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AN INTERESTING DILEMMA — Chicago and other news media have reported more women are driving cabs, limos and other ride-sharing vehicles. Some women passengers prefer women drivers because they feel safer with a woman than a male stranger as their driver, and vice versa. *But if women cabbies bypass men trying to hail them, is this a form of illegal discrimination? If companies prefer to hire woman drivers over men, or women order a vehicle but demand a woman driver, same question.*

IT’S NOT JUST THE IRS THAT FACES THIS DISPOSAL PROBLEM — Earlier this year the Treasury Department Inspector General faulted the Internal Revenue Service on its disposal of information technology equipment, i.e., computers and copiers. The IRS uses recycling and contributions to schools for disposing of such equipment. In addition to tracking problems (“Where did the equipment go?”), the IRS also is faulted on “sanitizing” (scrubbing any information on agency equipment) before disposal. The IRS responded we are doing better, but reduced funding is having an impact on our performance in this area. *When Congress gets mad at the IRS, which it does all the time, it usually reduces IRS appropriations for operations. The IRS is currently looking at 2008 levels of funding. Not many federal agencies can equal that sort of cut in spending. But wouldn’t it make more sense to ensure IRS equipment was thoroughly scrubbed of tax records before disposal. We are talking about more than 100,000 desk top and laptop computers alone. Companies face similar problems when it comes to disposing of computers, copiers, and even cell phones. It’s an issue for all of us.*

HEADLINE OF THE WEEK — A recent headline that appeared in *The Atlantic* caught our attention. “Study: Nobody Is Paying Attention On Your Conference Call” is what it said. *Think about it. Do you sometimes find yourself multitasking on conference calls, walking away for a cup of coffee, looking at messages on your cell phone? Just asking...*

GOOD READING ... See you in November 2014

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NOT-FOR-PROFIT LAW DEVELOPMENTS

THE PLOT THICKENS... — Senate Democrats have released a report saying the Internal Revenue Service review of organizations applying for tax-exempt status under §501(c)(4) status as social welfare entities targeted Democratic-sounding organizations as well as Republican Tea Party entities, information the Democrats claim was left out of the IRS Inspector General’s report used in the investigations to date. Terms such as “progressive” in titles also led to greater scrutiny. Senate Republicans disagreed, saying Tea Party groups were scrutinized in much greater number and detail. *With all the missing emails from former IRS officer Lois Lerner and five of her key employees, and the administration’s failure to disclose other records amid all the political punching and counterpunching, the truth will probably never be known. Follow your exemption applications carefully and track any additional information requested by the IRS.*

EMPLOYMENT LAW DEVELOPMENTS

CALIFORNIA JOINS CONNECTICUT IN MANDATING PAID SICK LEAVE — Add California to the growing list of states and cities mandating employers to provide paid sick leave to their employees. California’s requirements, effective July 1, 2015, are not minimal. An employee who works 30 days a year or more is entitled to paid sick leave which is accrued at the rate of not less than an hour for each 30 hours worked. Exempt employees are deemed to work a 40-hour work week, unless their normal work week is less in which case their accruals shall be based on their normal work weeks. Accrued and unused sick leave must be carried over to the following year, but an employer may limit an employee’s use of paid sick leave to three days in a year. If an employer already provides paid sick leave which meets or exceeds this new mandate, the employer may keep its current system. San Francisco’s mandated policy is more generous than this new mandate so employers there must follow the San Francisco requirements. *This just scratches the surface of all the nuances of this law. The one hour in 30 works out to about three days a year. For more details, see California’s new Healthy Workplaces, Healthy Families Act of 2014, California AB 1522. It covers employees in California even if the business is primarily located elsewhere. It applies to all employers including state, county and municipal employers. Employers, take note. This law is indicative of a trend across the nation, as cities including Washington, D.C. and New York City are already moving ahead to mandate such coverage, and numerous states have campaigns underway.*

AN INTERESTING CONCEPT TO WATCH — Richard Branson has come up with another innovation for the employees at Virgin Group’s parent company offices in the UK and in the U.S. If it works there, he said he would recommend it to Virgin’s subsidiaries. Branson has announced an unlimited vacation policy. Employees may take as much vacation as they want without managerial approval. Branson’s rationale is the employees will only take vacation when it will not adversely affect operational results or their fellow employees, and, of course, their careers. He thinks it will offer workers more freedom and improve their morale and efficiency. *It will be interesting to see how this works out for all concerned. Branson said he got the idea from his daughter who read that Netflix does this. It is not unique to Netflix; there are estimates that about 1% of U.S. companies do it as well. One common criticism: the policy may lead employees not to take time off because they do not want to violate the “norm,” whatever it might be.*

