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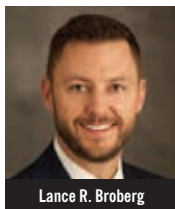
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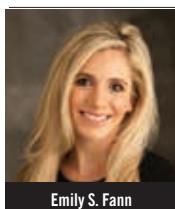
PROFESSIONAL & PERSONAL ACHIEVEMENT

LANCE R. BROBERG has been elected to serve on the Executive Committee of the Arizona Foundation for Legal Services & Education (a.k.a. the Arizona Bar Foundation). The State Bar of Arizona created the Foundation as a separate 501(c)(3) organization in 1978, charging it with the mission of preparing Arizona's youth for civic responsibility and promoting access to justice for all Arizonans. Lance and his wife are Next Generation Fellows for the Arizona Bar Foundation. Lance also has served and continues to serve on the Board of Directors for the organization.



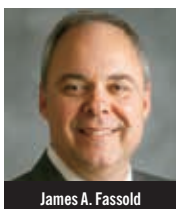
Lance R. Broberg

ASHLEY L. CASE was elected by the Maricopa County Bar Association to serve on its Board of Directors. Ashley is the immediate past chair of the Association's Estate Planning, Probate, and Trust Section and a Diversity & Inclusion Committee member. Ashley is also newly certified as an Accredited Estate Planner® (AEP) designee by the National Association of Estate Planners & Councils (NAEPC). The AEP designation is a graduate-level, multi-disciplinary specialization in estate planning, obtained in addition to already-recognized professional credentials within the various disciplines of estate planning. Additionally, Ashley has co-authored an article for the *NAEPC Journal of Estate & Tax Planning* titled, "CCA 202152018: Lessons for a Multi-Disciplinary, Collaborative Approach to Planning." The article explores the recent Chief Counsel Advice's impact on grantor retained annuity trusts and provides suggestions of possible planning implications.



Emily S. Fann

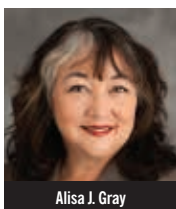
EMILY S. FANN was admitted into the Texas State Bar in October 2021.



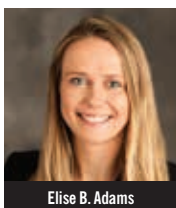
James A. Fassold

JAMES A. FASSOLD gave a seminar titled, "How Much Can I Charge?" Representing the Lay Fiduciary," for the State Bar of Arizona in September 2021. He continues to serve as a member of the Executive Council of the State Bar Probate and Trust Section.

ALISA J. GRAY was a co-presenter at the Feb. 28, 2022 State Bar of Arizona Labor and Employment Section monthly meeting for a program entitled, "Wellbeing for Lawyers 2022 – Cultivating Skills for Resiliency and Stress Management."



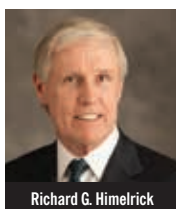
Alisa J. Gray



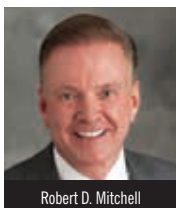
Elise B. Adams

ALISA J. GRAY and **ELISE B. ADAMS** led a breakout session for the Arizona Fiduciaries Association's 2022 Spring Conference in April, titled, "Trust Administration: Traps for the Unwary." The Arizona Fiduciaries Association's members include public and private fiduciaries from around Arizona, along with associate and affiliate members.

RICHARD G. HIMELRICK and **ROBERT D. MITCHELL** co-authored the Sixth Edition of *Arizona Securities Fraud Liability: Civil Liability, Defenses, and Remedies*. The new edition provides a comprehensive analysis of civil liability, defenses, and remedies under Arizona's securities laws. Coverage extends not only to the Arizona Securities Act but to securities claims under the Consumer Fraud Act, the Investment Management Act, and common-law theories of intentional, negligent, and

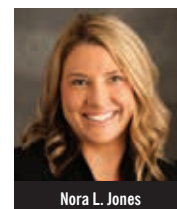


Richard G. Himelrick

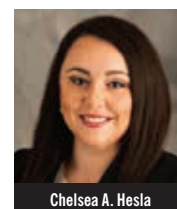


Robert D. Mitchell

fiduciary fraud. This publication continues to be the leading authority on state securities law liability in Arizona and has been quoted by legal practitioners.



