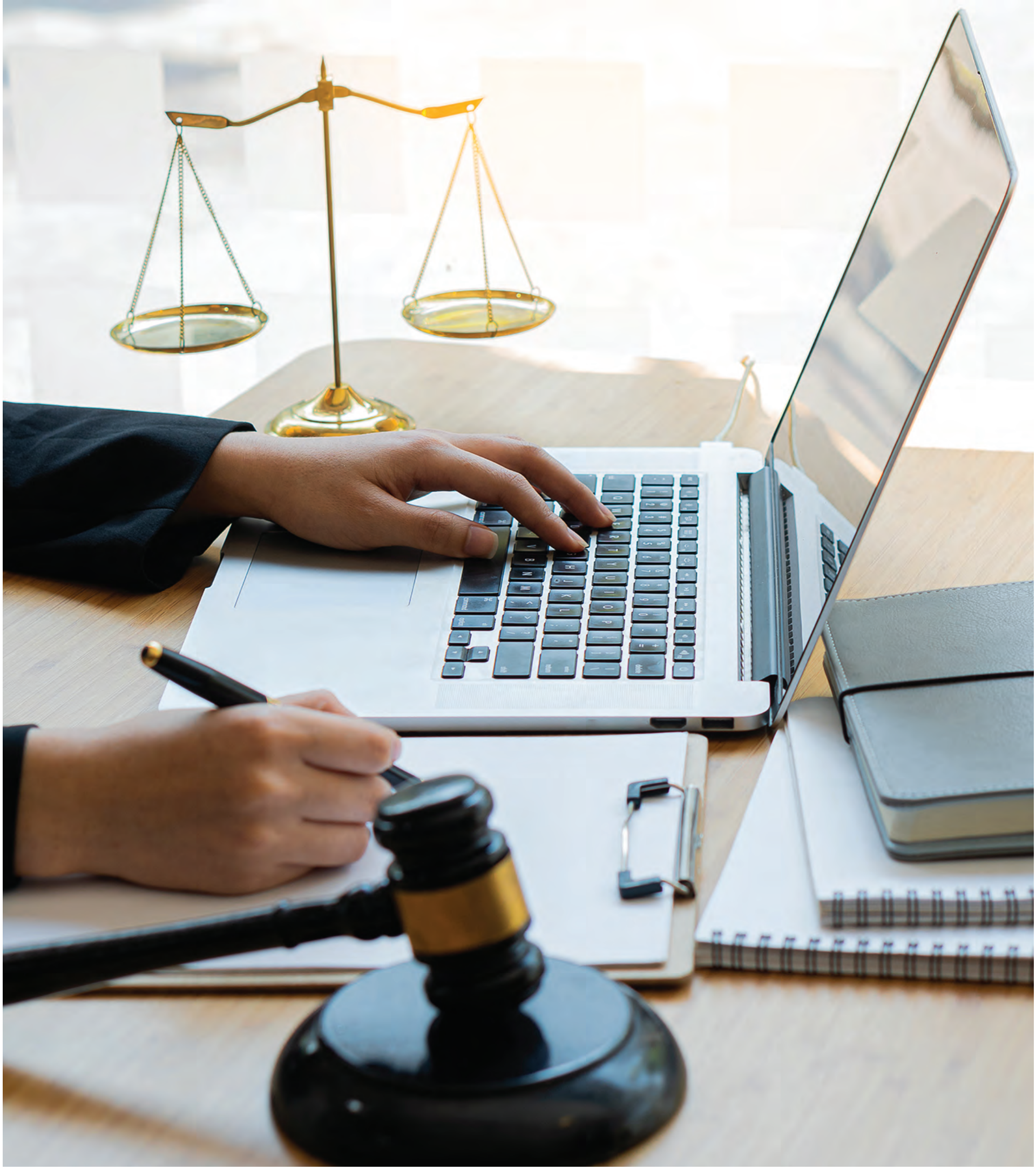
LAW SPECIALTIES

CUSTOM CONTENT • November 15, 2021



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Five U.S. Immigration Pointers at the End of 2021

As we near the end of 2021, we at David Hirson & Partners, LLP would like to offer you some important and timely pointers on five aspects of U.S. immigration:

1. E-2 Visa to EB-1C Green Card: Many may be unaware it is indeed possible to convert an E-2 visa to an EB-1C green card. It is common to see L-1 visa managers/executives convert to EB-1C, but other appropriate visa holders (i.e. E-2, H-1B, etc.) can also be successful in converting to EB-1C. The sponsoring company will need to work with an experienced U.S. immigration attorney in order to ensure that both the business and the application is structured correctly to meet all of the immigration requirements for both visas involved.

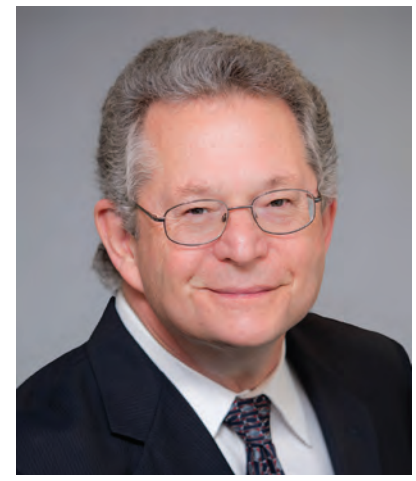
2. E Visas & Citizenship by Investment in Other Countries: With an investment/donation of $500,000 or less, families can apply for passports and citizenship from Turkey, Grenada, and other third-party nations. The U.S. has treaties that permit the issuance of E visas to citizens of Turkey (E-1 & E-2) and Grenada (E-1). Nationals of other countries around the world can make investments into Turkey and Grenada to become citizens of these nations and thereby hold the requisite treaty county nationality.

3. U.S. Embassies/Consulates Slowly Reopening (but backlogged): The COVID-19 pandemic shut down all U.S. embassies and consulates around the world. Embassies and consulates are gradually reopening and slowly issuing visas. They are still not operating a full capacity, and there are significantly fewer available appointments than individuals seeking appointments.

4. COVID-19 Requirements for Travel to the U.S.: *Air Travelers:* Effective November 8, 2021, all air travelers to the U.S. must attest to their COVID-19 vaccination status and be tested. Fully vaccinated travelers to the U.S. (including U.S. citizens traveling back to the U.S.) must continue to provide a negative COVID-19 test within 3 days before travel or prove recovery from COVID-19 within the last 90 days.

