



The Addendum

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KEN HOFFMAN JOINS DYSART TAYLOR

Dysart Taylor is pleased to announce that Ken Hoffman joined the firm as Of Counsel in February of 2009. Ken represents clients involved in a variety of aspects of the transportation and logistics industry, including corporate, regulatory and governmental relations matters, both domestic and international. His clients include domestic and foreign multimodal, land transport and container depot interests. He appears before state and federal courts and agencies and in mediation and arbitration proceedings. His practice includes counseling, as well as litigation, in connection with complex cargo loss and damage, contract, hazardous materials, safety compliance, personal injury, and cross-border

transportation matters.

Ken is a member of the Transportation Lawyers Association and served as its president in 2000-2001. He is also a member of the Canadian Transport Lawyers' Association and has twice served on its Board of Directors.



Hoffman

He is admitted to practice before the United States Supreme Court, the United States Court of Appeals for the Tenth Circuit, and the United States District Courts for the Western District of Missouri, the District of Colorado, and the Western, Eastern, Northern, and Southern Districts of Texas. He is licensed to practice law in the states of

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In 1934 a small law firm was founded in downtown Kansas City. The original partners specialized in labor and motor carrier law. The firm grew and expanded its expertise in the transportation area and added expertise in aviation, commercial and insurance litigation, business transactions, estate planning and probate law.

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- Robert W. Cotter
 - Patrick K. McMonigle
 - Martin M. Montemore
 - Kent M. Bevan
 - Lee Burcham Brumitt
 - Stephen J. Bahr
 - Thomas E. Roszak
 - Patrick J. Kaine
 - George P. Coughlin
 - John F. Wilcox, Jr.
 - Don R. Lolli
 - Matthew W. Geary
 - Molly B. Bartalos
 - Michael J. Judy
 - Amanda Pennington Ketchum
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MISSOURI CHANGES FICTITIOUS NAME REGISTRATION STATUTE



Roszak

The State of Missouri has recently enacted a rather sweeping change to the Fictitious Name Registration Statute. Prior to the change, a fictitious name registration was effective indefinitely. The new change limits the duration of a fictitious name registration. Specifically, any fictitious name registration filed on or before August 28, 2004, must be renewed by August 28, 2009. Failure to renew a fictitious name registration by that date will cause the prior registration to expire prohibiting the business from legally

conducting operations in Missouri under that name. Fictitious names registered after August 28, 2004, will expire five years after the date they were filed. All future registrations and renewals will also have an effective duration of 5 years.

The Missouri Secretary of State Office has indicated that they intend to send a notice to all fictitious name holders prior to the expiration date. You should be on the lookout for this notice and if you do not receive it well in advance of the renewal date of August 28, 2009, we recommend that you contact our office for facilitating the renewal.

KANSAS LEGISLATURE CLOSES “ADDITIONAL INSURED” LOOPHOLE

In 2004, the Kansas legislature took on “broad form indemnity” clauses in construction contracts and made such clauses void, unenforceable, and against public policy. Missouri legislated against “broad form indemnity” in public and private construction contracts in 1999.



Brumitt

Such clauses, customarily found in agreements between the owner and the general contractor and between the general and its subcontractors, compel either the general to indemnify the owner or a subcontractor to indemnify the general for the owner’s or general’s own negligence or intentional acts or omissions. As part of the Fairness in Private Construction Contract Act (2005) and Fairness in Public Contract Act (2007), the Kansas legislature expanded its assault

on indemnity clauses and made construction contract provisions which waived, released or extinguished insurance subrogation rights void and unenforceable. Missouri has not invalidated waivers of subrogation. By invalidating broad form indemnity clauses and, later, subrogation waivers in Kansas, the liability of parties to construction contracts was limited to their own negligence and their insurance carriers were free to seek reimbursement for paid claims from the party or parties whose negligence caused the damages.

The expanded view taken by the Kansas laws clearly signaled a legislative intent to level the contractual playing field. However, the legislation did not go far enough. For instance, it was still a common practice to require subcontractors to name generals as “additional insureds” on a subcontractor’s insurance coverage. As evidenced by case law from other jurisdictions

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DYSART TAYLOR ATTORNEYS ELECTED TO LAKC-YLS BOARD OF DIRECTORS

Matthew Geary and Michael Judy have been elected to the Lawyers Association of Kansas City Young Lawyers Section Board of Directors. Matt was elected to serve on the executive committee as treasurer and Michael was elected to a two-year term on the Board of Directors. The mission of LAKC is to provide lawyers opportunities to volunteer in the



community, improve the administration of justice and develop balanced professional lives. LAKC accomplishes this mission through service projects, legal education, social events and forums addressing current issues impacting our judicial system or legal profession.

THE MISSOURI NON-PARTISAN COURT PLAN

Judges play the most important role in our system of justice. Having a strong judiciary is paramount in maintaining faith in the rule of law. Recently, controversy has arisen regarding Missouri's method of selecting judges. Missouri's method, entitled Missouri's Non-Partisan Court Plan or the Missouri Plan, serves as a national model and has been adopted in some form by 34 states since Missouri developed the plan in 1940. The Plan rejects the election of judges in the five largest populated counties in the state. Judges selected under the plan are first nominated by a non-partisan commission that screens the applicants and forwards the three most qualified to the Governor. The Governor then selects one of the three applicants for appointment to the bench. All appointed judges are accountable to voters and must stand for retention in the first general election after service for 12 months.



Cotter

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Clay, Platte and Greene Counties. Numberwise, 143 of Missouri's 363 state judges are selected through the Missouri Plan.

Trial judges in counties that do not follow the Missouri Plan are elected. These judges preside over cases in smaller communities where voters have actual and personal knowledge about the judges running for election from which they can base their votes.

Who Sits on the Commissions?