Nora L. Jones



Chelsea A. Hesla

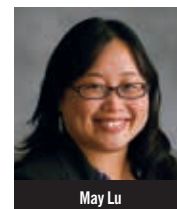
NORA L. JONES and **CHELSEA A. HESLA** were honored to present to the Maricopa County Bar Association on the topic of "Probate Basics" on Feb. 18, 2022. The course provided attendees with a step-by-step approach to the probate process in Arizona and included practical tips for mitigating conflict and avoiding contested probates in order to ensure efficient estate administration.

CHRISTOPHER R. KAUP, who chairs the firm's Commercial Bankruptcy & Creditor Rights Group, recently received the North Star award from the Grand Canyon Council of Boy Scouts of America. The North Star is one of the Council's highest honors, recognizing his service and dedication to Scouting in Arizona. Chris was also elected President of the Penn & Wharton Club of Arizona. Additionally, Chris was selected to be a member of the Board of Directors of the Arizona Chapter of the Private Directors Association.



Christopher R. Kaup

MAY LU was one of seven female attorney panelists who spoke at ASU Law School's Women in Transactional Law Panel on Sept. 29, 2021. May was also a panelist with three female managing partners of the Phoenix offices of international law firms who spoke at ASU Law School's Recognizing Women in Leadership Panel on March



May Lu

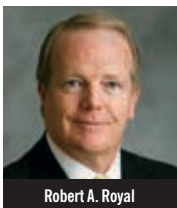
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3, 2022. Additionally, on Feb. 16, 2022, she participated in ASU Barrett Honors College's Inn of Court, providing advice to undergraduates interested in attending law school.

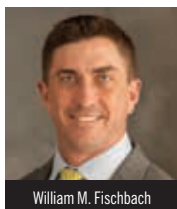


JAMES P. O'SULLIVAN recently presented on leadership to the State Bar of Arizona Leadership Institute. Jim is the current Chairperson of the Bar Leadership Institute,

a year-long intensive training program developing leaders to serve within the legal profession and the broader community.



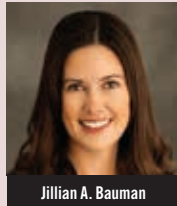
ROBERT A. ROYAL presented a webinar entitled, "Legal Liability Protection for Directors and LLC Managers," to ExecHQ, an association of national C-level experienced persons.



In order to better serve the business dispute and litigation needs of their clients, shareholders **ROBERT A. ROYAL, ROBERT D. MITCHELL, LANCE R. BROBERG** and

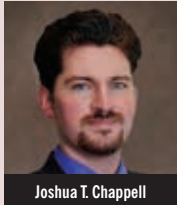
WILLIAM M. FISCHBACH have combined their departments' resources to market themselves collectively for large companies' litigation needs. The group's over 100 years of experience includes more than 200 trials and litigating nearly all types of commercial disputes. Their team consists of lawyers who are accountants and have business degrees, as well as lawyers who have honed their skills serving as clerks to judges at the Arizona Court of Appeals and with other highly-qualified commercial litigators. While each of the shareholders will continue to handle most client matters by department, relying upon the personal attorney-client relationships they have developed over many years, they are collaborating and will expand that collaboration in larger litigation matters, where their combined breadth of experience and resources offers unique capabilities not found at many law firms.

