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# MANA Hosts Third Attorney Forum



*Left to right, standing: Dan Beederman, Florentino Ramirez, Matt Benson, Stephen Valentine, John Anderson, Joe Miller, Charlie Melville, Tom Kammerait and Hank Bergson, NEMRA. Seated: Abe Brustein, John Schoonover, Victoria Valentine, John Riccione, Barbara Kramer, Adam Glazer and Gerald Newman.*

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**H**ot on the heels of commission protection legislation that was enacted in the State of Connecticut, MANA convened its third annual Attorney Forum in Chicago late this summer. Predictably, the subject of such legislation occupied a prominent position on the agenda. But that was just for starters. Also covered by a gathering of 13 attorneys eminently familiar with rep concerns were:

- The pros and cons of having an industry standard contract vs. individual, custom contracts tailored to individual situations.
- Nexus — individual states' never-ending hunt for new sources of revenue — with manufacturers' representatives fixed firmly in their sights.
- Unique legal cases where the attorneys assisted their rep clients during the past year.

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#### Commission Protection

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Currently there are 37 states that have some form of commission protection statute on the books. The consensus is that some of the existing pieces of legislation are better than others. The attorneys present during the legal forum agreed that there are some laws that remain unconstitutional and others that possess virtually no teeth due to their lack of punitive damages. A panel of attorneys explored:

- Which states currently have language that should be upgraded, if possible.
- What the chances are of getting the attention of the state legislatures in various states.
- Of the remaining states that do not have laws on the books, which should be targeted for future lobbying efforts, such as those so effective in Florida, North Carolina, and most recently Connecticut?
- How can funds for future lobbying efforts be raised?

***“Hundreds of dollars spent consulting up front with an attorney can ultimately save tens of thousands of dollars later following termination.”***

It was noted that one of the legal firms present, Von Briesen & Roper, Milwaukee, Wisconsin, annually updates the commission protection acts found in the member area of the MANA web site ([www.MANAonline.org](http://www.MANAonline.org)) showing recent case outcomes and changes in law.

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#### Standard Contracts

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Following last year's legal forum, work began on the formulation of a revised MANA contract. Subsequent to that effort, it became clear that a “one-size-fits-all” contract wasn't necessarily the best approach. It became evident that precise, customized contract language for each major partnership between reps and their principals may have to be crafted based upon the principles in a contract guideline. Even contracts drawn by industry-specific associations for their members may be insufficient for all members of that association. Added to the mix is the consideration that many reps see attorneys — even those specifically suited to work with reps — as an unnecessary cost when negotiating for a new line. Participants in the legal forum agreed that “hundreds of dollars spent consulting up front with an attorney can ultimately save tens of thousands of dollars later following termination.”

Other contract points discussed by the attorneys included:

- Can a standard contract be drawn that will apply to all relationships? Most relationships?
- If so, should the contract be a MANA standard contract, drawn exclusively by MANA attorneys and members, or should all the industry-specific rep associations come together to create a document that will carry more weight across all industries?
- What are the most important clauses that should be included in any contract or guideline?
- Can an all-industry menu of guideline clauses be created that will satisfy most situations?
- Is there a method whereby rep association mem-

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***“In the opinion of MANA, there are only a couple of dozen attorneys in the United States and Canada who truly understand the rep-principal partnership.”***

### **Attorneys Participating in MANA’s Third Legal Forum**

- ▶ John Anderson, Law Offices of John H. Anderson, San Clemente, California
- ▶ Dan Beederman, Schoenberg, Fisher, Newman & Rosenberg, Ltd., Chicago, Illinois
- ▶ Matt Benson, Dunbar, Harder & Benson, LLP, Houston, Texas
- ▶ Abe Brustein, DiMonte & Lizak, Park Ridge, Illinois
- ▶ Adam Glazer, Schoenberg, Fisher, Newman & Rosenberg, Ltd., Chicago, Illinois
- ▶ Tom Kammerait, Von Briesen & Roper, Milwaukee, Wisconsin
- ▶ Barbara Kramer, Kramer & Kramer, LLP, Ann Arbor, Michigan
- ▶ Charlie Melville, Strauss & Troy, Cincinnati, Ohio
- ▶ Gerald Newman, Schoenberg, Fisher, Newman & Rosenberg, Ltd., Chicago, Illinois
- ▶ Florentino Ramirez, Ramirez & Associates, Dallas, Texas
- ▶ John Schoonover, Wileman & Schoonover, LLC, Cleveland, Ohio
- ▶ John Riccone, Aronberg, Goldgehn, Davis & Garmisa, Chicago, Illinois
- ▶ Stephen Valentine, Valentine & Assocs., West Bloomfield, Michigan
- ▶ Victoria Valentine, Valentine & Assocs., West Bloomfield, Michigan

bers can be encouraged to consult with an attorney prior to signing any major contract?

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#### **Nexus**

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A number of individual states’ taxing authorities remain on the hunt for new sources of revenue. This search includes both state income taxes and sales and use taxes. The various taxing authorities are increasingly active in coming after reps and their principals and claiming tax avoidance. A panel of attorneys discussed actions that reps and their manufacturers can and should take when approached by one of these taxing authorities.

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#### **Shared Body of Knowledge**

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At the conclusion of the forum, association executives who were in attendance were asked for their thoughts on the session. Joe Miller, president/CEO of MANA, noted that “the effectiveness of the session exceeded my expectations. At first, I felt that the forum would be a great way for MANA staff to stay up to date on current legal happenings regarding the rep-principal relationship. It was also hoped that the attorneys could better serve our members if they shared a body of common knowledge concerning contracts, litigation, employer/employee issues, international law, etc. However, what we’ve found over the three years that we’ve sponsored the forum is that the group of attorneys has bonded and are assisting each other with cases, using each other for co-counsel in far-away cities. In addition, they’re trading referrals and information all to the benefit of MANA members. I wish our members could sit in on one of these meetings to learn firsthand what MANA is really doing for them.”

Miller continued that another important outgrowth of working so closely with the forum attorneys is that “In the opinion of MANA, there are only a couple of dozen attorneys in the United States and Canada who truly understand the rep-principal partnership. We’ve always said that it is better to engage one of these lawyers when you have a serious problem, even if they are not in your home city, and even if you have a good general business attorney. Better yet, it’s become clear to us that it’s critical for reps to contact one of these attorneys before signing a contract. A few dollars invested on the front end may very well save a rep \$100,000 on the back end.”

Miller noted that it remains amazing to him that

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relatively few MANA members seek the assistance of counsel before entering into a contractual relationship with a new principal. "One of the attorneys we know," he explains, "will review a contract and comment for as little as \$250. Another lawyer present at the attorney's forum will charge \$1,000, but also will conduct an hour-long interview with the rep in order to craft language that will protect the client down the road. Then he will issue a written memo stating his objections and alternate language that the rep can use to negotiate with the prospective principal. This memo can be used effectively in the rep's negotiation with the manufacturer. While some may say this is expensive, my reaction is it's not if you plan to be with the principal 5-10 years and generate \$50,000 or more annually in commissions."

From his perspective as a first-time attendee at the forum, NEMRA President Hank Bergson observed that "MANA obviously assembled a cadre of attorneys that was well-versed in not only what reps are, but how they operate and what they face on a daily basis. With that knowledge of the type of legal issues reps encounter, they have extensive client and trial

experience and an expertise in negotiating that gave form and definition to the conversations that were conducted. While I may have had some selfish reasons for representing NEMRA at the meeting, specifically to network with the attorneys present, any expectations I may have had for the meeting were exceeded by the actual experience. At the end of the day, I had to kick myself for not attending the forum in the past. It was a fascinating experience, and I won't miss similar meetings in the future.

And finally, Helen Degli-Angeli, vice president of MANA, concurred that the meeting was very beneficial and "if any points were driven home they were:

- The importance of reps creating and maintaining proper documentation for their relations with principals.
- Working with an attorney should not be considered an expense for a rep. Rather, the rep should view it as an investment in the future of his agency."

The legal forum was moderated by MANA's Miller. In addition to Bergson and Degli-Angeli, also in attendance were Ray Hall of ERA and Susannah Hart of MRERF. □

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One Spectrum Pointe, Suite 150, Lake Forest, CA 92630-2283 • Phone: (949) 859-4040 • Toll-free: (877) 626-2776 • Fax: (949) 855-2973  
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