



DOUMAR LAW GROUP NEWSLETTER

A Periodic Publication Covering Legal Issues of General Interest

George R.A. Doumar, PLLC

2000 N. 14th Street, Suite 210 Arlington, VA 22201

Tel: 703-243-3737. E-mail: gdoumar@doumarlawgroup.com

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There Is No Such Thing As A Perfect Contract

Our clients regularly have to decide the degree to which they want to document many types of transactions. Forms are almost always imperfect and clunky, with many gaps and irrelevant provisions, but they're usually better than nothing. A contract drafted (or revised) by a lawyer in our office will be better, but because we don't know the business like our client, client input is essential for a better product. Examples of different scenarios can be helpful. Comprehensive agreements are the best from a legal perspective, but also can be expensive, lead to extensive negotiations, require a lot of client input and comment, and still not address many circumstances (so-called "Martian landing" scenarios as well as normal unanticipated issues). The amount of detail included is a business decision of the client. The more money is at stake, the more comprehensive the contract should be. In the past year we have seen six-figure transactions, based on a handshake or one paragraph piece of paper, only after money has changed hands. That is too late.

Independent Contractors v. Employees - - Again

A regular dilemma raised by our clients is how to treat workers. The IRS employs a multi-factor balancing test. Regular, full-time staff generally must be paid as W2 employees, for whom taxes are withheld (and FICA taxes paid). Penalties can apply if this is not done. If benefits are offered to some employees, such benefits typically must be offered to all. Part-time commission or piecemeal workers who function independently can sometimes be treated as 1099 contractors, for whom taxes need not be withheld. Some benefits need not be offered to such persons. But 1099's usually can work other jobs, or even engage in some competitive business, unless they sign a contract that restricts their activities.

ERISA and Insurance

Nobody likes to pay money and insurance companies are no exception. For any employer-based insurance in particular, the insurance companies have wide latitude under ERISA to deny claims, with limited judicial review. For an insured making a claim, do everything you can to paper the file in support of claims.