Land Travelers: Effective November 8, 2021, all non-essential foreign nationals entering the U.S. by land from Canada and Mexico must be full-vaccinated. There is no requirement to have a negative COVID-19 test prior to entering the U.S. by land. Beginning early January 2022, the U.S. will require both essential and non-essential foreign nationals entering the U.S. by land or ferries to provide proof of being fully vaccinated.

5. EB-5 Regional Center Program: While the EB-5 Regional Center (RC) Program has lapsed since June 30, 2021, it is rumored that the program will be reauthorized early December or maybe early next year. It is important to understand that the original permanent direct-investment EB-5 program is still open for applications and investments at the $500,000 level. There are also rumors that the $500,000 investment amount will increase when the RC program is reauthorized.



David Hirson, Esq. has 40 years of experience in U.S. immigration law, specializing in business and investment immigration. David is the founding and manager partner of *David Hirson & Partners, LLP* ("DHP"), and he is internationally-recognized for his decades of success in investment immigration, specifically EB-5. He has been certified as a Specialist in Immigration and Nationality Law by the State Bar of California, Board of Legal Specialization continuously since 1990. David's success with investment immigration has spanned decades, as seen by his involvement with the EB-5 program since its inception in 1990. David and his partners have a proven track record of successfully advising individuals, start-ups, large corporations, hospitals, and universities in navigating complex areas of employment immigration. The firm's business and employment-based immigration practice provides a full range of immigration services for all US visa types. David also specializes in guiding franchise businesses who have foreign partners/managers.

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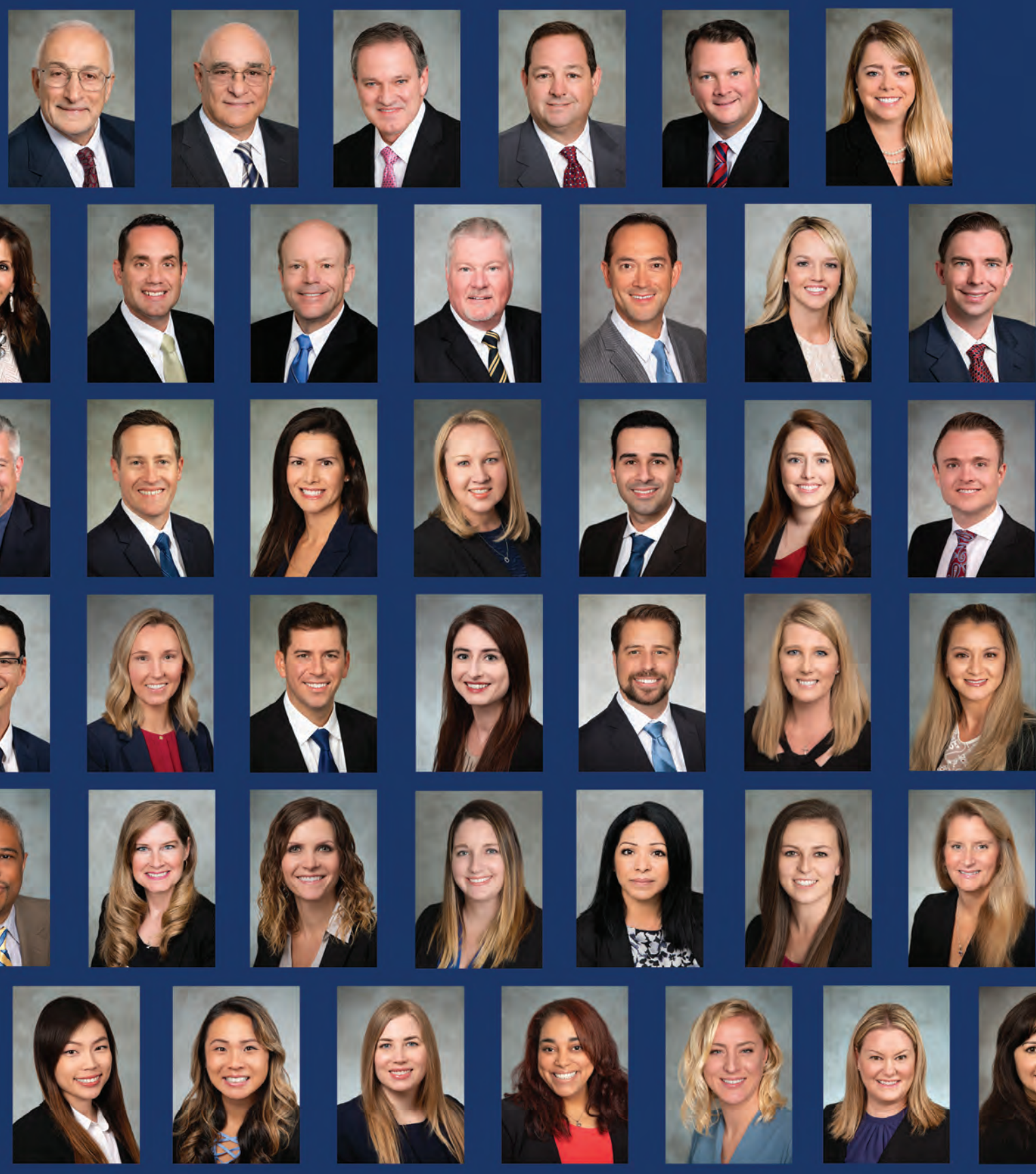

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BUILD BACK BETTER: WHEN THE DUST SETTLES

In March of this year, Senators Bernie Sanders and Chris Van Hollen introduced separate bills geared towards raising revenue and curtailing many of the tools utilized by estate planning attorneys. Among the list of potential changes were an increase in ordinary income tax rates and individual capital gains tax rates, the elimination of the step-up in income tax basis at death, deemed income tax realization rules at death, an increase in the estate tax rate, the elimination of valuation discounts, an increase in C-corporation tax rates, a curtailment of the IRC 199A qualified business income deductions, the elimination of favorable grantor trust rules and the restoration of the estate and gift tax exemptions to pre-2017 levels. The Biden administration pegged some of these tax increases to finance the President's proposed sweeping social agenda.

