

## MISCONCEPTIONS ABOUT FDIC INSURANCE

Misconceptions about the nature and extent of deposit insurance from the Federal Deposit Insurance Corporation (FDIC) can be risky. Especially to be avoided is a depositor's false impression that all of his funds in a bank are insured when, in fact, some of the money is over the insurance limits, thus exposing it to loss if the bank fails. Here are some of the most prevalent erroneous beliefs about FDIC deposit insurance:

- **The most any consumer can have insured is \$100,000.** In fact, accounts at different FDIC-insured institutions are separately insured, so the same consumer may qualify for up to \$100,000 at each institution. Furthermore, the same consumer may qualify for more than \$100,000 in coverage at each bank if accounts are owned in different "ownership categories."
- **The FDIC insures any product sold by a bank.** Dispelling this idea is especially important now that banks, directly or through other companies, have branched out into financial products such as stocks, bonds, mutual funds, annuities, and other insurance products. The FDIC insures the more conventional bank products, such as checking accounts and certificates of deposit.
- **Revocable trust accounts are always insured up to \$100,000 for each beneficiary.** Generally, the owner of a revocable trust account is insured up to \$100,000 per beneficiary, but that is only for "qualifying beneficiaries," meaning the depositor's spouse, child, grandchild, parent, or sibling. Portions of the trust payable to any nonqualifying beneficiaries would be insured as the personal funds of the owner, only up to a total of \$100,000, along with any deposit accounts the owner may have alone at the same bank.
- **Depositors could have to wait up to 99 years for their money in insured accounts if a bank fails.** The origins of this falsehood are sketchy, but, in any event, federal law requires payment "as soon as possible" after a bank failure. In the past, this has meant no more than a few days.
- **Changing the order of names or Social Security numbers can increase coverage for joint accounts.** This practice is of no consequence whatsoever. The FDIC will just add each person's share of all joint accounts at the same institution and insure the total up to \$100,000. ■

A lie can travel halfway around the world  
while the truth is putting on its shoes.

— Mark Twain

PRSR STD  
U.S. POSTAGE  
PAID  
Las Vegas, NV  
Permit No. 2470

### HUTCHISON & STEFFEN

ATTORNEYS

A FULL-SERVICE, AV-RATED LAW FIRM  
PECCOLE PROFESSIONAL PARK  
10080 WEST ALTA DRIVE, SUITE 200  
LAS VEGAS, NEVADA 89145  
702-385-2500 • FAX 702-385-2086  
HUTCHLEGAL.COM  
LAS VEGAS • RENO • SALT LAKE CITY • PHOENIX  
©2008 HUTCHISON & STEFFEN

ADMINISTRATIVE LAW  
ALTERNATIVE DISPUTE RESOLUTION  
APPELLATE LITIGATION  
ASSET PROTECTION & BUSINESS PLANNING  
BUSINESS & COMMERCIAL LITIGATION  
CONSTRUCTION LAW  
CORPORATE & TRANSACTIONS  
CREDITOR'S RIGHTS & BANKRUPTCY  
EMPLOYMENT LAW  
ESTATE PLANNING  
FAMILY LAW  
HEALTHCARE PROFESSIONALS ADVOCACY  
INSURANCE DEFENSE  
LANDLORD/TENANT  
PERSONAL INJURY  
REAL ESTATE LAW  
TRUST & PROBATE LITIGATION



Small Business –  
Maintaining a Safe  
Workplace



LLC Owner  
Liable for  
Employment  
Taxes



Vacation Home  
Tax Treatment

HUTCHISON & STEFFEN  
ATTORNEYS

# Legal Matters

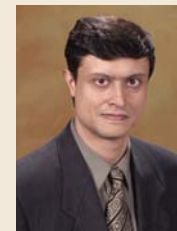
Spring 2008



Joseph R. Ganley

### Partner Joseph R. Ganley Achieves Highest Martindale-Hubbell® Rating

Joseph R. Ganley, recently was awarded the highest possible rating by Martindale-Hubbell®, the legal community's premier peer rating service. The AV rating places Ganley in the top tier of attorneys rated for ethical standards and legal excellence. The AV rating is a significant accomplishment as lawyers are rated by sitting judges and their peers.



L. Kristopher Rath

### Partner L. Kristopher Rath Prevails in Major Internet Patent Infringement Lawsuit

L. Kristopher Rath prevailed in a nearly fifty million-dollar lawsuit involving his client, First Technology, LLC, versus Bodog Entertainment. The lawsuit involved allegations of patent infringement of a method-related patent. The court entered judgment in this case on June 13, 2007. It recently upheld this judgment, despite a challenge from the Bodog entities.



Michael K. Wall

### Partner Michael K. Wall Appointed to State Supreme Court Committee

Michael K. Wall has been named to the Nevada Supreme Court Bench Bar Committee. The Supreme Court established the committee in 2005 to review its rule changes, court processes and internal operating procedures. The committee also develops outreach programs to educate the bar and the public about the court and its work, practices and procedures.



Tanya N. Lewis

### Associate Tanya N. Lewis Joins American Inns of Court

Tanya N. Lewis has been accepted into the Las Vegas Chapter of the American Inns of Court for 2007-2008. The American Inns of Court is a professional organization designed to advance the skills, professionalism and ethics of the legal bench and bar. The chapter includes many of the community's best and most experienced judges and attorneys.