NEW FACES



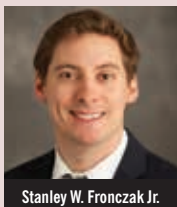
JILLIAN A. BAUMAN joined the firm in October 2021. Jillian helps guide businesses and their owners with venture entity formation, owner agreements, the sale and purchase of businesses/mergers and acquisitions, succession and exit planning strategies, and general business planning. Jillian received her law

degree from the Sandra Day O'Connor College of Law at Arizona State University and was named a Willard H. Pedrick Scholar for academic excellence. While in law school, she served as the Managing Editor of the *Arizona State Sports and Entertainment Law Journal* and the Journal published her note: "Authors vs. Audible: A Fight For Their Rights." She also participated in the Innovation Advancement Clinic assisting small businesses with the legal complexities faced in early-stage ventures, and proudly volunteered over 415 hours toward pro bono work. Prior to law school, Jillian received degrees in business management and global politics from Arizona State University and graduated from Barrett Honors College.



JOSHUA T. CHAPPELL joined the firm in February 2022. Prior to joining Tiffany & Bosco, Joshua had practiced for 6 years in the areas of Real Estate Law, Foreclosure Law, Bankruptcy Law, Litigation, and Appellate Law. Joshua graduated *cum laude* from the University of New Mexico with a Bachelor's degree in Psychology

and Sociology with a concentration in Pre-Law in December 2011. He went on to graduate *cum laude* from UNM School of Law, receiving his Juris Doctor in May 2015. Joshua has successfully handled hundreds of litigated real estate and commercial matters, including dozens of appeals to the New Mexico Court of Appeals and New Mexico Supreme Court. In his spare time, Joshua enjoys spending time with friends and family, traveling, reading, and studying languages.



STANLEY W. FRONCZAK JR. joined the firm in January 2021. Stan's practice focuses on civil litigation, including banking, financial services, foreclosure, and real estate matters. Stan graduated from the University of Notre Dame in 2014 with Bachelor's degrees in Political Science and Chinese (Mandarin) and a minor in Constitutional Studies. While at Notre Dame, Stan studied Chinese (Mandarin) abroad at Peking University in Beijing, China. He received his Juris Doctor from Notre Dame Law School in 2017. In his spare time, Stan enjoys being an avid fan of Chicago sports teams, traveling, boxing, and forever arguing that Michael Jordan is the greatest basketball player ever.

ANNOUNCEMENTS

RECOGNITION

'THE BEST' AROUND

The Best Lawyers in America is a listing of outstanding attorneys who have attained a high degree of peer recognition and professional achievement. The 2022 listing recognized: Jodi R. Bohr (Commercial Litigation; Litigation-Labor and Employment), Mark S. Bosco (Litigation-Banking and Finance; Mortgage Banking Foreclosure Law), David L. Case (Litigation-Trusts and Estates; Tax Law; Trusts and Estates), Enslen Crowe (Bankruptcy and Credit Debtor Rights/Insolvency and Reorganization Law), James A. Fassold (Litigation-Trusts and Estates), Alisa J. Gray (Litigation-Trusts and Estates), Richard G. Himelrick (Litigation-Securities), John A. Hink (Real Estate Law), Christopher R. Kaup (Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law; Litigation-Bankruptcy), May Lu (Corporate Law), Robert D. Mitchell (Commercial Litigation; Litigation-Securities), Diane Murray (Litigation-Bankruptcy), James P. O'Sullivan (Closely Held Companies and Family Businesses Law), Robert A. Royal (Business Organizations [including LLCs and Partnerships]), Anthony R. Smith (Mortgage Banking Foreclosure Law), Michael E. Tiffany (Real Estate Law), and Donald M. Wright (Bankruptcy and Credit Debtor Rights/Insolvency and Reorganization Law; Litigation-Bankruptcy).

The Best Lawyers in America listed the following attorneys as Ones to Watch in 2022: Zachary R. Cormier (Commercial Litigation), Carl Emmons (Litigation-Banking and Finance), Chelsea A. Hesla (Real Estate Law), and Elizabeth Loeftgren (Real Estate Law).

GOOD WORKS

Staff Committee Update

During the past fall and winter, Tiffany & Bosco embraced several opportunities to give back to the community and help those in need. Through those opportunities, the firm maintained its commitment to strengthening the community in the Valley. All attorneys and staff of the firm participated and helped uphold Tiffany & Bosco's reputation as a leader throughout the Valley. Specifically, the firm participated in a clothing drive, a candy drive, and the delivery of holiday gifts to families with children in the Phoenix Children's Hospital.