For months, prognosticators attempted to predict which of the proposed changes would take effect. Then, in October of this year, the Biden administration announced the framework of its social plan under the Build Back Better Act ("BBBA"). To the surprise of many, the BBBA contained virtually none of the estate planning restrictions proposed early this year. Thus, even if the BBBA is enacted, it is not likely to adversely affect the ability of taxpayers to plan for the future. It is still possible that Congress could introduce separate legislation limiting these estate planning options. In any event, the rollercoaster legislative session should serve as a reminder that now is a good time to finalize your estate plan before the landscape shifts again.

Estate and Gift Tax Exemptions Remain Unchanged - For Now

The gift tax exemption establishes the maximum value of assets that a taxpayer may gift during life without incurring a gift tax. The estate tax exemption establishes the maximum value of assets that a taxpayer may own at death without incurring an estate tax. In 2011, the estate and gift tax exemptions were both $5 million per person ($10 million per couple) with annual inflation adjustments. In 2017, the Tax Cuts and Jobs Act ("TCJA") temporarily doubled the exemptions to $10 million per person ($20 million per couple) with the same annual inflation adjustments. Taking these inflation adjustments into account, the 2021 estate and gift tax exemptions are $11,700,000 per person ($23,400,000 per couple). The legislation proposed by Senators Sanders and Van Hollen would have reversed the TCJA changes effective January 1, 2022, taking the exemptions back to approximately $6 million per person ($12 million per couple). However, even if no current version of the Senators' legislation is enacted, under current law, on January 1, 2026, the estate and gift tax exemptions are set to revert back to approximately $6.5 million per person ($13 million per couple).

So how will the proposed changes affect your estate taxes? A taxpayer owning $20 million of assets and dying in 2026 under the reduced estate tax exemption would pay an extra $2,080,000 in estate taxes compared to the same taxpayer who died under the current estate tax exemption. Therefore, taxpayers who expect to have estates valued in excess of $6.5 million ($13 million for a couple) in 2026 should schedule time with their attorney to discuss their tax situation.

To Gift or Not to Gift

The estate and gift tax exemptions are tied together so making gifts during life affects the amount of estate tax exemption available for use at death. Taxpayers who find themselves in a taxable estate situation may want to consider making gifts now to lower their taxable estates in the future. These gifts may be especially effective if the taxpayer gifts assets, which are expected to appreciate greatly in the future with all such appreciation subsequent to the date of the gift occurring outside of the taxpayer's estate. For instance, the gift by a taxpayer of 1,000 shares of Amazon stock on January 5, 2016, would have been valued at $636,990 ($636.99 per share x 1,000 shares). If instead, the taxpayer died on November 10, 2021, owning the shares, those same 1,000 shares would have been worth $3,475,990 ($3,475.99 per share x 1,000 shares). By making the gift in 2016, the extra $2,839,090 in appreciation would not be included in the taxpayer's estate for estate tax purposes.

Gifts to Irrevocable Trusts

Although outright gifts to children or grandchildren may be an option, many clients feel that the beneficiaries have not reached a sufficient age or maturity level to responsibly manage such gifts. Making gifts to irrevocable trusts established for the beneficiary's benefit provides peace of mind that the assets will be used and protected for the beneficiaries. Aside from these concerns, many clients elect to make gifts to irrevocable trusts established for the benefit of the child or grandchild because gifting in trust may afford asset protection (for instance, protection from ex-spouses in the event of divorce) and may allow the assets to pass on to future generations estate-tax free.

Grantor vs. Non-Grantor Trusts

One of the more effective tools, which estate planning attorneys use is the intentionally defective grantor trust ("IDGT"). In simplistic terms, the IDGT's structure allows taxpayers to take advantage of a difference between the estate and gift tax law, on one hand, and the income tax law, on the other hand. Transfer to IDGTs are completed transfers for estate and gift tax purposes and will not be includible in the estate of the individual who made the transfer. But, for income tax purposes, the assets transferred to the IDGT are still treated as being owned by the transferor. This structure allows for a variety of sophisticated planning opportunities. Some of the legislation proposed by Senators Sanders and Van Hollen would have limited the ability of taxpayers to utilize the IDGT - essentially requiring the transferor to include in his or her estate the value of assets transferred to the IDGT. With the exclusion of this provision from the BBBA, it appears that IDGTs remain a viable planning tool for the time being.

Conclusion

Now is a good time to consult with your estate planning attorney to see what, if any, steps you should take to preserve your estate for future generations. At Ferruzzo & Ferruzzo, LLP, we have a number of highly qualified estate planning attorneys to guide you through this process.

BLAINE M. SEARLE, Esq. is a Partner within the Firm's Corporate and Estate Planning Practice Groups. He handles corporate formation, business succession, estate planning, and implements strategies to minimize estate, gift, income, and real property taxes.

DANIELLE R. GUERRERO is a Senior Associate with the Firm's Estate Planning and Trust Administration Practice Group. Her practice focuses on drafting estate planning documents and guiding clients through the trust administration process, which includes assisting business owners with the succession of their business. Additionally, she regularly provides legal advice to trustees on their fiduciary obligations.

Knobbe Martens

Many companies already know the importance of obtaining federal registrations from the U.S. Trademark and Copyright offices to protect their trademarks and copyrights. Some of those companies also know the added value of recording their registered trademarks and copyrights with U.S. Customs and Border Patrol (CBP). For example, CBP will enforce those recorded registrations at the U.S. borders against foreign knockoff and counterfeit products.

Currently, CBP is statutorily authorized to seize imported goods that infringe a registered U.S. trademark or copyright. Unlike the European Union, China, and Japan, United States law currently does not afford the same benefit to a registered U.S. design patent. Design patents protect the ornamental appearance of a product and, if that same ornamental appearance becomes an indicator of source to the consumer, then that ornamental appearance later can be registered as trade dress with the U.S. Trademark Office.

Design patents can be used to remove knockoff products from the marketplace, thereby strengthening the public's association between the appearance of the patent owner's product and the patent owner as the source of the product. This can expedite the creation of an association in the public's mind between the appearance of the product and its source, an association necessary for developing trade dress rights and registering the trade dress.

Securing trade dress registrations can be difficult, but the advantages afforded to the holder of the registered trade dress can be well worth the time and expense. Imported goods currently can mimic the product appearance while omitting registered trademarks, thereby circumventing seizure by CBP. Subsequently, once the products are inside the U.S., counterfeiters then apply the registered trademarks. However, if a product's appearance is protected by registered trade dress, then CBP can seize the product on the basis of the registered trade dress.