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There are two levels of commissions, the Appellate Judicial Commission, and the Circuit Judicial Commissions. The Appellate Judicial Commission is made up of one judge from the Supreme Court of Missouri; three lawyers (one from each of the three districts of the Missouri Court of Appeals); and three non-lawyer citizens, also one from each of the districts of the Court of Appeals, appointed by the governor.

The Circuit Judicial Commissions are made up of the chief judge of the Court of Appeals that includes the circuit of the vacant position; two lawyers from that circuit; and two non-lawyer citizens from the circuit appointed, by the governor.

What Judges Are Selected Under the Missouri Plan?

All of Missouri's appellate judges, including judges on the Supreme Court of Missouri, are selected under the merit based Missouri Plan. At the trial level, Circuit and Associate Circuit judges are selected under the Missouri Plan in St. Louis City and County, and Jackson,

An Effective Non-Partisan Plan

The Missouri Plan has produced outstanding Judges. The Plan prevents money from being spent on judicial campaigns including contributions by outside special

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interest groups. Judicial elections are designed to create name recognition and encourage political contributions, which can lead to skepticism about the impartiality of judges and the rulings they subsequently make. The focus of the Missouri Plan is on qualifications. Legislators and the public should continue to be educated about the Missouri Plan and the crucial role it plays in providing a strong and independent judiciary.

OPERATION IRAQI CHILDREN

For several years, Dysart Taylor's client, People to People International (a Missouri not-for-profit organization) has teamed with Operation Iraqi Children, founded in 2004 by Actor Gary Sinese (Forest Gump, Apollo 13, CSI:NY) and Author Laura Hillenbrand (Seabiscuit: An American Legend) to provide school supplies which are distributed by U.S. soldiers directly to Iraqi children. To date, the program has provided more than 250,000 school supply kits, which typically include pencils, paper, scissors, glue and crayons.

Recently, American Airlines, Operation Iraqi Children and People to People International, with the cooperation of the U.S. Department of Defense, transported and provided 10,000 basic school kits and 6,000 pairs of new shoes donated by Crocs' SolesUnited (SM), a humanitarian shoe donation program. The supplies weigh 20 tons and is the

largest single shipment in the history of Operation Iraqi Children.

Joining this humanitarian journey to Iraq are Mary Jean Eisenhower, President and CEO of People to People International, and 75 volunteers and entertainers who will assist in distributing supplies to the children and who will also entertain our U.S. troops. Ms. Eisenhower is the granddaughter of President Dwight D. Eisenhower who established People to People in 1956 to enhance international understanding and friendship through educational, cultural and humanitarian activities.

For more information about People to People International, you may visit www.ptpi.org.

For information about Operation Iraqi Children, you may visit www.operationiraqichildren.org.

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which held that naming a party as an "additional insured" was a legal way to indemnify that party, this practice effectively thwarted the public policy that each contracting party should be responsible for its own negligence. The Kansas legislature recently closed this loophole by amending its anti-indemnity statute to expressly void any provisions in a construction contract in which a party is required to provide liability coverage as an additional insured for another. The statute covers indemnification and "additional insured" provisions entered into after January 1, 2009 and nullifies similar provisions found in motor transportation contracts, dealer agreements, and franchise agreements. Kansas now joins seven other states in enacting some form of legislation closing the "additional insured" loophole. Missouri has not followed suit and its anti-indemnity statute

specifically allows a construction contractor to name another as an "additional insured" on its insurance coverage.

There are some notable exceptions in the new Kansas anti-indemnification statute for indemnification provisions which are part of a settlement agreement, 16-121(d)(3), and for "a separately negotiated provision or provisions whereby the parties mutually agree to a reasonable allocation of risk, if each such provision is: (A) Based on generally accepted industry loss experience; and (B) supported by adequate consideration," 16-121(d)(5). Time will tell if these exceptions will tilt the indemnity playing field again, but for now, the legislature has assured that the field is level.

“Kansas now joins seven other states in enacting some form of legislation closing the “additional insured” loophole.”

KEN HOFFMAN JOINS ... continued from cover

Missouri, Texas and Colorado.

Ken is a member of the International Law Section of the State Bar of Texas, and he has previously served as a member of the Council of the International Law Section. He was a founding director of the U.S.-Mexico Bar Association. Mr. Hoffman speaks Spanish proficiently, and has

assisted clients with projects in Mexico, Canada, South America and Europe.

Ken holds a law degree from the University of Texas School of Law and a Bachelor of Arts degree in Economics from Rice University.

TRANSPORTATION LAWYERS ASSOCIATION

Pat McMonigle, Ken Hoffman and John Wilcox recently attended the 2009 TLA Annual Conference and CTLA Mid-Year meeting in Carlsbad, California. The



Conference concluded Pat's term as Second Vice-President of the Transportation Lawyers Association and marked the beginning of his term as First Vice-President. John was elected to the TLA's Executive Committee. In addition, John was a panel speaker on the topic of document and data retention programs for transportation companies.

The Editor of the Addendum is **Matthew Geary**. Mr. Geary received his B.A. from William Jewell College in 1998 and his J.D. from the University of Kansas in 2001.

The Dysart Taylor Addendum is intended as a report to our clients and friends on legal developments of general interest. In no case does the published material constitute an exhaustive legal study and applicability to a particular situation depends upon investigation of the specific facts and professional advice. COMMERCIAL SOLICITATIONS ARE PERMITTED BY THE MISSOURI RULES OF PROFESSIONAL CONDUCT BUT ARE NEITHER SUBMITTED TO NOR APPROVED BY THE MISSOURI BAR OR THE SUPREME COURT OF MISSOURI. © 2009 Dysart Taylor, P.C., 4420 Madison Avenue, Kansas City, Missouri 64111

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