ANIMALS IN NEED

In September, Tiffany & Bosco participated in a clothing drive for the Arizona Humane Society. The Arizona Humane Society has several thrift stores that rely on donations of gently used clothes, electronics, and furniture to generate revenue used to help the Society's pets.

SWEET HONORS

In October, Tiffany & Bosco also participated in Operation Gratitude. Operation Gratitude is a nationwide nonprofit organization that provides opportunities to honor our military, veterans, and first responders through hands-on volunteerism, compiling care packages to send to service members and veterans. Tiffany & Bosco collected more than 50 pounds of candy to

donate to Operation Gratitude. That candy was then distributed to deployed troops, local military units, veterans, and first responders.

GIVING JOY

In November and December, Tiffany & Bosco participated in the Jaydie Lynn King Foundation's Adopt-A-Family program. The Jaydie Lynn King

Foundation is an organization committed to raising money and supporting programs that benefit children.

Each holiday season, the Jaydie Lynn King Foundation partners with the Phoenix Children's Hospital and helps deliver gifts, food, household necessities, and other items to families with a child who is receiving treatment at the Center for Cancer and Blood Disorders. Tiffany & Bosco collected more than 247 gifts and other items for delivery, with the goal of bringing a bit of a joy to families in need during the holiday season.



Northern Exposure

Tiffany & Bosco opens brick-and-mortar office in Northville, Michigan

BY KEVIN P. NELSON

In February 2022, during my fifteenth year with the firm, I had the honor of opening Tiffany & Bosco, P.A.'s first brick-and-mortar office in Michigan. Located in a small suburb of Detroit, the office is a testament to the unique culture that has arisen from the four pillars of our firm.

The first pillar is an insistence on treating everyone with respect. It is an unwritten but strictly enforced "no jerk" policy that makes the practice of law less stressful for our attorneys, staff, and clients. We can and do disagree on particular issues from time to time, but we always listen to, respect, and consider one another's views.

The second pillar is a prohibition against imposing costs on one another without reaching a consensus. There are costs that we all share so that we can meet our needs (e.g., office space and utilities), but no attorney is forced to pay for another's discretionary expenses or wants (e.g., season tickets or social club dues).

The third pillar is our source policy, which credits our attorneys for developing business for themselves and for others at the firm. There are no minimum requirements, and we do not vote people out for failing to develop business. Instead, we encourage our attorneys to get involved in groups that reflect and strengthen their affiliations, associations, or communities, and we support their involvement as a firm. The attorneys who develop business often receive an objective award that naturally flows from their involvement.

The fourth and final pillar is that our shareholder

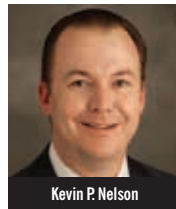
compensation is largely self-determined. In other words, we do not have a committee that dictates our compensation and, as a result, our relationships are not tainted by disagreements over money.

These four pillars support a strong platform from which our firm grew to what it is today: a firm of more than 70 attorneys across seven states and nine offices. And it is also these four pillars that enabled me to open the office in Michigan.

I first pitched the idea of my move to Michigan in March 2019. To keep it brief, I saw an opportunity for my family, and after discussion, we each felt compelled to move. Because of the firm's four pillars, my unique idea was not dismissed outright, and any concerns partners had regarding additional costs were easily addressed. After the initial shock of the idea wore off, the firm rallied behind our move in July 2019—four very short months later.

With the support of my firm, a lot of hard work, some quiet time created by the pandemic, and the supportive community of attorneys in Michigan, I began learning the intricacies of Michigan law and procedure, obtained my license to practice law in Michigan, and have now opened the Michigan office. As I build the firm's presence in Michigan, I continue to maintain an active and growing practice in Arizona and New Mexico and travel back to the firm's Phoenix office regularly.