Design patent applications must be filed within one year of the first offer to sell the invention, or within one year of the first public use or disclosure of the invention, and design patent applications are relatively inexpensive to file. If foreign rights are desired, the U.S. design patent application should be filed before any offers for sale or public disclosures. Foreign applications receive the U.S. filing date if filed within 6 months of the U.S. application. Design patents could increase in importance should the proposed Counterfeit Goods Seizure Act (S. 2987) be enacted; this Act would allow CBP to seize goods that infringe design patents, thereby providing an earlier attack against the importation of knock-off products.

Robb Roby is a partner with Knobbe Martens. Robb represents clients in all aspects of their intellectual property and agreement needs. He strategically structures his client's intellectual property estates and works to create an integrated and balanced portfolio that effectively combines the overlapping protections of patents, trademarks, copyrights, and trade secrets.

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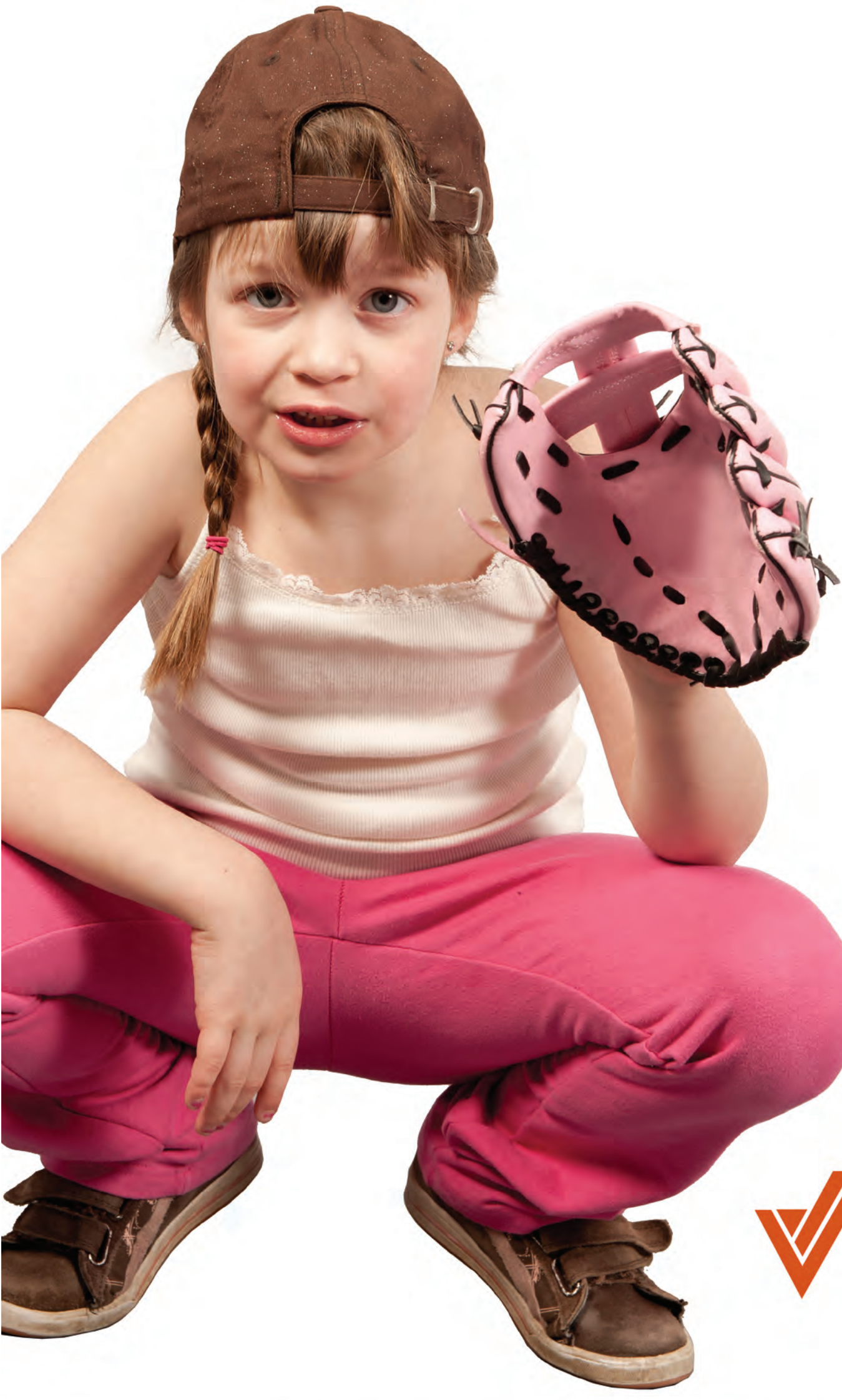

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How Large Employers Can Prepare for CCPA/CPRA Obligations for "HR Data" in 2022

Get ready, large employers. After years of amendments exempting the personal information of employees and other personnel from the California Consumer Privacy Act ("CCPA"), covered employers now have a firm deadline by which to comply with the CCPA's requirements in protecting employee and personnel personal information ("human resources data"). The deadline – January 1, 2023 – may appear far off, but certain provisions trigger obligations for 2022. Below are the steps large employers should take to comply with the CCPA.

Step 1: Be familiar with the rights afforded to consumers under the CCPA.

The CCPA was enacted on June 28, 2018, creating one of the most comprehensive frameworks for regulating digital privacy in the United Sates. The law currently grants California consumers the right to know what personal information is collected, used and processed by covered businesses; the right to access the personal information; the right to request that covered businesses delete the personal information; the right to know whether and to whom the personal information is sold or disclosed; the right to opt out of the sale of personal information; and, the right to the same quality of service as that provided to consumers who do not opt out. The CCPA's effective date was January 1, 2020.

Step 2: Determine if the CCPA applies to the employers' business.

The CCPA applies to for-profit companies that do business in California that either have an annual gross revenue of over $25 million; buy, sell, receive, or share the personal information of at least 50,000 California residents, households, or devices for commercial purposes; or derives at least fifty percent of their annual revenue from selling California residents' personal information ("large employers").

Step 3: Understand the extent of the CCPA's current "employee" exemption.