EMPLOYEE GARNISHMENTS ARE UP — Payroll service provider ADP reports that wage garnishments are up for employees, based on ADP’s study of 2013 payroll records for some 13 million workers. Some key trends emerged from the study. Garnishments are highest in the Midwest, in the manufacturing sector, and for those in the ages 35 to 44 age bracket. Child support is the leading cause, followed by tax debts, according to

the ADP study. *Garnishments may rise as high as 10% of the work force for blue-collar workers in manufacturing industries in the Midwest in that age bracket. Ten percent! Employers need to be on top of garnishment claims to avoid liability to workers' creditors. With medical claims and college loan debts on the rise, will there be new categories to worry about in the future?*

ATTENTION WILL BE PAID TO THE OUTCOME OF THIS APPEAL — *H&H Report Update* — The Colorado Supreme Court has heard oral argument on the appeal of a worker terminated for his use of medical marijuana. His employer has a drugs-free policy. His doctor prescribed medical marijuana in combination with other drugs to control painful spasms due to the worker's paralysis from a car crash. The combination allowed him to work at a customer service call center. He relies on a Colorado law that says an employer may not fire a worker for his legal off-the-job activities. Recreational and medical marijuana use is permitted under Colorado law. But the counter argument is that federal law prohibits the use of marijuana, and an employer should not be compelled to violate federal law to uphold state law. *This is the first appeal of this issue in a state where recreational as well as medical marijuana use is permitted so the appeal is generating more than usual interest. Several other state supreme courts have ruled against employees who were terminated or not hired because of their medical marijuana use.*

MEETINGS & TRAVEL LAW DEVELOPMENTS

HAVE YOU RUN INTO THIS ONE WHILE ON THE ROAD? — A recent headline in the *Chicago Tribune* read "Don't Touch That Candy Bar. Hotels charge guests who lift, but don't eat, minibar snacks." It seems many hotels assume any time you move a minibar snack, can or bottle that you have consumed it. They have sensors detecting movement of items tied to their billing systems. *So OK, you can protest at checkout, deny you consumed the item, and the hotels will usually take off the charge(s), but think about it. You are often in a hurry, have not scrutinized the bill with care, and the charges may be buried among other charges. Or you are checking out from your room using the hotel's online system on the room TV. How do you contest a charge? The hotels will give you reasons why they do this in the name of better service and efficiency, but the onus is on the guest to be aware of any unwarranted charges. Let them know how you feel about it when you have to correct your bill to get rid of such charges. If enough of us complain....*

SHOULD "CONCEALED CARRY" LAWS BE A CONCERN FOR PLANNERS? — A recent survey of likely Utah voters found that nearly two-thirds of the respondents supported teachers carrying concealed weapons in the classroom. Would that attitude carry over to an association meeting or convention? With concealed weapons laws now the national norm, should meeting planners be addressing this in their RFPs and on-site preparations? The first step is to know the applicable law in the state of your meeting site. Many states still bar concealed weapons in or near schools, stadiums, public facilities, churches and similar sites. Does your meeting site fall within the category of sites where concealed weapons are prohibited? Another state law issue is whether the property owner may bar concealed weapons from the owner's property, including an office building or site where meetings are held? May a tenant in the building bar concealed weapons if the property owner does not? *Because state laws vary on some of these issues, meeting planners need to find out the applicable law where the meeting will be held, and then the meeting site owner's or manager's position on concealed carry. That's step one, with many more to follow.*

SOMETIMES IT PAYS TO COMPLAIN — The Federal Communications Commission has entered into a consent decree with Marriott International, Inc. and Marriott Services, Inc. (collectively "Marriott") applicable to some Marriott employees' use of a "Wi-Fi containment system" at the Marriott Gaylord Opryland property.