While I always appreciated my firm's unique culture, the past two years have taught me even more about the strength of that culture and deepened my appreciation for it. Anything but a traditional firm, Tiffany & Bosco continues to grow with and as a result of the platform created by our four pillars.



Kevin P. Nelson

THE GREATEST SHOW ON GRASS

Tiffany & Bosco returns to Open for an exciting week of golf

The Waste Management Phoenix Open returned earlier this year, again opening the TPC Scottsdale's lush, green fairways to throngs of people looking to have fun and enjoy a nice week outside under the sun. As in most years, the weather cooperated and allowed for perfect golf conditions, showcasing what Phoenix has to offer to a worldwide audience. As usual, Tiffany & Bosco watched the action from its skybox near the 18th green, witnessing an exciting tournament which included champion Scottie Scheffler making a comeback to eventually win a three-hole,



sudden-death playoff over favorite Patrick Cantlay. But the excitement was not limited to the 18th hole, as memorable

hole-in-ones on the famous 16th hole saw early spring showers and lots of noise amidst celebration from all fans in the area.

Most importantly, through sponsoring the golf tournament yet again this year, Tiffany & Bosco contributed to the millions of dollars in charitable giving that the tournament has provided to Arizona charities. As a consistent sponsor and contributor, Tiffany & Bosco is proud of the benefit it is able to provide to the community and looks forward to continuing its involvement with the tournament in the future.

Sign of the Times



Arizona's housing shortage crisis, NIMBYism, and zoning

BY WILLIAM E. LALLY

The alarm bells have been going off for years in Arizona. Every article, symposium, and report discussing the real estate market in Arizona has highlighted the housing shortage crisis, but the solution is a complicated balance. The crisis is the result of many factors, including record-low new home construction and resale housing inventory,



William E. Lally

skyrocketing material costs, labor shortages, and record population growth (not to mention a worldwide pandemic, a disruption in the supply chain, and a war in Europe). All of those

factors have contributed to huge shortages in available housing options and, therefore, massive increases in housing prices.

Local experts agree that even if we get a handle on the labor and materials shortages, the process for approving and delivering more new housing to the market gets harder every day. In order to provide more housing units to the market, it all starts at your local city or county planning department. Arizona law delegates the rezoning of property to the local jurisdictions and those cities and counties have to follow a public outreach and hearing process, which means public notice to surrounding property owners and stakeholders. As social media has broadened its use and reach in society, it has been a tool to shed more light on the local zoning process. When COVID-19 protocols went into place, most cities turned to online zoning meetings, making public interaction as easy as the click of a button. Gone are the days that a neighbor would have to get in the car and drive down to an evening city council zoning hearing to voice his or her opinion. Now, with the click of a button, anyone can participate in the public zoning hearing process.

Some argue that a more open and accessible government is a good thing. But the flip side

of the coin is that public debate is no longer limited to those impacted residents who learned about a rezoning case by living in the affected area. Increasingly, the general public is commenting on cases outside its own neighborhoods. More recently, these problems have been made even worse with the rise of the “Not In My Backyard” (or NIMBY) attitude. This notion, which refers to neighbors of proposed new development projects stating they support growth and development just as long as it is not near them, has never been more rampant than it is now. Related activism has generated a new political problem for those tasked with approving projects. And the pandemic, which has kept everyone in their homes and on their computers with easy access to social media platforms on which they can voice their frustrations, has likely exacerbated both the political atmosphere and the challenges associated with overcoming the housing crisis in Arizona.

Political leaders at the local level are tasked with weighing public opinion when approving new zoning cases to allow new development, and they are often faced with much more volume. What may seem like good policy for a city or the region can get drowned out by those wanting the housing crisis to be solved elsewhere.

Finally, those trying to solve the housing crisis are taking notice. This year, the Arizona Legislature debated a bill, sponsored by the housing industry, that would remove local control from local jurisdictions to approve housing and allow certain properties to bypass local approvals for zoning and permits—effectively eliminating any public involvement. That bill is on hold for now but sure to return in some form or another.