Human resources data is largely exempt from the CCPA for the time being. Under the CCPA's current "employee" exemption, the personal information of a job applicant, employee, owner, director, officer, medical staff member, or contractor of a covered business are exempt from the CCPA *as long as* the covered business collects and uses the personal information (1) in the context of the covered business's relationship with the employee or personnel, (2) to maintain emergency contact information on file, or (3) to administer benefits.

Despite the employee exemption, employers should understand that there are existing obligations concerning human resources data. The CCPA requires employers to safeguard human resources data and to provide a notice to employees and personnel regarding the human resources data collected by the employer and how the information is used. Although no model notice has been provided under the CCPA, the notice must describe "the categories of personal information to be collected and the purposes for which the categories of personal information shall be used." The CCPA privacy notice must be given to employees "at or before the point of collection" and provide a copy of, or link to, the employer's privacy policy. Employers should also know that California residents can seek to recover statutory damages for certain data breaches, including those involving human resources data.

Step 4: Understand the new obligations for human resource data under the CCPA.

Human resources data was exempt from the CCPA's requirements until January 1, 2021. With the approval of Assembly Bill 1281 on September 29, 2020, the January 1, 2021 deadline was extended to January 1, 2022. California voters approved the California Privacy Rights Act (the "CPRA") on November 3, 2020, which amended the CCPA and extended the employee exemption to January 1, 2023, the effective date of the CPRA.

The extra year is helpful for large employers, as the CPRA expands consumers' rights. In addition to the CCPA rights, the CPRA grants California consumers the right to correct personal information; the right to limit the use and disclosure of sensitive personal information; and, the right to opt out of the sharing of personal information. Additionally, the CPRA has a 12-month "look-back" provision, meaning that employers should be tracking their collection, use, and disclosure of human resources data up to twelve months before the January 1, 2023 effective date. Thus, employers should be prepared to provide information going back to January 1, 2022.

Enforcement of these additional rights lies with the ability of employees and personnel to seek to assert a private right of action for data breaches. The CPRA adds an additional enforcement mechanism by establishing the California Privacy Protection Agency, which administratively enforces the CCPA as amended by the CPRA.

Step 5: Create an action plan to comply with the CCPA as amended by the CPRA.

Although the January 1, 2023 deadline seems far away, large employers should take steps to ensure compliance with the CCPA and CPRA concerning human resources data. These steps include: engaging in data mapping of human resources data; continuing to provide CCPA privacy notices to employees and personnel; ensuring the accuracy of privacy policies; evaluating physical, technical, and administrative safeguards concerning human resources data (which includes evaluating contracts with vendors such as payroll providers and benefit administrators); and implementing a plan to ensure the tracking of human resources data from January 1, 2022 and onwards.

As the effective dates of the CPRA loom on the horizon, Dorsey's CCPA Team can effectively guide your organization through developing and implementing proactive California-compliant programs. Contact your Dorsey attorney for assistance.

Gabrielle Wirth is a Labor & Employment Partner at Dorsey & Whitney LLP. Gabrielle's successful trial experience in a broad range of employment disputes including wage and hour, whistleblower, wrongful termination, discrimination, harassment, retaliation, breach of contract, and trade secret/noncompetition cases and her work with the corporate team on acquisitions and startups equip her to nimbly assess and provide legally compliant options, whether in the counseling or litigation defense role. She also represents employers before a wide variety of state and federal agencies. Gabrielle can be reached at (714) 800-1455 or wirth.gabrielle@dorsey.com.

Melonie Jordan is a Labor & Employment Associate at Dorsey & Whitney LLP. Melonie advises employers in various industries on a broad range of workplace privacy and information security issues. Melonie is certified by the International Association of Privacy Professionals (IAPP) as a Certified Information Privacy Professional (CIPP/US), a designation demonstrating her understanding of U.S. privacy and security practices and their applicability to the workplace. Melonie also defends employers before state and federal agencies and courts in a broad range of employment disputes. Melonie can be reached at (714) 800-1451 or jordan.melonie@dorsey.com.

How Well Is Your Divorce Attorney Telling Your Story?

By Paul Nelson, Esq

If you ever have the privilege of serving on a jury, the judge is likely to begin the trial by advising you to adjust your expectations. "This isn't going to be like *Perry Mason* or *Boston Legal* or *The Good Wife*," the judge might say. "This trial is likely to move slowly. There will be no grand speeches, no surprise confessions on the witness stand. This is a court of law, not a TV series set."

On one hand, this judge will have a point. Television and motion pictures are designed for entertainment, not the administration of justice. Also, in drama, time is compressed. Dialogue is snappy. Conflict is maximized. Legal niceties can be discarded cavalierly for the sake of dramatic convenience. And above all, any good TV or movie trial requires a surprise twist or unexpected reveal, something that almost never happens in real life.

On the other hand, it would be a mistake to completely dismiss the notion that a trial is *not* theater. The principles of drama — character, narrative, conflict, theme, catharsis — often do play a significant role in how a matter is decided. In fact, an age-old legal maxim tells us: "In a trial, the side with the best story wins."

This adage is particularly true in divorce law. Divorces, by their nature, pit two individuals against each other in a high-stakes contest. At play is the disposition of community property, the determination of separate property, as well as the establishment of any long-term financial responsibilities (e.g., alimony, child support) one party may owe the other.

Even when the divorcing spouse claims they are seeking an "equitable" arrangement, the fact is, any such contest likely will have its winners and its losers, and each party wants to be on the winning side. How well the divorce attorneys manage to convey their clients' cases through narrative, presentation, and the generation of empathy will go a long way in determining the final settlement the judge decrees.

So, what does a good attorney do to plead a divorce matter? And how can you pick the best attorney for yourself, should you ever need one? What follows are the elements successful divorce counsel use to tell a winning story:

Just the Facts, Ma'am

The hero of the TV cop drama *Dragnet* was Joe Friday, a laconic, by-the-book detective who wanted "just the facts" of any case he was investigating. A good divorce lawyer will be similarly diligent, not only taking the time to collect the objective particulars relevant to your marriage and its dissolution but also confirming their legitimacy. When you go to court, you similarly want your evidence to be rock-solid. The last thing you need is the opposing counsel casting doubt on your evidence or, worse yet, revealing key parts of your case to be exaggeration or fabrication.

The Hero's Journey

In his book, *The Hero with a Thousand Faces*, literature professor Joseph Campbell famously created a template for storytelling he dubbed "The Hero's Journey." Drawing on everything from Greek mythology to Shakespearean drama, Campbell's "monomyth" has served as the basis for films ranging from *Star Wars* to *The Lion King* to *The Hunger Games*.

