Michigan and Pennsylvania – could be pressured not to block his nominees. And to speed them through confirmation, avoid clogging the Senate with too many nominees for the district courts, where legal philosophy is less crucial.”

He predicts that the consequence of the transformation of the judiciary will yield an appellate court system as ideologically split as Congress is today, after the Democrats regain power and use the same playbook.

[Read the NYT article.](#)

An Overview of Recent Production Deduction Cases

Courts in several states recently have addressed questions about post-production cost deductions in petroleum production, according to an [on-demand webcast](#) from Steptoe & Johnson.

In this webcast, Andrew S. Graham reviews the state of the play in the Appalachian Basin, as well as other oil and gas producing states, on the source of the deduction problem and where the states stand on this notoriously thorny issue.

Among the topics for discussion:

- What does the *Leggett* case mean for West Virginia producers in light of *Tawney*?
- Why did the Supreme Court of Ohio decide to not decide a case on post-production deductions?
- Has the marketable product rule reached a high-water mark in Colorado?

[Watch the on-demand webinar.](#)

Creating Defensible

Employment Agreements Before an Employee's First Day



Significant tools in the arsenal of strategies are contracts signed by the employee, but waiting until the employee departs is too late to start thinking about them, points out [Spiwe L. Jefferson](#) in [an article](#) on the website of the Association of Corporate Counsel.

In her article, she discusses contract considerations at the beginning of the employment relationship.

She covers confidentiality agreements and nonsolicitation agreements,. Under the “noncompete agreements” heading, she discusses limiting temporal scope, protecting legitimate interests, exempted professions, timing requirements, consideration, and geographic limits.

[Read the article.](#)

Key Provisions for Supply Chain Contracts

In an article in the [Manufacturing Industry Advisor](#) published by Foley & Lardner, [Nicholas J. Ellis](#) discusses six areas that generally are the most critical points to consider when it comes to drafting a supply chain agreement.

“By paying careful attention to the terms of its supply chain contracts, a company can help to mitigate its risks while at the same time maximizing the value of its supply chain,” he writes.

The areas he discusses are critical commercial terms, quantity, duration, early termination, warranties and disclaimers, and limitation of remedies and damages.

[Read the article.](#)

[Three Legal Pitfalls to Avoid in Blockchain Smart Contracts](#)

While the use of smart contracts is tempting, this silver bullet of efficiency and lower costs doesn't come without potential problems, warns Gregg M. Jacobson of Chamberlain Hrdlicka in an article in [Bitcoin Magazine](#).

Among the concerns he points out are: “First, will a court even consider a computer program to be a binding contract? Second, if disputes arise, where can the parties sue? Last, do the parties have to go to court, or is the less-expensive option of arbitration available?”

In his article, he discusses each of those points.

[Read the article.](#)