Zoning law is a very unique blend of the advocacy of fair application of real estate laws and the art of compromise in a political environment. As Arizona remains one of the hottest housing markets in the country, the solution to the crisis will continue to be front and center, and zoning professionals will continue to play a critical role.

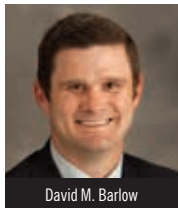
REAL ESTATE

Creditors Take Note

Changes to Arizona's homestead statutes raise exemptions, authorize involuntary home sales

BY DAVID M. BARLOW

Effective Jan. 1, 2022, recent amendments to Arizona's homestead statutes significantly impact judgment creditors' rights and ability to



David M. Barlow

enforce monetary judgments.¹

Homestead statutes help protect a home from creditors and were designed to maintain physical shelter and provide financial protection to homeowners. The origins of homestead statutes date back to the 1800s. When Texas joined the Union in 1845, its state constitution was the first to provide for homestead protections. Now, homestead statutes are heralded for their positive impact on free enterprise, with some form of homestead protection available in all but two states.²

Arizona's homestead exemption has a similarly long history and dates back to the state's days as a territory. The purpose of Arizona's homestead statutes is to protect Arizona homeowners from the forced sale of

their homes. With limited exceptions, the statutes protect homeowners from creditors and shield their primary residences from being used to satisfy debts. Arizona residents do not have to declare or otherwise take any action to claim this exemption. The statutes typically take effect when individuals are experiencing financial distress caused by mounting debts or a significant monetary judgment entered against them. A few of the

recent amendments to the statutes are particularly significant to a judgment creditor.

First, the recent amendments to A.R.S. § 33-1101 *et seq.* increase the amount of the homestead exemption from \$150,000 to \$250,000 and add new statutory language governing the determination of whether there is equity in a homestead.³ An amendment to A.R.S. 33-1103(A)(4) expressly authorizes an





involuntary judicial sale provided that excess equity exists beyond the \$250,000 homestead amount. Such an involuntary sale implicates several statutory requirements that must be strictly complied with by the judgment creditor, but if a judgment debtor's interest in the homestead property exceeds \$250,000 plus any consensual liens with priority over the relevant judgment lien, then such a forced sale should be considered. Particularly

given the recent rise in property values, judgment creditors may wish to reevaluate whether such an involuntary judicial sale could be used to satisfy their judgments.

Additionally, the amended statutes, and specifically A.R.S. § 33-964, provide that a money judgment properly recorded becomes a lien "on all real property of the judgment debtor in the county in which the judgment is recorded," including the judgment debtor's homestead property. Under the prior statutes and case law, a judgment lien did not attach to a judgment debtor's homestead. A judgment creditor had to wait until a voluntary sale resulted in excess proceeds above the homestead amount or force a judicial execution sale. Now, a judgment creditor can protect its priority by properly recording its judgment.

Moreover, the amended A.R.S. § 33-964(B)⁴ was added to the judgment lien statutes to codify the existing right of judgment creditors to be paid from proceeds following a judgment debtor's voluntary sale of his or her homestead. Under the old statutory regime, a judgment creditor's lien did not attach to the homestead and therefore did not automatically attach to sale proceeds, so when a judgment debtor voluntarily sold the homestead and excess proceeds existed, the judgment creditor was not automatically entitled to them. Now, aside from recording its judgment, a judgment creditor does not have to take any additional steps for its judgment lien to attach to any proceeds in excess of the \$250,000 homestead exemption amount and any other liens with higher priority.

Finally, the amendments increase judgment creditors' rights with respect to refinancing proceeds. Now, a judgment creditor must be paid in full from refinancing proceeds before the judgment debtor receives any of

EXEMPTION CHANGES

If you need assistance with navigating the recent homestead statute revisions, please contact the attorneys at Tiffany & Bosco, P.A.

those proceeds. Accordingly, A.R.S. § 33-1101(C) was amended to specify that "the homestead exemption does not attach to the person's interest in identifiable cash proceeds from refinancing the homestead property." This protects judgment creditors from judgment debtors who might otherwise attempt to pull excess equity from their homesteads via refinancing and shield those proceeds from the reach of judgment creditors.

Although homestead exemptions can often be frustrating to creditors, these recent statutory amendments demonstrate that they are here to stay. At first glance, the increased exemption amount of \$250,000 may add to Arizona creditors' frustration. But creditors can take solace in the fact that Arizona is not one of the several states with an unlimited homestead exemption. Further, the recent amendments provide judgment creditors with an opportunity to evaluate additional remedies that may now be available for enforcing their rights under past judgments.

¹ This article does not discuss the transitional rules related to the implementation of the amendments, which are set forth in A.R.S. § 33-964(G).

² Only Pennsylvania and New Jersey currently do not offer any statutory or constitutional homestead protection.

³ A.R.S. § 33-1101(D).

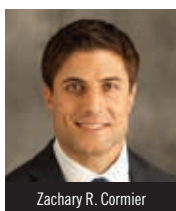
⁴ A.R.S. § 33-964(B) also gives title companies the ability to record a partial release of a judgment creditor's lien under particular circumstances, but that amendment warrants its own separate article.

EMPLOYMENT LAW



PAULUS RUSYANTO/DREAMSTIME

Ninth Circuit largely upholds California's prohibition of mandatory arbitration within prospective employment agreements



Zachary R. Cormier

**BY ZACHARY R. CORMIER
& ROBERT D. MITCHELL**

Companies that employ California employees should take note of recent legal developments affecting an employer's ability to include mandatory arbitration provisions within an employment agreement, as well as potential exposure stemming from the inclusion of such provisions.

California Assembly Bill 51, signed into law in late 2019, added Section 432.6 to the California Labor Code. Section 432.6(a) provides that:

A person shall not, as a condition of employment, continued employment, or the receipt of any employment-related benefit, require any applicant for employment or any employee to waive any right, forum, or procedure for a violation of any provision of

the California Fair Employment and Housing Act [or the California Labor Code] ... including the right to file and pursue a civil action or a complaint with, or otherwise notify, any state agency, other public prosecutor, law enforcement agency, or any court or other governmental entity of any alleged violation.

Section 432.6(b) further prohibits an employer from refusing to hire a prospective employee because she or he will not agree to an arbitration provision. Violation of Section 432.6 constitutes an "unlawful employment practice" that provides the basis for civil liability, as well as for civil and criminal penalties.¹ Importantly, Section 432.6(h) provides that Section 432.6 applies only to employment agreements entered into on or after Jan. 1, 2020.

Section 432.6 was set to take effect on Jan. 1, 2020. However, a lawsuit filed in the U.S. District Court for the Eastern District of California in December of 2019 resulted in a preliminary injunction regarding enforcement of Section 432.6 on the basis that it was preempted by the Federal Arbitration Act (FAA).² The Ninth U.S.

Circuit Court of Appeals largely overturned that holding in September of 2021.

In *Chamber of Com. of United States v. Bonta*, the Ninth Circuit held in a 2-1 opinion that the FAA does not preempt Section 432.6's regulation of employer conduct prior to the execution of an employment agreement containing a mandatory arbitration provision.³ Accordingly, the Ninth Circuit held that Section 432.6's potential civil and criminal consequences would be invalid if applied to the situation where a prospective employee actually executed an employment agreement containing an arbitration provision.⁴ Thus, an employee would not have a claim against the employer under Section 432.6 to invalidate an executed employment agreement.⁵ However, if a prospective employee does not execute the proposed employment agreement, Section 432.6 and its consequences validly apply to the employer

who proposed and attempted to require the inclusion of an arbitration provision.⁶ As such, under the Ninth Circuit's holding in *Bonta*, employers that continue to require arbitration provisions in employment agreements with prospective employees risk potential exposure under Section 432.6 in any circumstance where a prospective employee refuses to sign the agreement.⁷

¹ Cal. Gov. Code § 12953; Cal. Labor Code § 433 (making a violation of the California Labor Code a criminal misdemeanor).

² *Chamber of Com. of United States v. