

April 1, 2020 - 10:00am ET
Georgia Manufacturers Alliance - Legal Roundtable

Host: Jason Moss

Guests: Taylor English Duma LLP, Attorneys At Law:

- Russ Dunlap, specialty: Patents and Intellectual property
- Mitzy Hill, specialty: COVID-19 task force, legislation passed, etc. Usually specializes in corporate tech law, ie data privacy, cyber security and tech oriented contracts. Suppliers and vendors included.
- Leeann Jones, specialty: corporate litigator
- Henry Quillian, specialty: Insurance and Corporate Contracts

DISCLAIMER: These notes were taken by one of the participants and have not been approved or endorsed by Taylor English Duma LLP or any of its lawyers, the Georgia Manufacturing Alliance, or Jason Moss. These notes serve as a helpful tool. It is the responsibility of the reader to confirm the facts. Resources can be found at www.taylorenghish.com and www.georgiamanufacturingalliance.com.

Introduction by Jason Moss:

Welcome! The current U.S. Government guidelines of social distancing and staying in place until April 30th has changed the way we do business. GMA is focused on growing relationships digitally.

Introduction of Attorney Mitzy Hill by Attorney Russ Dunlap.

Attorney Mitzy Hill:

Let's look at some statistics and predictions:

	<u>30 days ago:</u>	<u>Today:</u>
New York City:	1 case	40,000+ cases; 1200 deaths
Georgia State:	none	4,000 cases

1. The last day Atlanta worked in an office was Friday, March 13, which is approx 2.5 weeks ago.
2. Economists predict that about 40 Million will be out of work by April 30th.
3. Contract disputes (rent, supply chain, services etc) will increase
4. There already is an increase in cyber security hacking
5. Insurance disputes will increase
6. Issues of employee layoffs, furlows and salary cuts
7. Employee related issues will arise, such as how much privacy are employees entitled to.
Can we ask health questions or let them know a coworker has been sick or tested positive?

Facts and Useful information:

- Track virus laws on our website, www.taylorenglish.com
- Since March 15, the States and local government have acted timely. 31 States have issued shelter-in-place, schools are online until 4/30 and very likely for the rest of this school year, the Democratic National Convention has been postponed.
- The U.S. Government response was slower and more disjointed
- Congress has engaged

COVID-19 Aid Packages passed by Congress:

- **Family First Coronavirus Response Act:** gave workers immediate new rights such as more paid leave related to the Corona Virus issues. For employers with less than 500 employees.

- **CARES Act** (Coronavirus Aid, Relief, and Economic Security) passed on 3/27/20:

- 2.2 Trillion Dollar Stimulus Bill
- 900 pages

Intended to get cash or liquidity to american families, small and large business and builds on worker's rights, here's how:

1. Most americans will a check in the mail
2. \$350 billion lending and grant program for small businesses
 - a. EIDL (Economic Industry Disaster Loan), an SBA loan, is available right now for \$2,000,000 max per business. This is a regular loan, not forgivable, but its new feature is a \$10,000 advance emergency grant that you do not have to repay. You can roll one loan into this one.
 - b. PPP (Paycheck Protection Program) loan for small businesses. See Taylor English website for application. PPP is a new loan but not available yet. The U.S. Treasure Dept will have an application available on April 3rd. See also Taylor English website.
 - i. This is an emergency infusion of cash for payroll, rent, mortgage interest etc for eight weeks.
 - ii. If you can show a steady payroll then your loan will be forgiven. You have to stay up/running until the economy moves again. Forgiveness rules are not available yet, but PR has to be steady by headcount (not job), ie 100 employees before crises and 100 employees until 6/30/20.
 - iii. You must show documentation as to how you used the funds, with PR, benefits, tax and utility statements.
 - iv. Amount forgiven is not taxable income and the max loan is 2.5 times the average monthly payroll compared to before COVID-19.
3. \$500 billion lending for other businesses, but no rules yet.
4. New tax deferrals and tax breaks. Approximately 10-12 different tax breaks.
 - a. Alternative minimum tax credit: deduct business interest expenses up to 50% of adjusted taxable income.
 - b. Paid leave, advance refund credit due to Employer

- c. Net operating losses, write off in full instead of 80%, and carry back 5 years.

Now widely available but maybe not with COVID-19 crisis:

- No employee retention credit with PPP
- Deferral of employer payroll taxes, medicare and social security tax: split ½ in 2021 and ½ in 2022 - not available if you do PPP

Notes:

1. You can apply for both loans (EIDL & PPP) but you cannot use the same expenses for both loans. You need to do your math homework whether you want either loan or tax breaks.
2. Only 25% of non-payroll expenses will be forgivable under PPP, so rather do that under EIDL
3. Look at both loans, and apply for both - at least EIDL and \$10,000 emergency. Get Payroll from last year so you can calculate your average. Go to your preferred banker to apply, not the SBA. Most importantly, keep good records on how you spend the money and talk to your accountant. You may also want to look at your existing loans and whether you can reduce or prepay it to avoid problems with those.

Introduction of Attorney LeeAnn Jones by Attorney Russ Dunlap.

Attorney LeeAnn Jones

Business Disruption today:

Businesses who are doing well right now are effectively managing the disputes on a proactive basis.

Regarding Legal Liabilities:

- Disputes are now around supply chain:
 - a. Vendors are unable to deliver raw materials to you so you cannot perform under your existing supplier agreement, which is a significant issue.
 - b. Suppliers SE Asia: this may be a new normal, lag in delivery time
 - c. Third party liability - failure of equipment or customer. Most are handled in Courts, a Lawsuit enforces a contract. Today's new reality: Courts have hit the pause button. Legal relief is not necessarily going to be fast, and it will move even slower now. Jury trials not to resume for a while, for obvious health reasons, and may not happen 6 mos - year.
 - Suggestions on what to do:
 - a. Be proactive.
 1. Identify potential performance issues that may arise. What is the status of our performance?
 2. Look at your supply agreements.
 3. Look at your vendor agreements.
- Triage these risks:
- How can we resolve issues with communication, first.
 - If your vendor or you are unable to fulfill a contract:

- a. what are your legal rights
 - b. what are ramifications
 - c. how can you litigate or private dispute with resolution or arbitration?
- b. Look at all vendor relationships and identify those business partners that may be at financial risk and may be in a bankrupt scenario. This will affect you so be proactive.
- c. "What if". For instance, do you provide masks for your workers or, how do you make the workplace safe so you can keep up & running. What if we issue non-compliant masks, are there liabilities for us? Suggestion: Follow CDC guidelines! Your best guide is get accurate info and make the best decision for your employees.

Liabilities will be part of this crisis, so get Attorney Henry Quillian to help you. The question is whether insurance can help your business regarding financial responsibility.

Introducing Attorney Henry Quillian:

Attorney Henry Quillian heads up the construction group at Taylor English Duma which consists of six people.

Construction covers almost every aspect of commercial law in the USA.

Insurance coverage:

- a. Hopefully you have a strong broker who has a general knowledge of what they sold you.
- b. A little known fact: your insurance policy has coverage that may have nothing to do with the name of the policy. Check every policy for hidden coverage unrelated to the type of policy.
- c. Most policies are a base policy plus bells/whistles, which make all the difference.

Insurance is a State based undertaking. Each State regulates insurance differently. Keep in mind though that every insurance contract is a contract! If the insurance company messed up with ambiguous words, the insured may come out ahead! Best advice: get a lawyer to check out the policy, all the endorsements etc. Insurance companies sometimes don't even know all their policies.

Property policies:

Right now a lot have a Virus and Bacteria inclusion - some do not. NJ: proposed bill to wipe out that inclusion. The law of the State where the insurance policy was issued makes a difference. For instance, if you have a multi-location business, the policy may be controlled by a State other than your HQ address.

Claims that may be filed because of the COVID-19 crisis:

1. Event: check for event cancellation insurance. Provider and participant could be covered.
2. Property policy: business interruption, would be good right now.
 - It generally covers direct physical loss/damage of the covered property. A virus does not qualify. However, you may see a claim such as: if a building is uninhabitable because of virus = damage.
 - Side issues: if a civic authority (think national guard or police) prohibits use of property. "Gold Property Extension Endorsement" means that if something happens

- within a two miles radius of your building and this prevents access to your building, you are covered. For instance, if civic authorities blocked access to your building because of a fire two miles away, and thus you cannot get in = business interruption!
3. Workers Comp insurance and laws: largely for recovery for employee injuries while at work, or for a subcontractor who makes a claim.

Notes:

Best you can do right now is to collect all your insurance policies and read them in its entirety! Do not rely on title of policy. There will be lots of third party claims - get your policies and read them!

Closing comments by Jason Moss:

GMA is an association with 120+ events in 2019 and lots of attendees. The Georgia Association for Association Executives of which Jason is a member, cancelled a lot of national events. All policies have exclusions for communicable diseases - nobody planned for that, are not covered. It is a major mess right now.

In conclusion, litigation should be your last resort. Jason asked for everyone to remember: "do unto others as you would have them do unto you".

Question from participant:

- Has there been any recent litigation re interpretation of Act of God, ie Force Majeure?
Attorney Jones: we have not seen them resolved but expect a lot of people will use that clause to get out of a contract.
- Note from participant: Manufacturers have protection under CARES Act. Section 3103.

Resources:

www.taylorenghish.com - corona virus link - new ppp application.
www.georgiamanufacturingalliance.com