Similarly, when preparing to argue your case, a good divorce lawyer will take those facts we just discussed and arrange them in a way that tells an equally compelling tale—with you as the hero. Like any good protagonist, you may at times appear flawed, vulnerable, and even capable of poor decisions. Yet in the end, your counsel will portray you as the person most deserving of a positive outcome.

Workshopping

Unlike movies and TV shows, Broadway plays,

whether dramas or musicals, usually go through an arduous process called "workshopping" before opening night. Beginning with a simple script, the writer, director, and cast, working as a team, will manage to put the show together. Bit by bit, scene by scene, this dedicated group will identify what works, discarding what doesn't, continuously polishing the production — often with live audience feedback — until they have what they believe is a winning product.

A good divorce attorney works in much the same way. Starting with your story as you present it, they will edit your narrative, role-play with you, coach you, and even help you rephrase testimony so it is as compelling and sympathetic as possible, all while staying within the boundaries of truth.

In this sense, your attorney is akin to a movie director or symphony conductor, coordinating the presentation of elements so emotions rise and fall in a rhythm designed to elicit the best possible effect.

Reading the Room

Any live performer knows the importance of "reading the room," that is, being sensitive to the tenor and mood of the audience. Consider a courtroom as a theater with an audience of one: the judge. As a litigant, you want the judge to like you. To sympathize with you. To be on your side.

Invariably, this requires you to be humble, courteous, respectful, and most of all, truthful. (Most judges have spent years on the bench and possess heightened B.S. detectors. They can easily sniff out people who are evasive, hostile, snide, or prone to exaggeration and fabulation.)

They also don't like whiners, complainers, smart alecks, or those given to angry outbursts. A good divorce attorney will therefore advise you how to comport yourself in court and even how to control powerful negative impulses (those damning traits the opposing counsel will try to get you to express).

In my 22 years of litigating divorce cases, I have grown to understand the power of a strong narrative to our most important audience — the judge. The right story must be carefully constructed and executed for this individual to evoke the right response: a positive outcome for the protagonist.

PAUL NELSON

Fraud Investigations: Key Steps and Mistakes to Avoid

By: Ryan Nguyen, CPA, CFE and Austin Ray, CPA, CFE

We live in a world where fraud and embezzlement are rather common; in fact, the Association of Certified Fraud Examiners reports that private companies and small businesses experience fraud more frequently than large corporations, with a frequency rate of 28%!

Knowing what steps to take to address suspected fraud is critical, as these set the course for criminal or civil actions, form a basis for termination proceedings, and provide evidence for insurance claims.

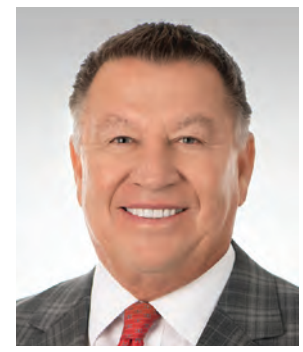
Before launching an internal investigation, hire outside professionals to help guide your efforts. An attorney will help ensure that the proper legal steps are taken to protect your company and establish a case for potential prosecution against the perpetrator. A forensic CPA who is trained as a fraud examination specialist can investigate the fraud scheme, calculate damages, then act as an expert in legal proceedings.

At the outset, it is critical to obtain and preserve evidence. Avoid removal of key records by suspects through creating backups of all financial data and correspondence, ensuring that this information remains unaltered. As evidence is collected, always be sure to document the origins of the information and maintain the chain of custody. Again, work carefully with your fraud experts to guide this process.

Remember, no one should be above suspicion. Consider collusion between multiple parties and minimize any disclosure of suspicions of fraud. Finally, create a hypothesis of what occurred based on the known facts. Your fraud experts will help you test this hypothesis by thoroughly analyzing all records, conducting interviews, and evaluating the next steps.

Ryan Nguyen, CPA, CFE, Partner - Forensics and Audit, specializes in litigation consulting and expert witness testifying. Austin Ray, CPA, CFE, Supervisor - Forensics and Audit, specializes in litigation support, and corporate and individual accounting. Contact Ryan or Austin at (949) 553-1020, or email ryan.nguyen@smithdickson.com, or austin.ray@smithdickson.com.

New California Tax Law Saves Business Owners Federal Tax



Under the new law passed by California AB 150, owners of a qualified pass-through entity, including S Corporations, partnerships, and LLC's, may elect a to pay a pass-through entity tax equal to 9.3% on its qualified income. Beginning in 2021, this election means the owners of the entity can decrease their federal net income as reflected on their K-1 statements.

This law, which has been approved by the IRS, is essentially a workaround of the $10,000 State and Local Tax Deduction Limit ("SALT") for California taxpayers. Instead of claiming a state deduction, which will be capped by the SALT limit, the taxpayer can pay the pass-through entity tax and reduce their Federal Adjusted Gross income.

The owner will report the net income to California, which will not include the tax payment, and receive a California tax credit equal to the state tax paid by the pass-through entity on behalf of the owner.

For example, if ABC LLC has a net income of $100,000 and two equal partners, the partners can make the election and pay $9,300 to the Franchise Tax Board. The LLC then reports $45,350 (($100,000-9,300) x 50% of net income on each federal K-1s. On the California return, the partners report the same $45,350, and will get a tax credit for the $9,300 tax paid.

The election for this pass-through tax treatment and tax payment is due on the original timely filed tax return due on March 15, 2022. To get a deduction for 2021 the election and tax payment needs to be made by December 31, 2021. If not all the partners want to participate, the entity may still elect to pay the tax even if some of its owners do not consent. However, the amount of qualified net income will be reduced by the nonconsenting owners' share of the entity's income.

To learn more, please contact Mark Doyle at MDoyle@TLDlaw.com

Mark C. Doyle, a TLD Law, LLP partner since 1988, has been recognized as a "Super Lawyer" and rated "AV Preeminent" by his peers. Mr. Doyle advises his valued individual, professional, and corporate clients on a full range of estate, business, and tax planning matters. Mr. Doyle's expertise includes creating both revocable and irrevocable trusts, family limited partnerships, and limited liability companies (LLCs) to assist clients in establishing businesses, minimizing taxes, and developing succession plans. Representative clients include high net worth individuals, professionals, closely held and public companies, fiduciaries, and financial institutions.

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The Greenberg Gross Sexual Assault Litigation practice leadership team. From left: Deborah Mallgrave, Jemma Dunn, Wayne Gross, and Brian Williams.

Fighting for Survivors of Childhood Sexual Assault

By Wayne R. Gross and Deborah S. Mallgrave

Since opening our doors almost a decade ago, Greenberg Gross has focused on being the business litigation firm of choice for plaintiffs and defendants in bet-the-company trial work across the country. We have worked hard in those eight years to provide the very best representation to companies and executives in need of sophisticated lawyering. In late 2019, however, a change in California law caused the firm to supplement its primary focus – complex business litigation – with an entirely new practice area for plaintiffs who have been subjected to childhood sexual assault. This article explains how the law has changed and its widespread impact on the business community and beyond.

The California Child Victims Act (AB 218)

A landmark piece of legislation, California Child Victims Act (AB 218) affords survivors of childhood sexual assault an "open window," during which they may file claims that would otherwise be time barred by the statute of limitations. This window is open until December 31, 2022. After the present window closes, survivors of childhood sexual assault will have either until age 40, or five years from the discovery of abuse to file civil lawsuits. The previous limit had been age 26, or within three years from discovery of the abuse.

With the passage of this law, the Governor and legislature have recognized the deep psychological trauma caused by the sexual assault of a child. The sad reality is that it often takes years for child-victims to recover, to discover or sufficiently understand their experience, and to develop the courage to seek the help and justice they deserve. Indeed, most survivors of childhood sexual assault do not come forward until much later in life, statistically around the age of 52.

In the past, many institutions covered up the crimes of sexual predators and escaped responsibility. AB 218 makes it easier for survivors to bring lawsuits against these institutions, which sadly includes not only religious organizations, but also public and private schools, youth sports leagues, daycare facilities, foster care agencies, detention centers, and others that have a duty to protect the children in their care.

Greenberg Gross regularly confronts powerful adversaries in its complex business litigation. With its deep experience handling some of the most complex, challenging cases, as well as counting among its attorneys former federal prosecutors, the firm has the resources, platform, and experience to litigate childhood sexual assault cases at the highest level. In entering the fray upon the passage of AB 218, we discovered a void that needed to be filled. The ravage of child sexual assault cuts across all swaths of society and strikes people from all walks of life, regardless of income, education, professional success, religious affiliation, gender or other demographic. Two Greenberg Gross cases exemplify this reality.

The Gucci Sexual Assault Case

On one end of the spectrum is what has become known as the Gucci sexual assault case. In September 2020, Greenberg Gross filed a lawsuit on behalf of Alexandra Zarini, a member of the Gucci fashion family and the granddaughter of founder Aldo Gucci, against her mother Patricia Gucci, grandmother Bruna Palombo (Aldo Gucci's longtime partner), and step-father Joseph Ruffalo. The case, filed under AB 218, alleges that Patricia Gucci and Bruna Palombo were negligent, that Patricia Gucci was physically and emotionally abusive, and that Joseph Ruffalo repeatedly sexually harassed, abused, and assaulted Zarini in their Beverly Hills home starting when she was just six years old and continuing through her young adulthood. Zarini further alleges that her mother enabled the assaults, and that her grandmother ordered Zarini to keep quiet and say nothing. The harrowing allegations by Zarini have generated international attention and have focused a spotlight on the fact that childhood sexual assault occurs in what seemingly is the most privileged of settings. The great-granddaughter and Gucci heiress has set up a foundation, the Alexandra Gucci Children's Foundation (guccifoundation.org), and will use any financial recovery she receives to help other victims of sexual assault. The Foundation is currently working on policy initiatives, both in Washington and globally, as well as bringing awareness to one of the biggest societal challenges of today, the sexual assault of the world's children.

The La Luz del Mundo RICO and Trafficking Case

On the other end of the spectrum is a tragic human trafficking case involving some of the poorest members of society. Representing Sochil Martin, in early 2020, Greenberg Gross filed a lawsuit against the global religious institution, La Luz del Mundo (LDM), under federal human trafficking and racketeering (RICO) statutes and several other federal and state laws, including AB 218. Exhibiting a presence on five continents and in nearly 60 countries, and with more than 5 million members, LDM is a global religious sect built around a doctrine of complete subservience to the "Apostle," Naason Joaquin Garcia, and his inner circle of bishops. As alleged, the case seeks to end the longstanding cycle of exploitation, abuse and retaliation against Martin and hundreds of others at the hands of LDM and its leadership, which grooms children to be sexually assaulted by the Apostle. In Martin's case, the abuse began at the age of nine when she was given over by her aunt and foster mother to "serve" the Apostle. She has endured a lifetime of manipulation, trafficking, forced labor, sexual assault, financial exploitation and harassment perpetrated by a sexual predator and the global institution protecting that predator. Since Martin began to break away from the group at age 30, LDM has tried to buy her silence, threatened her, and launched a smear campaign against her. Even in the midst of her own lawsuit and personal struggles, Ms. Martin fights for the rights and freedom of other survivors of sexual assault and financial exploitation.

What both of these groundbreaking cases illustrate is that the California legislature was absolutely right in passing AB 218, which has enabled Greenberg Gross, as well as other firms who have taken up the cause, to fight for courageous survivors of childhood sexual assault from all walks of life.

Wayne R. Gross is a highly respected trial attorney who regularly handles high-stakes business litigation for major companies and top executives in their most important matters. He is a founding partner of Greenberg Gross LLP, where he focuses on trial practice, complex civil litigation, and white-collar defense. He previously served as Chief of the U.S. Attorney's Office in Orange County and prosecuted cases of national and international significance. Mr. Gross can be contacted at wgross@ggtriallaw.com.

Deborah S. Mallgrave is chair of the firm's Sexual Assault and Human Trafficking Litigation practice where she concentrates her practice on complex litigation matters and advocating for survivors of sexual abuse and assault. Her extensive litigation experience includes a multitude of different business transactions, fraud schemes, unfair competition scenarios, real estate issues, intellectual property disputes, and trust litigation. Ms. Mallgrave can be contacted at dmallgrave@ggtriallaw.com.

