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Table of Contents

Article 1

Florida's New Directed Trust Statute -

Finally an Article Worth Reading

By Alan Gassman and Ian Sanford

Florida Statute §736.1401 through §736.1416 was enacted by the legislature and signed into law by Governor DeSantis effective July 1, 2021, titled the Florida Uniform Directed Trust Act ("the Act"). This new Act expands upon the law governing non-trustee persons who are empowered to give directions to a trustee ("trust directors").

Second to the new Community Property Trust Act in importance to most planners, the new Directed Trust Act is an improvement to the prior law, which recognizes that the dutiesof Trusteeship of a Trust can be divided in order to limit the responsibility and potential liability of separate Trustees, and to also have a Trust sitused in a state where a director resides. The director trustee, or trust protector is employed for the purpose of assuring that the law of the jurisdiction where the director is located can apply to the Trust, and directing trustees to fulfill administrative functions that can vary from managing investments to paying distributions to beneficiaries.

Pursuant to Florida Statute §736.1403, the Act only applies to trusts that are created or change their place of administration to Florida after July 1, 2021. §736.140(2) clarifies that the "terms of the trust that designate the principal place of administration of the trust in the state are valid and controlling if a trust director's principal place of business is located in or a trust director is a resident of [Florida]."

The precise title of the trust director isn't considered when determining if the Act applies that person. The trust director is a non-trustee with a power to direct as granted by the terms of the trust. Some powers are excluded from power of direction, such as a power of appointment, the power to appoint or remove a trustee or trust director, and a power that a settlor might reserve over a trust that is revocable by that settlor.

A trust director who holds rights of authority has an affirmative duty to act, and failure to do so will result in a breach of trust.

It is worth noting that the trust director does not need to be a single person. A group of people can serve as "the director". A plurality of directors must act by majority decision, unless otherwise stipulated by the terms of the trust.

For example, an individual residing in New York, which has a 21-year plus life in being Rule Against Perpetuities for irrevocable trusts formed there, may wish to take advantage of Florida's 360-year Rule Against Perpetuity by forming a Dynasty Trust that will provide educational benefits and living expenses for family members who are pursuing education for 360 years. Please note that South Dakota has a 999-year statute and a good many trust companies that are ready, willing, and able to serve as Administrative Trustee of a South Dakota Trust.

The clients in this situation have a close friend who is a CPA and resides in Florida.

They name this close friend as the Trust Director of the Trust, and retain the right to replace him with an alternate trust director at any time and for any reason. As long as their power is limited so that they cannot replace the Director with a related or "subordinate person" as defined in Internal Revenue Code Section 672(c), this retained power will not cause them to be considered to have retained significant control over the Trust for federal estate and gift tax purposes by reason of Revenue Ruling 95-58, 1995-2 C.B. 191 and the case law that the IRS recognized in that ruling. The language of Code § 672(c), which defines “subordinate party”, is as follows.

(c) Related or subordinate party

For purposes of this subpart, the term “related or subordinate party” means any nonadverse party who is—

(1) the grantor’s spouse if living with the grantor;

(2) any one of the following: The grantor’s father, mother, issue, brother or sister; an employee of the grantor; a corporation or any employee of a corporation in which the stock holdings of the grantor and the trust are significant from the viewpoint of voting control; a subordinate employee of a corporation in which the grantor is an executive.

For purposes of subsection (f) and sections 674 and 675, a related or subordinate party shall be presumed to be subservient to the grantor in respect of the exercise or nonexercise of the powers conferred on him unless such party is shown not to be subservient by a preponderance of the evidence.

The following applies for purposes of the above:

(a)Adverse party

For purposes of this subpart, the term “adverse party” means any person having a substantial beneficial interest in the trust which would be adversely affected by the exercise or nonexercise of the power which he possesses respecting the trust. A person having a general power of appointment over the trust property shall be deemed to have a beneficial interest in the trust.

(b)Nonadverse party

For purposes of this subpart, the term “nonadverse party” means any person who is not an adverse party.

The clients appoint their lawyer in New York to be the Distribution Trustee to make the decisions as to distributions to be made for educational benefits for the beneficiaries of the Trust, with the Alternate Trustee being a Trust Company affiliated advisor that is sitused in Delaware.

They also name their daughter as the Investment Trustee under the Trust Agreement, and she confers periodically with their investment advisors and maintains the assets of the Trust in an account under the name of the Trust that she is the sole signer of. The alternate Investment Trustee will be the Delaware Trust company referred to above.

The clients retain the right to change the identity of the Distribution Trustee and the Investment Trustee at any time and for any reason, subject to the limitations provided under Revenue Ruling 95-58.

Florida Statute Section 736.1403 recognizes that this will be considered to be a Florida Trust, even though the settlors reside in New York.

In addition, the Trustees may establish an account with a financial institution (a bank or brokerage firm) at a Florida office in order to establish a firm financial situs in Florida.

Under Florida law, the Distribution Trustee should have no responsibility if there is malpractice or malfeasance on the part of the Investment Trustee, and the Investment

Trustee should have no liability or responsibility for the negligence or malfeasance of the Distribution Trustee. It is important to note that the Act differs from the Uniform Directed Trust Act by requiring the directed trustee to assess whether a trust director's instructions are within the scope of the trust director's power of direction prior to following the instructions.

This assumes that a Trustee who is not responsible for the negligence or malfeasance of the other Trustees did not "actively conspire" or assist in or participate in such negligence or malfeasance.

How sure can we be that Florida law will apply with respect to the Rule Against Perpetuities and the insulation from liability under the Florida Directed Trust statute, assuming that the State of New York has no such statute?

Our answer is "pretty darned sure" because of the 1958 U.S. Supreme Court case of Hanson v. Denckla which indicated that Delaware law would apply to a Florida Trust.

Under the facts of Hanson v. Denckla, which are reviewed before, the U.S Supreme Court determined that there was no "connection" between Florida and the Trustees, who were all located in Delaware. The Court used the following language in its holding:

The execution in Florida of the powers of appointment under which the beneficiaries and appointees claim does not give Florida a substantial connection with the contract on which this suit is based. It is the validity of the trust agreement, not the appointment, that is at issue here. For the purpose of applying its rule that the validity of a trust is determined by the law of the State of its creation...

While living in Pennsylvania, Mrs. Donner visited Delaware and signed a revocable trust, appointing a Delaware trust company to serve as Trustee for certain investments. The Trust Agreement provided that she would receive income for life and that the remainder of assets after her death would be paid based upon her instructions under a "lifetime or testamentary power of appointment."

Mrs. Donner then moved to Florida where she lived until she died. After she moved to Florida, she signed valid instructions to provide that certain beneficiaries would receive $400,000, with the remaining assets passing by an attempted exercise of the power of appointment that was claimed not to be effective because of vague language.

A suit was filed in Florida, without the participation of the Delaware trust company, which was only given notice by mail and not by traditional required physical service of a registered agent.

The Florida court and the Supreme Court ruled that the attempted exercise of the power of appointment by Mrs. Donner was ineffective.

The Florida Supreme Court also held that the Florida court had jurisdiction over the Delaware Trust company.

The Delaware Trust company appealed the decision to a Delaware court, which found that the power of appointment had been properly exercised, therefore disagreeing with the Florida courts. This Delaware court decision was sustained by the Supreme Court of Delaware.

The U.S. Supreme Court overruled the Florida court, finding that the Florida court did not have in rem jurisdiction over the assets of the Trust or personal jurisdiction over the Trust company, and therefore had no power under Florida law to pass on the validity of the Trust.

Its judgment was therefore determined to be invalid and Delaware was under no obligation to give full faith and credit to an invalid Florida judgment.

Subsequent cases have recognized that a settlor beneficiary’s retention of control over certain aspects of a Trust operation have been insufficient to enable a court to exercise jurisdiction over the Trust where no Trustee purposefully availed itself in the jurisdiction where the lawsuit was filed.

Most legal scholars believe that in determining whether the Rule Against Perpetuities applies to a Trust Agreement will be determined by the law of the jurisdiction designated in the Trust Agreement unless that jurisdiction’s law is contrary to a mandatory rule of law of the jurisdiction having the most appropriate relationship to the matter at issue.

This new legislation will undoubtedly make Florida a competitive market for both trusts and trust directors. For further reading on the topic, see LISI Estate Planning Newsletter #2884 (May 17, 2021).

Article 2

Prepared for Alan S. Gassman

Steve Leimberg's Employee Benefits and Retirement Planning Email Newsletter - Archive Message #765

Date: 12-Jul-21

From: Steve Leimberg's Employee Benefits and Retirement Planning Newsletter
Subject: FLASH: Michael Geeraerts & Jim Magner: Will the FTC Ban Non-Competes

On Friday, July 10th, President Biden signed an executive order asking more than a dozen federal agencies to implement action on 72 initiatives designed to increase competition and limit the power of corporations. One provision that quickly caught the attention of advisors was the directive to the Federal Trade Commission (FTC) to ban/limit non-compete agreements.

During his Friday press briefing, the President said that Workers should be free to take a better job if someone offers it. If your employer wants to keep you, he or she should have to make it worth your while to stay. I didn't know until five years ago the incredible number of non-compete clauses for ordinary people that are done for one reason - to keep wages low, period. You'd feel powerless. Disrespected. Bullied. Trapped. That's not right.