The FCC investigation followed a complaint from a person attending a convention at the Gaylord Opryland Convention Center who said he was blocked from using his own device in the Convention Center and had previously experienced such a blockage at another Marriott property. Gaylord Opryland charged from \$250 to \$1,000 for access to the Marriott Wi-Fi system. The decree charges Marriott's Wi-Fi containment system use violated §433 of the (federal) Communications Act of 1933, and provides Marriott will not use Wi-Fi containment systems to block users from using their own personal Wi-Fi connection devices in Marriott properties throughout the U.S. Marriott will also pay a fine of \$600,000 and file periodic reports with the FCC demonstrating compliance with the decree. The consent decree is effective for three years from October 3, 2014. *Association executives and their members and attendees at their events are all too familiar with the problem of being blocked and faced with high fees for access to Wi-Fi connections. We have all experienced it. Now one man's complaint has led to this consent decree. Perhaps we should complain to the FCC when we run into this problem elsewhere, and keep this consent decree in mind when negotiating your meeting contracts.*

REGULATORY DEVELOPMENTS

FTC SHUTS DOWN BOGUS TRADE ASSOCIATION — The Federal Trade Commission has entered into a settlement with operators of a bogus trade association using the name Independent Association of Businesses. The group purported to be providing health insurance to consumers who paid an initial fee of \$50 to several hundred dollars and monthly fees thereafter from \$40 to \$1,000. The "benefits" included purported discounts on medical services and reimbursements on visits to certain doctors and hospitals, subject, of course, to broad exclusions and limitations. The defendant operators were charged under Section 5 of the FTC Act and the FTC's Telemarketing Sales Rule in 2012. A federal court halted the operation in 2013 pending the outcome of court proceedings. A settlement was reached in 2013 and is now final. The order finalizing the settlement calls for a ban on the various individuals from selling healthcare-related products under a variety of different business names, from misrepresenting material facts about any goods or services, or otherwise benefiting from consumers' personal information. The order also calls for a \$125 million judgment that will be "partially suspended" once the defendant operators turn over assets valued at an estimated \$2 million. *The FTC press release is silent on how long this scheme ran before the operators were initially charged. But a judgment of \$125 million, would indicate a lot of people paid a lot of money compared to the defendants turning over assets of under \$2 million, including five luxury cars, some \$500,000 in IRA funds, and other undisclosed assets. Who says crime doesn't pay?*

FTC AMENDS TELEPHONE ORDER MERCHANDISE RULE — The Federal Trade Commission has approved amendments to the FTC's Telephone Order Merchandising Rule, effective December 8, 2014, 90 days after Commissioners' approval. The rule dates back to 1975, and the amendments are intended to reflect changing patterns of mail orders based on Internet technology and changing commercial practices. Comments on amendments go all the way back to 2007. The final draft amendments were published for public comment in April 2014, and are now approved. The first order of business was to change the name of the rule to the Mail, Internet or Telephone Order Rule. Orders must be shipped within 30 days or any advertised period. If a seller cannot comply, it must inform the customer and ask whether the customer wants to cancel the order and receive a refund or will consent to a delay. Refunds should be made within seven days, and sellers may use any means for refunds or refund notices as fast or reliable as first class mail. *Associations and their members selling merchandise by telephone, Internet or mail order should be familiar with the amended rule. For more information see 16 CFR Part 435, Mail or Telephone Merchandise Rule, or go to the FTC's website for an announcement of the amendments.*

TAX LAW DEVELOPMENTS

IRS TURNS DOWN EXEMPT STATUS FOR A “MIND CONTROL” GROUP — The Internal Revenue Service has turned down an exemption application under §501(c)(3) from a group that claims to be protecting others from mind control and involuntary microwave attacks allegedly perpetrated by government agencies, contractors, mental health agencies, organized crime syndicates and various others. The basis for the rejection was the group failed to show it operates “exclusively for charitable and educational purposes,” and instead operates for the benefit of private interests. The group may appeal, said the IRS. The IRS redacted most of the identifying information for the group in the IRS letter of rejection. *Beliefs far from the main stream continue to flourish. A group calling itself the Satanic Temple recently claimed its followers are exempt from states’ abortion informed-consent laws, citing the U.S. Supreme Court’s Burwell v. Hobby Lobby Stores decision earlier this year. That may be tested in court when an employer asserts that position. Hobby Lobby is expected to generate more litigation as others cite their religious beliefs as the basis for objecting to Obamacare and other laws.*

INTELLECTUAL PROPERTY LAW DEVELOPMENTS

WHEN FEDERAL APPELLATE COURTS COLLIDE — Copyright law is often a minefield, and few areas are more uncertain than the doctrine of “fair use,” or determining when one party’s use of something created by another is permitted by federal copyright law. The Copyright Act, as interpreted by the U.S. Supreme Court, uses a four-factor test. But court interpretations of the four factors are all over the map. In recent years, various appellate courts have focused on the doctrine of “transformative use” or taking an original use and transforming it sufficiently to protect the new use from a claim of infringement of the original. But now two appellate courts have collided on that doctrine, with the court in Chicago taking specific exception to the doctrine as interpreted by the influential appellate court in New York in a 2013 decision. The court in Chicago said “transformative use” appears nowhere in the Copyright Act, and courts should rely on the Act’s four stated fair use exceptions. *When circuits collide on a basic interpretation of law, the Supreme Court is more likely to step in. The “transformative issue” doctrine announced by the Supreme Court in 1994 may be ripe for reinterpretation. The potential for copyright infringement has exploded with creation and expansion of the Internet, mobile communications, and access to original works as never before. Copyright law, and especially fair use, remain a minefield for creators and copiers.*

OTHER ISSUES, TRENDS & DEVELOPMENTS

SOONER THAN WE EXPECTED — Remember how we laughed when Amazon talked about delivering parcels by drone? Well, something like it has come to pass. Deutsche Post DHL has announced it will deliver small medical parcels and other supplies by drone (“DHL Parcelcopter”) to an island in the North Sea during emergencies. DHL entered into an arrangement with the German government for an exclusive area for routing from shore to the Island of Juist. The drones are under five kg. (about 11 lbs.) and can carry a load up to 1.2 kg. (about 2.6 lbs.). The system was first tried in 2013 and is ready to go operational. *Some trends here: Amazon and Google want to provide this service but the Federal Aviation Administration has not come out with rules yet. But the FAA is under pressure to do so, not only from the likes of Amazon and Google but from Congress which has imposed a deadline of September 30, 2015, for such rules. Another trend: Deutsche Post was privatized in 1995 and provides express packaging under the DHL brand, one of the largest courier services in the world, operating in more than 200 nations. Will the USPS ever be privatized? Not if Congress has a say. Meanwhile, the USPS is working with UPS on parcel deliveries in some cities so maybe there are opportunities to get around congressional roadblocks.*

“LINK ROT” — ANOTHER NEW TERM TO KEEP IN MIND — Have you come across the term “link rot?” It refers to the loss of connectivity to embedded links in articles, citations, reports and the like. Wikipedia defines link rot as “[A]n informal term for the process by which hyperlinks (either on individual websites or the Internet generally) point to web pages, servers and other resources that have become permanently unavailable.” It also refers to out-of-date web pages. It might be due to an originator changing or terminating a link, or a server being changed or operating under a different domain name, or for a myriad of other technical reasons. The consequence is that many browser searches cite links that turn out to be dead ends and the information cited is no longer available, at least not at the cited location. *All is not lost. There are some repositories for old information, such as one maintained by the University of North Texas in partnership with the U.S. Government Printing Office which provides access to defunct government agencies and commissions; another called the Internet Archive; and the DeadURL.com website, for starters.*

REVISED AAA CONSUMER ARBITRATION RULES EFFECTIVE 09/01/2014 — The American Arbitration Association has significantly revised its consumer arbitration rules. The new rules were effective September 1, 2014, along with a revised fee structure. One significant change is a Consumer Clause Registry which companies seeking to use the AAA consumer arbitration process must use as a condition of AAA consumer arbitration. The company’s consumer arbitration policy must be registered with the AAA, reviewed and found to substantially comply with due process standards according to the AAA’s standards. A company which has not registered its policy in advance must do so as a condition of using AAA arbitration. The new rules also provide significant procedural changes aimed at reducing costs by limiting discovery processes, including utilizing documents-only reviews in many cases, and providing for telephonic motions and hearings, time limitations on when cases will be heard and decided, and a revised set of fees. *This is a brief summary of significant changes. If your association or members utilize the AAA consumer arbitration process or may do so in the future, you are well advised to become thoroughly familiar with the new rules. Do not simply adopt them by reference and assume they will be acceptable. And check existing contracts to determine if they reference the AAA consumer arbitration rules in any way. The revised AAA consumer arbitration rules are available on the AAA website at [https:// www.adr.org.aaa.faces/rules/search rules](https://www.adr.org/aaa/faces/rules/search%20rules).*

H & H DEVELOPMENTS

In October . . .

Jonathan Howe co-presented “Lawyers’ Debate: Analyzing Legal Issues In Meeting Contracts” on Tuesday, October 21 in Tucson at *Destination Arizona*, an incentive conference at the Westin La Paloma.

Naomi Angel presented “New Developments in the World of Intellectual Property” to a national association for graphic and product identification manufacturers at the Omni Hotel in Chicago.

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