To learn more, visit: FightForSurvivors.com

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FRAGOMEN WORLDWIDE

Immigration During COVID-19

For the first few months of the pandemic, immigration to the United States was essentially at a stand-still. The current, and previous administration remained fluid with guidelines to suit the needs of our country, citizens, and immigrants alike. From the moment President Trump declared a National Emergency on March 13, 2020 to now, there have been four Presidential Proclamations (P.P.) suspending entry into the United States *(P.P.9984 (China); P.P.9992 (Iran); P.P. 10143 (Schengen Area, UK, Ireland, Brazil, and South Africa); and, P.P.10199 (India))*. These Proclamations applied to all noncitizens who were physically present in any of the named 33 countries during the 14-day period preceding their entry, or attempted entry, into the United States. However, as of November 8, 2021 these Proclamations will no longer be in effect.

To replace the Proclamations, and safeguard against the inherent risk of lifting the restrictions on areas heavily impacted by COVID, President Biden announced a global vaccination requirement for all adult foreign nationals entering the country by air. President Biden, in an October 25, 2021 *Proclamation on Advancing the Safe Resumption of Global Travel During the COVID-19 Pandemic*, found the vaccination requirements are essential to advance the safe resumption of international travel to the United States. The President has determined the unrestricted entry of certain classes of travelers named in the proclamation would be detrimental to the interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions.

More than a year after the initial proclamation, travelers subject to the restrictions were eligible to apply for a National Interest Exception (NIE) to travel to the United States from the restricted countries. Individuals seeking to provide vital support or executive direction for significant economic activity in the United States; journalists; students and certain academics covered by exchange visitor programs; immigrants; and fiancés qualified for the NIE. With the release of the latest proclamation, National Interest Exceptions are no longer needed. As of November 8, 2021, vaccinated individuals may enter the country upon proof of vaccination, and unvaccinated noncitizens who are nonimmigrants must agree to comply with applicable public health precautions established by the Director of the CDC to protect against the public health risk posed by travelers entering the United States. Such precautions may be related to vaccination, testing, mask-wearing, self-quarantine, and self-isolation, as determined by the Director of the CDC.

For more insights, and to stay updated on subsequent announcements regarding Travel Restrictions, please visit our website www.fragomen.com.

Mitch Wexler is the Managing Partner of Fragomen's Irvine, Los Angeles, and San Diego offices. Fragomen, with 50 offices and 4,500 employees worldwide, is the leading business immigration law firm in the world. Mitch can be contacted at mwexler@fragomen.com

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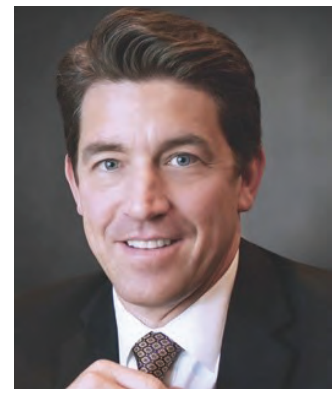

If you expect to sell your business, grow by acquisition, or solicit and receive investor growth capital, Adams Corporate Law can help you negotiate the best deal terms possible and protect your interests, no matter what type of transaction it is. We close deals.

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***Business law attorney Addison Adams** is a full-service lawyer for businesses across all industries and acts as outside general counsel for many companies in Southern California.*

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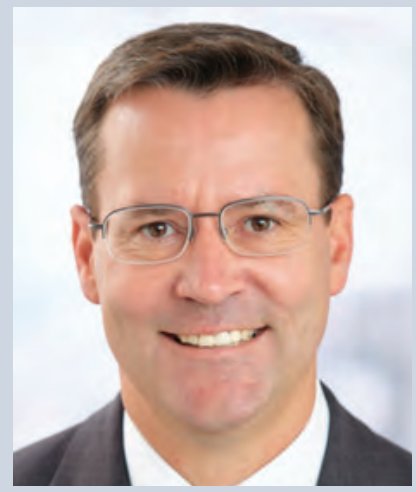

Seymour "Sy" Everett, III is a founding partner of Everett Dorey, LLP. Mr. Everett is a leading litigator in California and is routinely retained as trial counsel in complex and challenging cases throughout the state. Mr. Everett is an elected member of the American Board of Trial Advocates ("ABOTA"), a highly respected national advocacy group dedicated to the preservation of the right to trial by jury. He is also a "Fellow" with Litigation Counsel of America and recognized as a "Super Lawyer", which is an exclusive list, recognizing no more than 5% of the attorneys in the state.

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NFTs Present New Opportunities and Risks in Business and Law

By Kandy Williams, Esq. and Yev Muchnik, Esq.

NFTs, or non-fungible tokens, are all the rage this year. Beeple's digital art NFT sold at Christie's for $69m; DJ and music producer 3LAU sold music NFTs for $11.6m in 24 hours; Grimes made $5.8m in 20 minutes; and, according to Reuters, NFT sales volume for the first half of 2021 was $2.5b.

The burgeoning NFT collectibles marketplace shifts power back to creatives by allowing them to monetize digital creative works without intermediaries, creating new classes for artists, agencies, purchasers, and marketplace platforms to become market players. Beyond art and music, there are NFTs for sports collectibles, pixelated images of characters, domain names, COVID vaccination passports, medical records, real estate, and even tweets.

NFTs are a new digital asset class, built on code (smart contracts), and recorded on the blockchain. Blockchains are permanent, immutable ledgers that allow holders of NFTs to verify and track ownership and authenticity. This immutability makes it impossible for NFTs to be pirated, refuted, replicated, or deleted.

Each NFT is programmed with unique metadata distinguishing it from other NFTs, making each one of a kind like a stock certificate or numbered lithograph. Other digital tokens like Bitcoin and Ethereum are fungible or readily interchangeable for other Bitcoin or Ethereum, without any differentiation.

NFTs present new opportunities as well as new legal risks. For example, depending on the facts and circumstances, an NFT may be a security if there is an expectation of profit in a common enterprise derived from the efforts of others. The offering of a security must be registered or exempt from registration under the Securities Act of 1933 and may also require registration as a broker-dealer under the Securities Exchange Act of 1934. Additional considerations include anti-fraud laws, insider trading, restrictions on short sales, and market manipulation.

Other key legal issues involving NFTs include intellectual property rights, anti-money laundering, money transmission and virtual currencies, cybersecurity, and data privacy. NFTs may seem a goldmine, but without proper legal guidance NFTs remain potential landmines for the unwary.