While only time will tell how this issue plays out, advisors struggling to help clients on both sides of the bargaining table should carefully consider the following points. First, given the President's longstanding hostility towards non-competes, he could direct the FTC to make non-compete agreements illegal instead of just unenforceable to prevent employers from forcing employees to sign. California has banned non-competes since 1872, but 19% of California workers have signed one.

Second, if the FTC thinks that avoiding a retroactivity challenge would strengthen its final rule, it may make its final rule prospective. In this case, advisors should caution clients who are being asked to sign a non-compete prior to the enactment date of an FTC rule about the risks of doing so, as those clients would likely be bound by its terms and subject to the usual enforceability under applicable state laws.

Third, the FTC may create a carveout for non-competes that are designed to protect legitimate trade secrets. As a result, employers may be tempted to insert a trade secrets provision into their non-competes that don’t already have one. Employers who try this where no trade secrets exist may be overreaching. In his Friday press conference, the President ridiculed the non-compete clauses companies like Burger King and McDonald's have, saying: Come on! Is there a trade secret about what's inside that patty?

Michael Geeraerts and Jim Magner provide members with commentary that examines the issues surrounding a potential federal ban on non-competes.

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Jim Magner is an advanced planning attorney at The Guardian Life Insurance Company of America®. Jim previously worked as an Attorney Advisor in the IRS’s Office of Chief Counsel in Washington, DC where he wrote private and public rulings on estate, gift, GST and charitable remainder trust issues.[i]

Here is their commentary:

EXECUTIVE SUMMARY:

On Friday, July 10th, President Biden signed an executive order asking more than a dozen federal agencies to implement action on 72 initiatives designed to increase competition and limit the power of corporations. One provision that quickly caught the attention of advisors was the directive to the Federal Trade Commission (FTC) to ban/limit non-compete agreements.

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FACTS:

While many advisors may have reacted to this news story with a where did that come from, those who have followed this issue know that President Biden's hostility towards non-competes did not arise in a vacuum. Candidate Biden ran on a campaign plank that called for the outright elimination of non-competes:

Eliminate non-compete clauses and no-poaching agreements that hinder the ability of employees to seek higher wages, better benefits, and working conditions by changing employers. In the American economy, companies compete. Workers should be able to compete, too. But at some point in their careers, 40% of American workers have been subject to non-compete clauses. If workers had the freedom to move to another job, they could expect to earn 5% to 10% more that's an additional $2,000 to $4,000 for a worker earning $40,000 each year. These employer-driven barriers to competition are even imposed within the same company's franchisee networks. For example, large franchisors like Jiffy Lube have no-poaching policies preventing any of their franchisees from hiring workers from another franchisee. As president, Biden will work with Congress to eliminate all non-compete agreements, except the very few that are absolutely necessary to protect a narrowly defined category of trade secrets, and outright ban all no-poaching agreements. [ii]

More recently, President-Elect Biden's Plan for Strengthening Worker Organizing, Collective Bargaining, and Unions stated that:

Biden will work with Congress to eliminate all non-compete agreements, except the very few that are absolutely necessary to protect a narrowly defined category of trade secrets, and outright ban all no-poaching agreements.

The President's interest in this issue can apparently be traced to his time in the Obama White House where he was reported to have been instrumental in the Obama Administration's issuing its 2016 State Call to Action on Non-Compete Agreements and accompanying report entitled Non-Compete Reform: A Policymaker's Guide to State Policies in which the Obama Administration encouraged state legislatures to adopt policies to reduce the misuse of non-compete agreements.[iii]

It has been reported that:

On the same day that the White House issued its report, Vice President Joe Biden posted a lengthy message on his Facebook page, linking to a White House survey that encourages employees to share with the administration how non-competes agreements or wage collusion are holding you down. The Vice President expressed concern in his post about the improper use of non-compete agreements, where companies make workers promise when they are hired that if they leave the company, they can't work for another company in the same industry, and noted that these agreements can create unnecessary roadblocks for any worker trying to get a raise, looking to move up the ladder by joining another employer, or even start their own company. He concluded by promising that the President and I will continue to fight for the dignity and respect of hardworking Americans, including put[ting] forward a set of best practices and call to action for state legislators to make progress on reforms to address the misuse of non-competes.[iv]

State Efforts To Regulate Non-Competes

Over the past five years, non-competes have come under increased state scrutiny, and a number of states have enacted laws restricting or outright banning their use, particularly for lower-paid employees.[v] For example, California, North Dakota, Montana, and Oklahoma, ban or prohibit employee non-competes in all or nearly all situations.

Washington, D.C. passed D.C. Act 23-563, known as the Ban on Non-Compete Agreements Amendment Act of 2020 that prohibits:

- An agreement (or provision) between an employee or employer that bars the employee from simultaneously or subsequently being employed by another person, performing work or providing services for pay for another person, or operating the employee's own business.
- An employer from maintaining a workplace policy that prohibits the same.

Virginia prohibits non-compete agreements for low-wage workers (defined by a calculation, but roughly equates to those who make less than approximately $1,100 a week). Maryland prohibits non-compete agreements for those employees who make $15 an hour (or less) or $31,200 annually.[vi]

Other states prohibit or limit enforcement of non-competes for certain types of employees such as low-wage workers (Maryland, Illinois), IT workers (Hawaii), and physicians (New Mexico, New Hampshire, and Texas). Texas, for example, allows for arguments against the enforceability of physician non-competes on various grounds, including public policy situations involving physicians in rural areas with limited access to care.[vii]

Massachusetts requires employers to provide workers with at least 50% of their salary during the term covered by the non-compete in order for the agreements to be enforceable, and also requires civil actions relating to a Massachusetts non-compete to be brought in the county where the employee resides, or in Suffolk County, if the employer and employee mutually agree to litigate there.[viii] Massachusetts also bars the use of non-compete agreements for certain professions such as lawyers, physicians, nurses, social workers and broadcasters.

These state-by-state differences have made it difficult for employers to enforce one size fits all non-competes across state lines. It also makes it imperative for drafters to carefully research state law to ensure that their non-compete template complies in every jurisdiction.

There is also the issue of people moving across state lines, raising potential conflict of law questions because a state that does not enforce non-compete agreements may not uphold a non-compete entered into in another state. For example, if a company is based in State A but operates in several states and has a provision in its non-compete that stipulates State A law rules over the agreement, the courts of other states (such as California) may apply its own laws and not uphold the non-compete.

Because of these issues:

Parties often include choice-of-law provisions telling a court to apply a particular state's law rather than determine what state's substantive laws apply under a conflict-of-law analysis. In most cases a court will readily accept a choice-of-law provision and apply it as the parties intended. But that's not necessarily so in the case of a noncompete agreement.

Like other common law doctrines, conflict-of-law rules vary from state to state. Most states will not enforce a choice-of-law provision that would violate the public policy of a state with a materially greater interest in the dispute or where the parties do not have a substantial relationship with the chosen state. In other words, a California employer cannot get around California's prohibition against employee restrictive covenants by requiring his California employee to sign an agreement that includes a Nevada choice-of-law clause. This is because California courts will not apply the law of another state where that law is contrary to a fundamental public policy of the State of California. See, e.g., Application Grp., Inc. v. Hunter Grp., Inc., 61 Cal. App. 4th 881, 902 (1998).[ix]

A Movement Towards a Federal Ban on Non-Competes

In the past 5 years there have been a number of bills introduced that would limit the use of noncompete agreements, but none have passed either chamber of Congress:

- The Mobility and Opportunity for Vulnerable Employees, or MOVE, Act, introduced by Sen. Chris Murphy, D-Conn., and co-sponsored by Sens. Richard Blumenthal, D-Conn., Elizabeth Warren, D-Mass., Sheldon Whitehouse, D-R.I., and former Sen. Al Franken, D-Minn.;
- The Freedom for Workers to Seek Opportunity Act, introduced by Rep. Derek Kilmer, D-Wash.; and
- The Limiting the Ability to Demand Detrimental Employment Restrictions, or LADDER, Act, introduced by former Rep. Joseph Crowley, D-N.Y.
- Warren, Murphy and Sen. Ron Wyden, D-Ore., introduced the Workforce Mobility Act, or WMA in 2018, that would impose a total ban on all noncompete agreements outside the sale of a business or dissolution of a partnership.
- The WMA was reintroduced in October 2019 with bipartisan support by Murphy and Sen. Todd Young, R-Ind. The 2019 version of WMA generally prohibited any company from entering into, enforcing or threatening to enforce a noncompete agreement with any individual who works for the company. The bill defines a "noncompete agreement" as any agreement between a company and a worker that restricts the worker, after the termination of the working relationship, from: 1) Working for another person; 2) Working in a specified geographic area; and 3) Working for another person in work that is similar to the individual's work for the company. The 2019 version of WMA allowed for companies to enter non-competes with individuals that sell a business and with senior executives in severance agreements executed as part of the sale of business, provided it included at least 12 months' salary.

The Federal Defend Trade Secrets Act (DTSA)

At the same time the non-compete bills noted above were being introduced, Congress passed the federal Defend Trade Secrets Act, or DTSA. Trade secret laws like noncompete laws were historically the purview of the states, but DTSA was designed to harmonize divergent state laws by creating a single federal framework for trade secrets misappropriation lawsuits.[x] DTSA created a national law giving companies the ability to protect against and remedy the misappropriation of trade secrets.[xi]

DTSA has been described as being very deferential to the states,[xii] as it explicitly restricts courts from granting any injunction under the DTSA that conflicts with an applicable state law prohibiting restraints on the practice of a lawful profession, trade or business. This clause was designed to protect the interests of states such as California whose public policies would be offended by a DTSA order prohibiting an employee, on trade secrets grounds, from accepting a directly competitive position.

DOJ/FTC Antitrust Guidance for Human Resource Professionals

In 2016, the DOJ and FTC issued a publication titled Antitrust Guidance for Human Resource Professionals that ushered in a new era of increased scrutiny by government regulators of non-compete clauses and associated labor market restrictions. Because HR professionals often are in the best position to ensure that their companies hiring practices comply with the antitrust laws, as well as the fact that HR professionals can implement safeguards to prevent inappropriate discussions or agreements with other firms seeking to hire the same employees, the document warned that it was:

intended to alert human resource (HR) professionals and others involved in hiring and compensation decisions to potential violations of the antitrust laws. The Department of Justice Antitrust Division (DOJ or Division) and Federal Trade Commission (FTC) (collectively, the federal antitrust agencies) jointly enforce the U.S. antitrust laws, which apply to competition among firms to hire employees. An agreement among competing employers to limit or fix the terms of employment for potential hires may violate the antitrust laws if the agreement constrains individual firm decision making with regard to wages, salaries, or benefits; terms of employment; or even job opportunities.[xiii]

How Will the FTC Rule: Illegal vs Unenforceable?

While non-competes have been outlawed in California since 1872, a 2016 study published by the U.S. Treasury Department found that 19% of California workers had signed non-competes, which suggests that employers have been relying on a lack of worker knowledge or representation to suppress job mobility. If the FTC doesn't make non-compete agreements an illegal restraint of trade but instead makes them unenforceable, companies could keep pressuring employees to sign them, something that the 19% of California workers who have signed one well know.[xiv]

Would an FTC Rule Banning Non-Competes Withstand Court Scrutiny?

Despite the recent interest and proposals toward federal regulation of non-competes, many questions remain. The Biden administration will have to clarify the scope of rulemaking power held by the FTC and other regulatory agencies, and while there is a belief that the FTC has the authority to regulate non-competes as unfair methods of competition, there is no consensus on that.

Should a national ban on non-competes get implemented, there will undoubtedly be challenges. The question is will the courts, in particular the U.S. Supreme Court, strike down a national ban on non-competes? Courts often give Chevron deference to agencies, but if the rule is too broad or deemed unconstitutional, the courts could strike down the FTC's regulations. Employers who challenged an FTC ban would likely do so using some or all of the following constitutionality arguments.

Commerce Clause

The Commerce Clause in Article I, Section 8[3] of the U.S. Constitution authorizes Congress to regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes. The Commerce Clause has been interpreted both as a grant of positive authority to Congress and as an implied prohibition of state laws and regulations that interfere with or discriminate against interstate commerce (the dormant commerce clause).

One argument on the constitutionality of a national ban on non-competes may lie in the Commerce Clause. For example, the Workforce Mobility Act of 2018 that was introduced in the Senate would create a national ban on employers engaged in interstate commerce on requiring employees to enter into non-competition agreements. The Workforce Mobility Act of 2018 referenced Section 3 of the Fair Labor Standards Act of 1938 to define commerce. The FLSA defines commerce as trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof. Generally speaking, the Supreme Court says that commerce is every species of commercial intercourse which concerns more states than one.

The courts will usually grant legislative deference to:

1. Regulate channels of interstate commerce;
2. Regulate instrumentalities of interstate commerce; or

3. Regulate activities that have a substantial effect on interstate commerce (substantial effect is present when either the activity itself or in combination with other activities has a substantial effect upon or effect on movement in interstate commerce, and there is an aggregation principle where an activity repeated by many people has substantial effect on commerce, as opposed to de minimis character of individual activity).

Congress's rules will usually be upheld if:

1. Congress has determined that the regulated activity either substantially affects interstate commerce, or is actually a part of interstate commerce;
2. Congressional determination is rational; and
3. Chosen means are reasonably adapted to a legitimate end.

The Commerce Clause is generally about interstate commerce. Despite the fact that states may regulate intrastate commerce, Congress may regulate intrastate commerce in certain situations. While the Supreme Court has not adopted an overly expansive reading of the Commerce Clause, and generally the regulation of matters wholly confined within a state cannot be regulated by Congress, the Commerce Clause empowers Congress to regulate intrastate activities that in aggregate affects interstate commerce. For example, in Wickard v. Filburn the Court allowed Congress to regulate the wheat production of a farmer despite the wheat being intended strictly for personal use and not for the interstate market because that wheat farming has an aggregate effect on the national economy, such as that farmer may not buy wheat from someone else.

In general, the Court will uphold congressional regulation of intrastate activity under a substantial effects rationale if it is of economic or commercial activity and Congress has a rational basis to conclude that the activity in aggregate substantially affects interstate commerce. But again, the Court will not read the Commerce Clause to be too broad. For example, in National Federation of Independent Business v. Sebelius the Court ruled that the Commerce Clause does not give Congress the power to regulate economic inactivity and the penalties resulting from a failure to buy health insurance (individual mandate under Affordable Care Act) had to be upheld under Congress taxing power rather than its interstate commerce powers.

Also, in United States v. Lopez (1995), the Court held that Congress exceeded its power under the Commerce Clause and struck down the Gun-Free School Zones Act because regulating the carrying of handguns was too far removed from commerce to fall under the Commerce Clause. In United States v. Morrison (2000), the Court held that Congress could not use the Commerce Clause to justify a law that did not touch economic activities, so it struck down parts of the Violence Against Women Act which gave victims of gender-related attacks the right to sue in federal court. The Court viewed the law as too far removed from the subject of the Commerce Clause.

Regarding employment conditions, in United States v. Darby Lumber Co., the Court held that Congress had the power under the Commerce Clause to regulate employment conditions. While the employment conditions in Darby related to wages and hours for employees engaged in producing goods for interstate commerce, it may be possible that the Court could view a non-compete as an employment condition because one may be restricted from other employment due to a non-compete.

How Could These Constitutionality Arguments Apply to Non-Competes?

A national company doing business across the United States in all likelihood is engaging in interstate commerce, so Congress and the FTC can probably implement rules and regulations banning national companies from requiring non-competes because those companies engage in interstate commerce and congressional authority would presumably be present under the Commerce Clause. On the other hand, what about the local dental or medical practice that only has patients in one state? It is common for dental and medical students and residents coming out of school to sign employment contracts containing non-compete clauses.

And what about a local, closely-held, family business that only does business in its state, or even just its local community, and asks its employees to sign non-competes? On the face of it, those businesses would seem to only be engaging in intrastate commerce, not interstate commerce. While the regulation of matters wholly confined within a state generally cannot be regulated by Congress, the Commerce Clause may empower Congress to regulate intrastate activities that in the aggregate impact interstate commerce.

As noted above, the Wickard v. Filburn case may be instructive on the issue of regulating intrastate activities that in the aggregate impact interstate commerce. The Court allowed Congress to regulate the wheat production of a farmer even though the wheat was intended strictly for personal use and would not enter the interstate market because that local farming had an aggregate effect on the national economy. Would a dental or medical practice that only has patients in a local community be viewed as having an aggregate effect on the national economy? That is hard to say. The issue may come down to whether a local business is engaged in interstate commerce or is solely engaged in intrastate commerce so that Congress may not regulate a state's preference to allow for non-competes for purely intrastate businesses.

Retroactivity and the Takings Clause

What happens if FTC regulations are retroactive so that all non-competes entered into, including ones currently existing, are deemed void? If that were the case, there could be challenges based on the Takings Clause in the Fifth Amendment that "nor shall private property be taken for public use, without just compensation." Private contract rights are property and a law that targets existing contract rights could be challenged based on the Takings Clause.

However, retroactivity and the Takings Clause would likely be a consideration that the FTC will keep in mind as it crafts its regulations. For example, the Workforce Mobility Act of 2018 that was introduced in the Senate was aimed at only covenants that are signed after the effective date of the Workforce Mobility Act. This was probably intentional to avoid a challenge under the Takings Clause. The result could be that an employee who signed a non-compete prior to the enactment date should still be bound by its terms and subject to the usual enforceability under applicable state laws.

COMMENT:

While only time will tell the outcome of this issue, advisors struggling to help clients on both sides of the table of this emerging issue should carefully consider the following points:

- Given the President's longstanding hostility towards non-competes, he could direct the FTC to make non-compete agreements an illegal restraint of trade instead of just unenforceable to prevent employers from forcing employees to sign. As previously noted, California has banned non-competes since 1872, but 19% of California workers have signed one.

- If the FTC thinks that avoiding a retroactivity challenge would strengthen its final rule, it would likely make its final rule prospective. In this case, advisors should caution clients who are asked to sign a non-compete prior to the enactment date of an FTC rule about the risks of doing so, as those clients would likely be bound by its terms and subject to the usual enforceability under applicable state laws.

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HOPE THIS HELPS YOU HELP OTHERS MAKE A POSITIVE DIFFERENCE!

Michael Geeraerts

Jim Magner

CITE AS:

LISI Employee Benefits & Retirement Planning Newsletter #765 (July 12, 2021) at http://www.leimbergservices.com

Article 3

JACPA Ethics Alert

New York Ethics Opinion States that Lawyers May Provide Legal Services to Clients and Use Marijuana Under NY Law

By: Joseph Corsmeier

Hello everyone and welcome to this Ethics Alert, which will discuss the July 8, 2021 New York Ethics opinion which states that NY lawyers may provide legal services to clients in compliance with New York's recreational marijuana law, own marijuana businesses, and personally consume marijuana.

NYSBA Opinion 1225 is here: https://nysba.org/app/uploads/2021/07/Opn-1225-with-letterhead.pdf.

The NYSBA ethics opinion pointed out that, although marijuana remains illegal under federal law, 17 states, Washington, D.C., and Guam have legalized its recreational use since 2012. The opinion states:

"It seems fair to say that for nearly a decade federal forbearance in the enforcement of federal narcotics laws has been equally applied to state laws legalizing recreational marijuana and to state laws legalizing medical marijuana."

The ethics opinion further stated that lawyers must ensure compliance with the regulatory requirements in New York's medical marijuana industry applies equally if not more to its recreational marijuana industry.

"In a complex regulatory system where cultivation, distribution, possession, sale and use of a product are tightly regulated, legal advice and guidance has immense value…Without the aid of lawyers, the recreational marijuana regulatory system would, in our view, likely break down or grind to a halt."

The opinion reviewed Rule 8.4(b) and (h) of the New York Rules of Professional Conduct, which states that a lawyer cannot "engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer" or "engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer"; however, Comment 2 to the New York Rule states that: "Many kinds of illegal conduct reflect adversely on fitness to practice law. Illegal conduct involving violence, dishonesty, fraud, breach of trust, or serious interference with the administration of justice is illustrative of conduct that reflects adversely on fitness to practice law."

"Nothing the inquirer proposes to do involves acts of violence. Moreover, if the inquirer's ownership interest in a cannabis business, her home cultivation of marijuana plants, and her personal recreational use of marijuana comply with the Recreational Marijuana Law, they will fall within the scope of federal forbearance. For that reason, although those activities are technically illegal under federal law, they will not constitute illegal conduct that involves "dishonesty, fraud, breach of trust, or serious interference with the administration of justice." Accordingly, without more, such conduct would not adversely reflect on the inquirer's "honesty, trustworthiness or fitness as a lawyer" within the meaning of Rule 8.4(b)."

The opinion cautioned that excessive use of marijuana could negatively impact a lawyer's ability to represent his or her clients. According to the opinion: "(n)othing we say here connotes approval of such excessive use or establishes a protective shield for a lawyer who is facing disciplinary charges, malpractice claims or other adverse consequences arising out of marijuana use."

The opinion concluded:

"In light of current federal enforcement policy, the New York Rules of Professional Conduct permit a lawyer to assist a client in conduct designed to comply with New York's Recreational Marijuana Law and its implementing regulations, notwithstanding that federal narcotics law prohibits the activities authorized by that law. A lawyer may also use marijuana for recreational purposes and may, when the law becomes fully effective, cultivate an authorized amount of marijuana plants at home for personal use. Finally, subject to compliance with Rules 1.7 and 1.8(a), an attorney may accept an equity ownership interest in a cannabis business in exchange for legal services."

Bottom line: This New York ethics opinion wades into the continuing trend toward legalization of marijuana and the lawyer's duties and obligations related to same. New York lawyers now have an ethics opinion which authorizes them to advise clients on the marijuana laws, own marijuana businesses, and legally use marijuana without violating New York's ethics rules.

Be careful out there.

As always, if you have any questions about this Ethics Alert or need assistance, analysis, and guidance regarding ethics, risk management, or other issues, please do not hesitate to contact me.

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Article 4

Update - The "Kearney patch" Bill Did Not Pass into Law, Which Means that a Blanket UCC Filing Can Still Obliterate Protection of Pension Plans, IRAs, and Other Qualified Retirement Plans.

By: Christopher Denicolo and Brock Exline

Last year, the Thursday Report featured an article on the interesting 2019 United States Eleventh Circuit case of Kearney Construction Company, LLC, v. Travelers Casualty and Surety Company of America, which caused uncertainty regarding whether "boilerplate language" providing for the pledging of "all assets and rights, wherever located," as collateral for a loan would eliminate the creditor protection provided by Florida Statute Section 222.21 relating to IRAs and other qualified plans.

In Kearney, prior to filing bankruptcy, Mr Kearney had executed one or more promissory notes and a security agreement to permit an LLC owned by his son to place a lien against all of his tangible and intangible assets that could be secured by the lien under Florida law.

The court found that the lien attached to Mr. Kearney's IRA accounts at the time it was executed and that this constituted a Prohibited Transaction under Internal Revenue Code Sections 408 and 4975, which penalizes taxpayers who make personal use of their IRA accounts by pledging them as collateral for a personal loan. Florida Statute Section 222.21(2) generally requires that an IRA must be properly qualified under Code Section 408, to be exempt from creditors. Code Section 408 states that "[a]ny individual retirement account is exempt from taxation," but this status can be lost if the owner "engages in any transaction prohibited by section 4975." As a result, the Court found that Mr. Kearney's IRA accounts were not afforded exemption from creditors under Florida Statute Section 222.21. Because the Court did not cite the fact that the LLC was owned by Mr. Kearney's son as determinative on the outcome, the holding likely would have been the same if the lender were an entirely unrelated third party.

Mr. Kearney asserted that there was no intent to pledge the IRAs as collateral, but the "boilerplate language" of the security agreement and the Form UCC-1 Financing Statement that was filed nevertheless attached the IRAs, according to the Eleventh Circuit Court of Appeals, and this caused loss of the creditor-proof nature of the IRA, even though the creditor that had the lien did not attempt to garnish the IRA and was apparently paid in full.

The court in Kearney held that the plain language of the UCC-1 agreement signed was sufficient to implement a lien on six of Mr. Kearney's accounts including his IRA. The plain language of the UCC-1 agreement was as follows:

Grant of Security Interest. As security for any and all Indebtedness (as defined below), the Pledgor hereby irrevocably and unconditionally grants a security interest in the collateral described in the following properties[:] all assets and rights of the Pledgor, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof, all goods (including inventory, equipment and any accessories thereto), instruments (including promissory notes)[,] documents, accounts, chattel paper, deposit accounts, letters of credit, rights, securities and all other investment property, supporting obligation[s], any contract or contract rights or rights to the payment of money, insurance claims, and proceeds, and general intangibles (the "Collateral").

The court stated that "the above language constitutes an unambiguous pledge of 'all assets and rights of the Pledgor,' including his IRA Account."

The Kearney decision caught many by surprise, as the prevailing thought was that the creditor protection afforded by Florida Statute Section 222.21 was not considered to be waived as a result of boilerplate language in a pledge agreement or security agreement, which is often found in substantially all consumer loan and mortgage documents. The decision therefore has wide-ranging effects in that it could cause many unsuspecting individuals to be considered to have received a deemed distribution of the assets in his or her pension plans, IRAs or qualified retirement plans, which could subject the individual to taxes, interest and penalties, and also could subject such assets to creditor claims of Floridians.

In the 2021 Florida Legislative Session, efforts were made to introduce a new bill that would fix the uncertainties created by the Kearney decision. The bill, titled "Waivers of Exemptions of Applicable Assets," spearheaded by Senator Lori Berman, first took form as Senate Bill 688, and later transformed into House Bill 715. The bill sought the implementation of a new statute, Florida Statute Section 222.105, which would provide the following:

222.105 Waiver of exemptions; requirements.--

(1) The exemptions set forth in this chapter with respect to applicable assets may not be waived unless the person who is entitled to the exemption has specifically pledged a security interest in the applicable asset in a security agreement, as defined in s. 679.1021, that identifies the applicable asset by specific reference.

(2) The following references in a security agreement purporting to pledge a security interest are insufficient to pledge applicable assets or to waive the protections afforded to applicable assets by this chapter:

(a) All of a person's "assets and rights, wherever located, whether now owned or after acquired, and all proceeds thereof," or other words of similar import, including, but not limited to, those described in s. 679.1081(3); or

(b) References only to the type of collateral, as described in s. 679.1081(5).

(3) For purposes of this section, the term "applicable assets" means those assets described in ss. 222.13-222.16, s. 222.18, and ss. 222.201-222.22.

Unfortunately, the bill died in appropriations, never making it to the Governor's desk. It remains to be seen whether the legislature will take action on this. Nevertheless, the Tax Section of the Florida Bar has indicated that a "Kearney patch" bill is not forever discarded, and that interested Sections of the Florida Bar will convene at some point in the near future to work out a solution. It is anticipated that a proposed “Kearney patch” bill will be released at some point in 2022.

Unless or until a “Kearney patch” bill is enacted into law, readers need to be aware that as the state of the law currently treats pledge agreements and security agreements providing for a pledge of all of a person’s “assets and rights, wherever located” as a pledge of IRAs, qualified plans, and possibly other tax-advantaged assets. Accordingly, any such pledge agreements, security agreements, or agreements of similar effect should be closely reviewed and should provide for language specifically carving out such tax-advantaged assets from being pledged under the applicable agreement. The prudent investor will pledge which assets he or she is using as security with great specificity.

Article 5

Charitable Contributions of Inventory: Is Your Business Feeling Generous?

By: Grace Paul and Brock Exline

For businesses that are looking to give back to the community and enhance their goodwill by reducing excess inventory, a charitable donation of inventory can be a great way for a business to 1) contribute to a good cause and 2) get rid of unused or unwanted inventory while receiving a tax deduction.

Sometimes giving truly is receiving!

Specifically, the CARES Act enhanced the federal income tax deduction for charitable contributions in 2020, and the Consolidated Appropriations Act extended these enhancements through 2021.

Charitable Inventory Contributions In General

There are requirements that business owners should be aware of when seeking to make a charitable contribution of inventory in order to ensure that the donation is tax deductible.

IRS Publication 526 (2020) broadly defines inventory as “property sold in the course of business.”

The general rule according to IRS Publication 526 (2020) is that businesses “can deduct... the smaller of [the inventory’s] fair market value on the day it was contributed or its basis. The basis of contributed inventory is any cost incurred for the inventory in an earlier year that you would otherwise include in your opening inventory for the year of the contribution.” Many business owners may think that an inventory unit’s “basis” is simply its cost, but a business may also consider the additional allocated costs that the business has incurred in calculating an inventory unit’s basis. These costs may include shipping, storage, and depreciation.

IRS Publication 526 (2020) defines fair market value consistent with general tax law principles as follows: “the price at which the property would change hands between a willing buyer and a willing seller, neither having to buy or sell, and both having reasonable knowledge of all the relevant facts.”

In addition, for purposes of ensuring that your contribution is eligible for a tax deduction, business owners should also make sure that their chosen charitable organization is a qualified organization under the Internal Revenue Code.

IRS Publication 526 (2020) defines qualified organizations to include “nonprofit groups that are religious, charitable, educational, scientific, or literary in purpose, or that work to prevent cruelty to children or animals.” Such qualified organizations must have tax exempt status under Section 501(c)(3) of the Internal Revenue Code or similar sections providing for an entity to be tax exempt for charitable purposes.

Further, IRS Publication 526 (2020) provides Table.1 as guidance for determining whether contributions made to an organization are tax deductible.

In addition to Table.1, the IRS also provides an online search tool at the following link so that your business can be sure that their chosen organization is eligible to receive tax-deductible charitable contributions:

https://www.irs.gov/charities-non-profits/search-for-tax-exempt-organizations

Contributions of Food Inventory

Prior to the CARES Act, all businesses could receive tax deductions for up to 15% of their taxable income for charitable donations of food inventory, but the CARES Act increased this limit to 25% for donations made in 2020 to 2021. Internal Revenue Code 170(e)(3)(C)provides the following guidance on the charitable donation of food inventory:

(C) Special rule for contributions of food inventory

(i) General rule

In the case of a charitable contribution of food from any trade or business of the taxpayer, this paragraph shall be applied—

(I)without regard to whether the contribution is made by a C corporation, and

(II)only to food that is apparently wholesome food.

(ii) Limitation

The aggregate amount of such contributions for any taxable year which may be taken into account under this section shall not exceed—

(I)in the case of any taxpayer other than a C corporation, 15 percent of the taxpayer’s aggregate net income for such taxable year from all trades or businesses from which such contributions were made for such year; computed without regard to this section, and

(II)in the case of a C corporation, 15 percent of taxable income (as defined in subsection (b)(2)(D)).

C Corporations

C corporations have received the most benefits and incentives to donate inventory during the Coronavirus pandemic. Under the CARES Act, C corporations may deduct all charitable gifts of inventory made between January 1, 2020 and December 31, 2021 up to 25% of taxable income, while other types of businesses only saw an increase in the amount of taxable deductions for donation of food inventory.

Prior to the CARES Act, C corporations could only deduct 15% of charitable contributions of food inventory and 10% of all other inventory. Nevertheless, if a business or client did not take advantage of the 2020 CARES Act provisions all is not lost! The Consolidated Appropriations Act of 2021 extended these provisions through the end of the 2021 calendar year.

Another advantage that C corporations have is the ability to receive an additional deduction under Internal Revenue Code 170(e)(3)(A) if the contribution is used for the care of the ill, the needy, or infants and certain recordkeeping regulations are adhered to. If the requirements are met, a corporation can receive up to twice the basis of the donated inventory.

The statutory language is as follows:

(3) Special rule for certain contributions of inventory and other property

(A) Qualified contributions

For purposes of this paragraph, a qualified contribution shall mean a charitable contribution of property described in paragraph (1) or (2) of section 1221(a), by a corporation (other than a corporation which is an S corporation) to an organization which is described in section 501(c)(3) and is exempt under section 501(a) (other than a private foundation, as defined in section 509(a), which is not an operating foundation, as defined in section 4942(j)(3)), but only if—

(i)the use of the property by the donee is related to the purpose or function constituting the basis for its exemption under section 501 and the property is to be used by the donee solely for the care of the ill, the needy, or infants;

(ii)the property is not transferred by the donee in exchange for money, other property, or services;

(iii)the taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of clauses (i) and (ii); and

(iv)in the case where the property is subject to regulation under the Federal Food, Drug, and Cosmetic Act, as amended, such property must fully satisfy the applicable requirements of such Act and regulations promulgated thereunder on the date of transfer and for one hundred and eighty days prior thereto.

(B) Amount of reduction

The reduction under paragraph (1)(A) for any qualified contribution (a defined in subparagraph (A)) shall be no greater than the sum of—

(i)one-half of the amount computed under paragraph (1)(A) (computed without regard to this paragraph), and

(ii)the amount (if any) by which the charitable contribution deduction under this section for any qualified contribution (computed by taking into account the amount determined in clause (i), but without regard to this clause) exceeds twice the basis of such property.

S Corporations

Under the CARES Act, S Corporations are afforded similar increased deductibility with respect to charitable contributions of food inventory that apply to C Corporations, Accordingly, S Corporations can deduct contributions of food inventory to charitable organizations of up to 25% of its taxable income, but can only deduct up to 10% of all other inventory contributions.

S Corporations are “pass-through” entities, Meaning that the income of the entity is considered as the income of the shareholders. As such, the charitable contributions of S corporations pass through to the personal income tax returns of the shareholders. Each shareholder can then claim a pro rata share of the corporation's charitable donations on their personal income tax returns, as an itemized deduction.

A corporation is allowed to deduct charitable contributions to qualifying organizations as long as the contribution is to be “used within the United States or its possessions,” however, shareholders of an S corporation can claim a charitable deduction regardless if a portion of the contribution is used outside of “the United States or its possessions.” This result is warranted because as a “pass-through” entity, the S corporation’s shareholders take the charitable deduction into account separately on their personal income tax returns.

Partnerships

Under the CARES Act, partnerships can deduct up to 25% of taxable income for charitable food inventory contributions, but can only deduct up to 10% of all other inventory contributions, because they are not “corporations” under the Internal Revenue Code.

A partnership is similar to S Corporations in that they are both “pass-through” entities. As a result, the partners of a partnership deduct charitable contributions made by their business on their personal tax returns. If a partnership makes a charitable contribution, each partner takes a pro rata percentage share of the deduction on their personal tax return, or is otherwise provided in the partnership agreement.

For example, assume a partnership has three equal partners and donates a total of $6,000 in inventory in the year, the partners will receive $2,000 in charitable deductions that will pass through to their personal income tax returns.

A charitable contribution of property by a partnership reduces each partner’s basis in the partnership by the amount of the partner’s share of the partnership’s basis in the property contributed.

It is worth noting that multi-member LLC’s that are taxed as a partnerships for federal income tax purposes are subject to the rules described above for partnerships, such rules do not necessarily apply only to state law partnerships.

The CARES Act

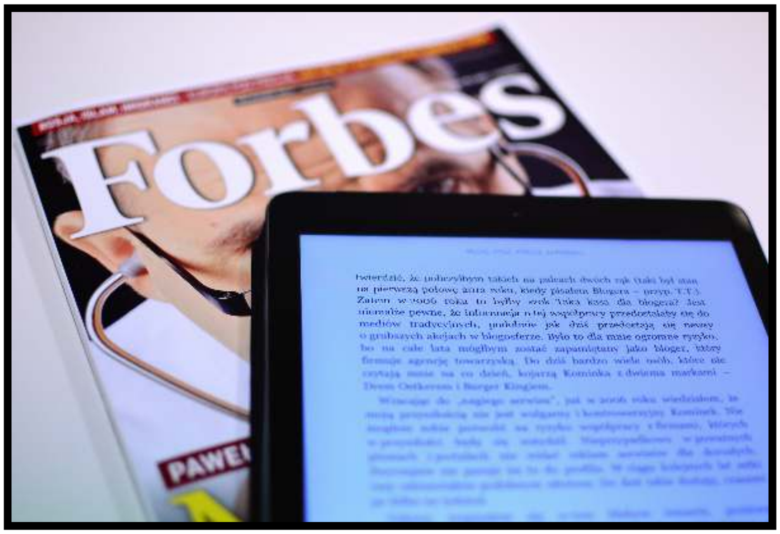
As mentioned above, the CARES Act temporarily increased the deduction limitation for charitable contributions of food inventory for contributions made during calendar year 2020 from 10% to 25% for corporations to provide increased deduction opportunities for certain businesses that are increasing their charitable activity in response to COVID-19.

The CARES Act also increased the limit on all charitable contributions from C corporations to 25% of taxable income, including donations of qualified inventory that is not “qualified food inventory.” Another significant advantage provided by the CARES Act is that if the aggregate amount of qualified contributions made by a business entity exceeds the 25% limit, the entity may deduct the amount of its qualified contributions exceeding the 25% limit over the next five years.

The Consolidated Appropriations Act extended the CARES Act charitable contribution provisions through 2021. The extension offers those who did not capitalize on the increases of charitable contribution deductions in 2020 a second chance to contribute to qualifying organizations at a higher level, thus lowering taxable income.

Businesses and clients need to be well aware that although some things have changed regarding charitable contributions deductions, much remains the same. Deducting donations made directly to an individual, no matter how needy, is still not permitted. Moreover, it remains imperative to obtain required substantiation for donations of $250 or more. Without a written acknowledgment from the charity or qualified organization, legitimate contributions may be nondeductible.

Forbes Corner



How To Protect Your Wealth From The Lions, Tigers And Bears Waiting To Pounce In The Washington Tax Forest

By: Martin Shenkman

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For Finkel's Followers

Social Distancing in the Business - Here's What You Can Do Right Now to Make a Difference

By: David Finkel

For many business owners, having a remote workforce has been a very personal decision. Some owners prefer their team to collaborate face-to-face, while others prefer to use technology and give their team the opportunity to work from home or while on the road. Unfortunately, with the recent Coronavirus pandemic many business owners have been faced with some tough decisions regarding their businesses and their team in terms of social distancing. Which has led to some very important discussions between you and your staff.

So where do we go from here? Maybe you want to start building up your systems and controls to give your team members the ability to work from home or adjust their work schedules during an emergency? Maybe the majority of your staff is already working remotely, and you want to get a better grasp on what they are doing and how best to serve them during this transition period.

Time Is Of The Essence

The worst time to have a discussion about contingency planning is when the building is on fire. Ideally, you want to think and plan ahead to decide how your team will handle various emergencies. Now, the specifics will of course vary from case to case but having a system in place to allow employees to work from home is always a good starting point. If your employees must come into the office, consider creating an alternative scheduling option that can be put into place should the need for social distancing arise.

You might also take the opportunity to think about things like stock levels and supply chains interruptions when working on your contingency planning. Can you say toilet paper shortage?
If the crisis is already here and you haven't properly planned, there are still things you can do to help during a transition. These include:

Tip #1. Communicate With Your Team

Hiding your head in the sand, and thinking that the current situation won't affect your business isn't the way to go. Instead sit down with your management team or other key employees and discuss ways to handle the task at hand. Be prepared to listen and ask questions.
The clearer you can paint this picture the more likely you are to be satisfied with the way your team handles a particular obstacle. The biggest mistake I see from business owners is they have a fuzzy or incomplete understanding of what their team (remote or otherwise) are responsible for in times of crisis. By focusing on clear success criteria you empower your remote team to understand what they are working to accomplish.

Once you have these key points worked out, sit down with your workers and make sure that you both understand what is expected of each other. Only then will you have the freedom to really do your best work.

Tip #2. Have Solid Reports

One of the big stressors to having a remote workforce (or in times of crisis) is not knowing the status of projects and deliverables. Thankfully with a little planning, you can both relax and focus on getting your most valuable tasks completed during uncertain times.

Ask Yourself:

What "Key Performance Indicators" (KPIs) should they report on? How often?

What updates should they submit? How frequently?

In my company, our remote workers check in once a week through our “Big Rock app.” There we document our big tasks completed for the week, key victories and tasks for the following week. You can also use a spreadsheet, task manager or even email to document your victories and to-do lists.

If your team is new to remote work, you want to help encourage weekly check ins until it becomes part of the company culture.

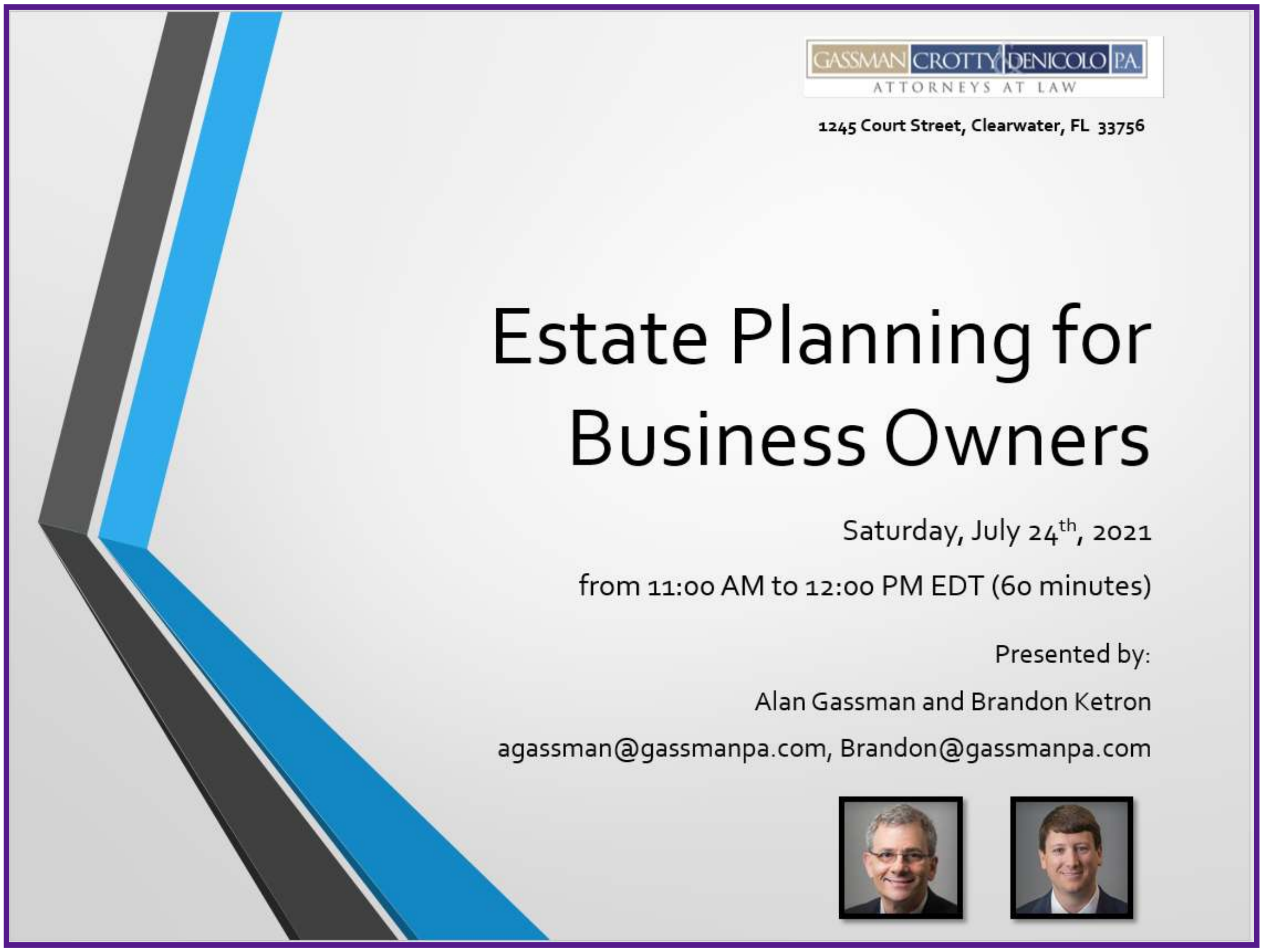
Tip #3: Social Distancing Doesn’t Mean You Can’t Check In Face to Face

There is a lot to be said for remote work and social distancing during times of crisis, but when it comes to brainstorming and creative projects there is nothing that competes with facetime together. So explore using conference lines, video meetings and other tools to keep your team connected when working remote.

We get together once a week as a team virtually to stave off feelings of isolation. It is usually a 15-minute quick huddle via conference line. Once a month we upgrade this huddle to a video conference for 30 minutes. One of the best parts of the video huddle is the chance to see our team in their home offices and make a connection.

Changing the way you do business is stressful, but with a little communication and teamwork the transition doesn’t have to be a painful one. How does your business handle social distancing in times of crisis?

Featured Event



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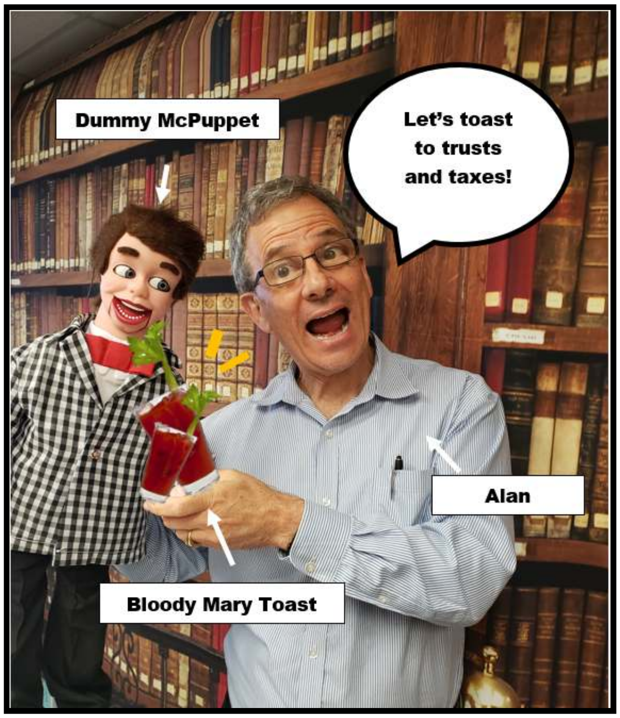

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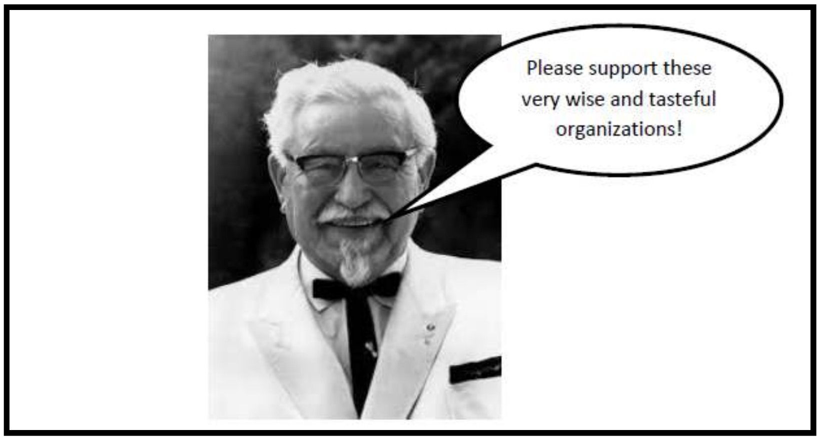

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Wednesday, **July 21, 2021**	**Free webinar from our firm** This event qualifies for CLE Credit	Alan Gassman, Jody Craig, Professor Jerry Hesch, and Michael Lehmann present: **Charitable Planning for the Business Owner** from 12:30 to 1:30 PM EDT	Register Here
Tuesday, **July 27, 2021**	**AICPA & CIMA ENGAGE 2021 in Las Vegas, NV** (In-Person and Virtual)	Alan Gassman, Kenneth DeGraw, Daniel Moore, Christopher Lucas, and Elizabeth Woodward present: **Ready for a Sale Panel on Businesses in Distress** from 9:30 AM to 10:45 AM PT	Register Here

Thursday, **July 29, 2021**	**AICPA & CIMA ENGAGE 2021 in Las Vegas, NV** (In-Person and Virtual)	Alan Gassman and Kenneth DeGraw present: **Bankruptcy: Planning, Execution & Solutions for Debtors and Creditors** from 3:00 PM to 3:50 PM PT	**Register Here**
Wednesday, **October 20, 2021**	**Notre Dame Tax and Estate Planning** (Virtual Conference)	Christopher Denicolo and Brandon Ketron present: **SLATs: How to Keep your SLAT from Going Kersplat!** from 3:00 to 5:00 PM EDT	**Coming Soon**
Friday, **October 22, 2021**	**Notre Dame Tax and Estate Planning** (Virtual Conference)	Alan Gassman and Jonathan Blattmachr present: **Tools and Strategies to Avoid Ethical Issues in Estate Planning** from 1:30 to 2:30 PM EDT	**Coming Soon**
Thursday, **November 4, 2021**	**Estate Planning Council of Birmingham**	Alan Gassman presents: **Hot Topics In Estate Tax And Creditor Protection** from 8:00 AM to 10:00 AM CT	**Coming soon**
Wednesday, **November 3, 2021**	**FL Bar Advanced Asset Protection Conference**	Alan Gassman presents: **Advanced Strategic Planning Techniques**	**Coming Soon**
Thursday, **February 10, 2022**	**John Hopkins All Children's Hospital** **We are proud sponsors of this event.**	24th Annual Estate, Tax, Legal and Financial Planning Seminar **Please Reserve the Whole Day**	**Coming Soon**
TBD	**Chattanooga Tax Practitioner Presentation**	**TBD**	**Coming Soon**

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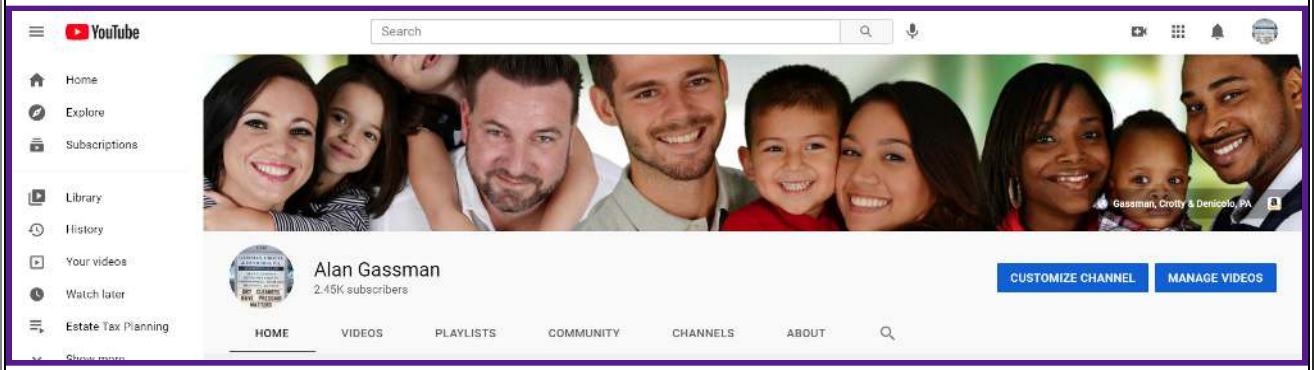

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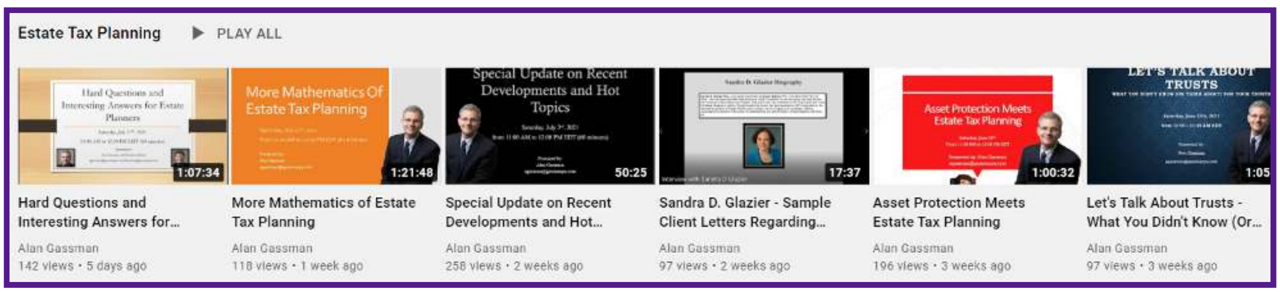

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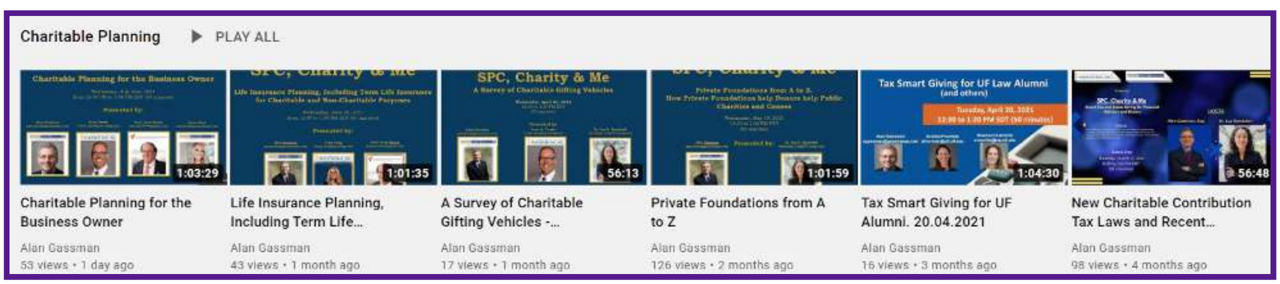