## SMALL BUSINESS – MAINTAINING A SAFE WORKPLACE

In theory, and often in practice, the safety of the workplace is a top priority for any business. But while large companies may have personnel devoted exclusively to the subject, safety is but one of many responsibilities for the owners of small businesses. In some cases, the matter of keeping workers safe slips down the list of priorities. There to make sure the issue is not neglected is the federal Occupational Safety and Health Administration (OSHA).



OSHA has written very detailed standards for maintaining workers' safety. It also has an expansive mandate to enforce those standards and the various provisions of the Occupational Safety and Health Act. Removing dangerous conditions is only common sense from any point of view, including employer-employee relations and a calculation based solely on dollars and cents.

The first step for any small employer is to be informed and educated as to workplace dangers, not all of which may be obvious. OSHA maintains an extensive Web site ([www.osha.gov](http://www.osha.gov)) containing information that is especially pertinent to small businesses, and also includes guidance about specific threats to safety. Insurance companies provide another good source of infor-

mation, since these companies have a vested interest in enhancing workplace safety and thereby minimizing insurance claims.

While exotic threats such as anthrax or Legionnaires' disease capture headlines, the leading causes of serious workplace injuries are more ordinary. They include overexertion, such as excessive lifting, pushing, pulling, holding, carrying, or throwing an object; falls on the same level (as distinguished from falls from a height); and "bodily reaction," which covers injuries from bending, climbing, slipping, or tripping without falling. Regular inspections and repairs, not to mention a vigilant workforce, can head off many such injuries.

Apart from monetary penalties that may follow an OSHA investigation, many billions of dollars each year are paid by employers in medical costs, wage payments, and insurance claims management as a result of workplace injuries. Small businesses get some breaks from OSHA, in the form of smaller monetary penalties and some exemptions from recordkeeping requirements for employers with ten or fewer employees. Still, given their smaller financial reserves, small businesses, in particular, are well advised to live by the truism that an ounce of prevention is worth a pound of cure. ■

## LLC OWNER LIABLE FOR EMPLOYMENT TAXES

Sean was the sole owner of an accounting firm that was set up as a limited liability company (LLC) under state law. When the firm went out of business, it had not paid any payroll taxes for the preceding 18 months. Perhaps thinking that an accounting business, of all things, should have stayed current in its payment of payroll taxes, the IRS went after Sean personally for the \$65,000 in unpaid taxes. A federal court upheld a judgment against him.

The authority of the government to look to the business owner in his personal capacity for satisfaction of the tax liability went back to the formation of the business. Treasury Regulations allow an individual who is the only owner of an LLC to elect to have the business classified as either an "association" or a "sole proprietorship." In the former situation, the entity is treated like a corporation. In the latter case, which had been selected by Sean, the business is not considered an entity separate from the owner.

Sean challenged the tax assessment against him, but to no avail. The court rejected his argument that the Regulation imposing liability on him as an individual was invalid because the legislation itself, the Internal Revenue Code, does not expressly authorize imposing personal liability on the sole owner of an LLC. The Regu-

lations, like many others issued by the Treasury Department, are intended as a means to "fill in the gaps" left by the Internal Revenue Code.

Notwithstanding the ultimately onerous effect on Sean of his earlier selection under the Regulations, they are not arbitrary, capricious, or unreasonable. When he checked the box on a form choosing treatment of his company as a sole proprietorship, he effectively agreed to be liable for the company's debts, but he also had benefited by avoiding the double taxation – once at the corporate level and once as an individual shareholder – that comes with treatment as a corporation. ■



Actual resolution of legal issues depends upon many factors, including variations of fact and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking any action on matters covered by this newsletter. Nothing herein should be construed to create or offer the existence of an attorney-client relationship.



## FOUNDING PARTNER MARK A. HUTCHISON NAMED TO SUPER LAWYERS 2007 LIST

Founding partner Mark A. Hutchison has been named to the 2007 *Mountain States Super Lawyers* list. This announcement was made public this past fall. This national listing identi-

fies the top attorneys in each region based on practice areas. Hutchison was named to the prestigious list for his work in the business litigation practice category. ■

## VACATION HOME TAX TREATMENT

An owner of a second home that is both rented out and put to personal use at different times in any given year should bear in mind the considerable differences in income tax liability that flow from how the two types of uses are allocated. Each year, for tax purposes, the home will be considered as either a residence or rental property, with important differences in the resulting tax calculations. The bottom line is that treatment of the home as rental property is advantageous for the owner, and keeping down the personal use of the property allows it to be so characterized.

If personal use of the second home is less than the greater of 14 days or 10% of rental days, the home will be considered rental property. Flowing from this classification is the ability to deduct repairs, maintenance, insurance, and depreciation costs. In addition, if the expenses exceed the income from the property, the taxpayer can deduct the loss, subject to passive loss rules. Generally, passive losses up to \$25,000



may be deducted if the adjusted gross income (AGI) is under \$100,000. The ability to deduct passive losses declines as the AGI increases, eventually phasing out at an AGI of \$150,000.

If the owner exceeds the personal use threshold for treatment as rental property, the home is treated as a "residence." In that case, the owner can deduct expenses only up to the amount of rental income, and no loss deductions are allowed. In addition, before there can be any deduction for operating expenses, the owner must use up the property's share of mortgage interest and property taxes to offset the rental income, which effectively wastes deductions.

In short, if as an owner of a second home you rent the home for a substantial part of the year, but you also just cannot stay away from the place (that's why it's called a vacation home, isn't it?), enjoy the time away but be prepared for tougher treatment by the IRS. ■