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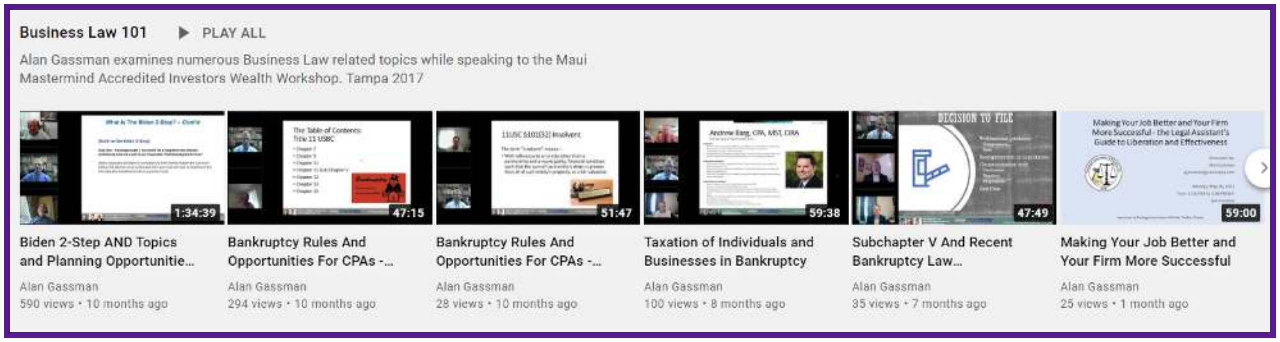
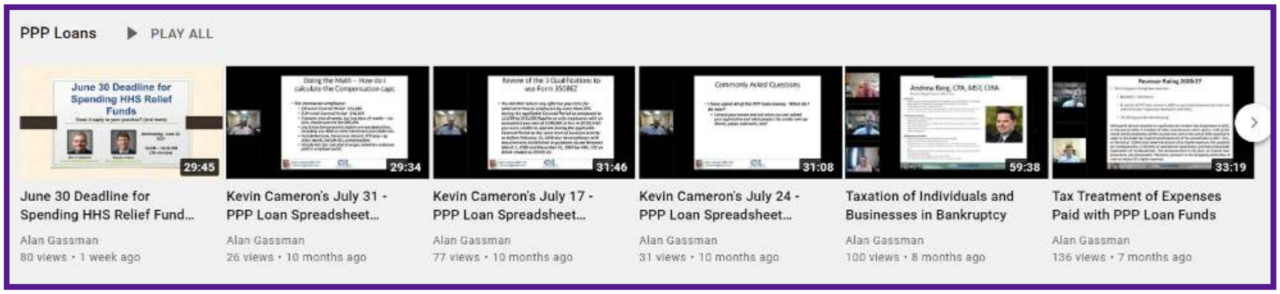
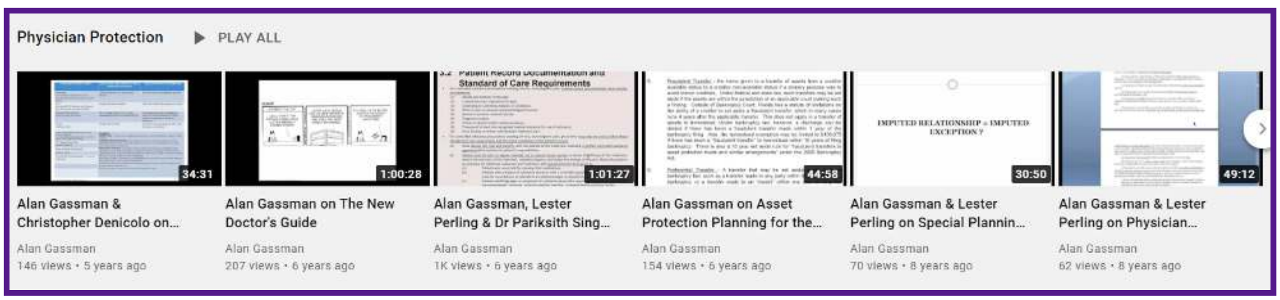


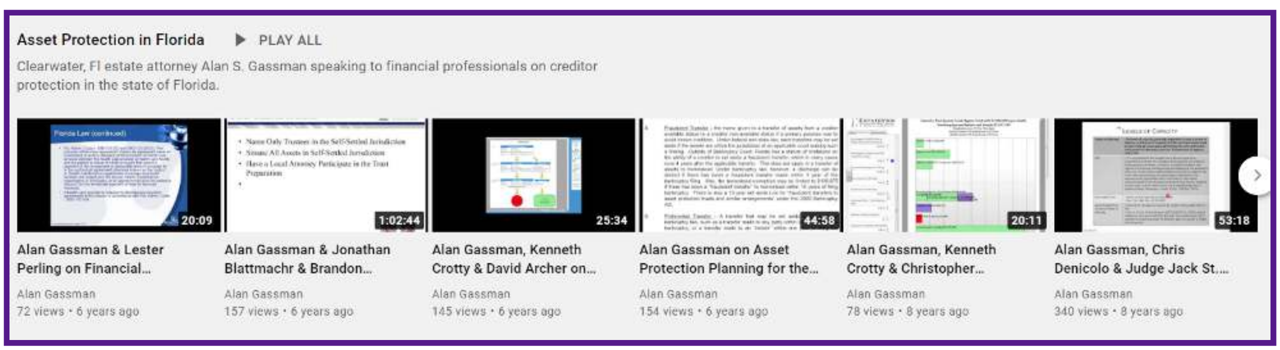
PPP LOANS



PHYSICIAN PROTECTION



ASSET PROTECTION IN FLORIDA



AND MORE!

Humor


1245
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KENNETH J. CROTTY
CHRISTOPHER J. DENICOLO
BRANDON L. KETRON
ALIENS FROM OUTER SPACE READ OUR SIGN


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THE BIG PINK COUGHING BIRD WAS A PHLEMINGO


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HE IS A SUE-CHEF NOW
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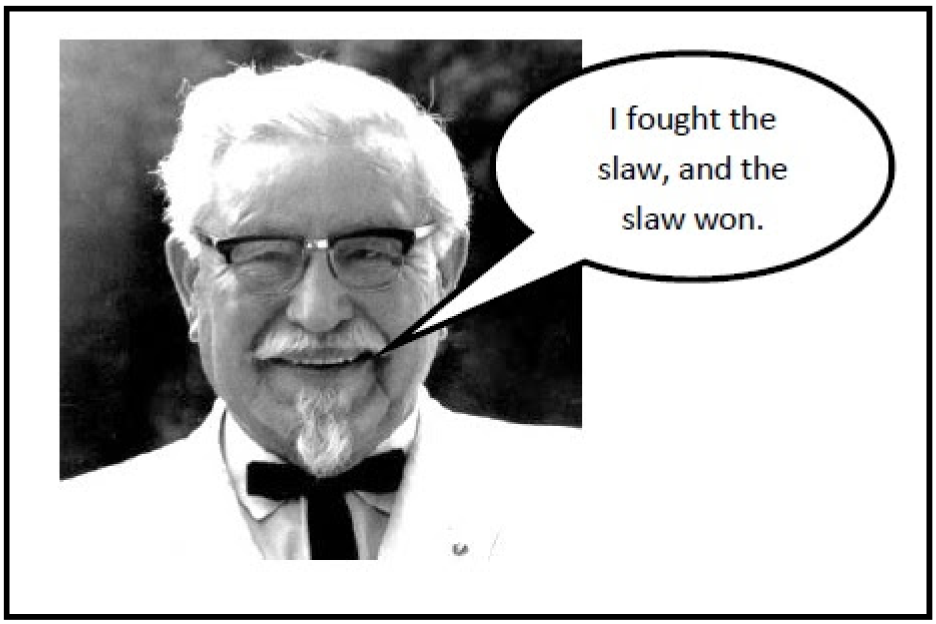
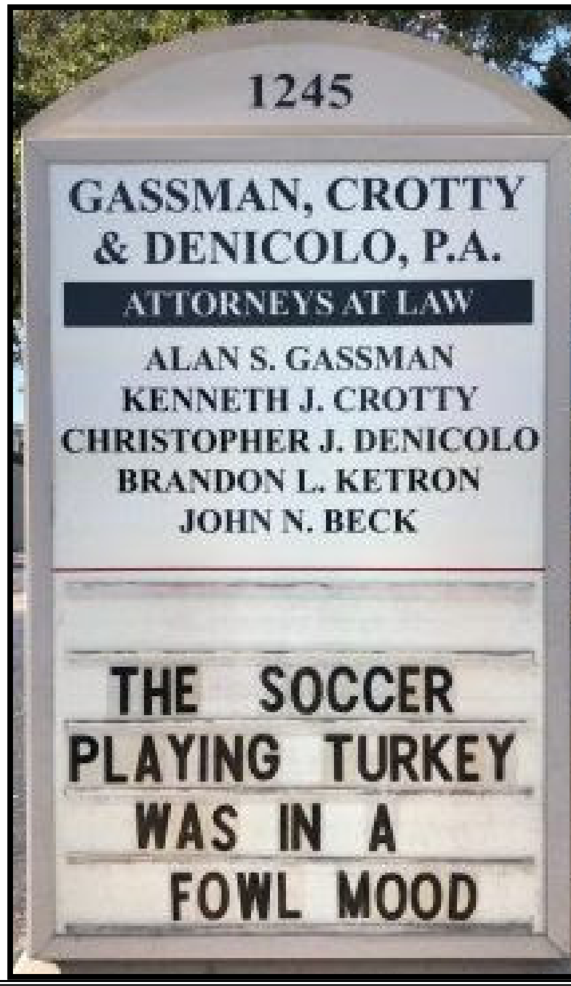

I fought the slaw, and the slaw won.



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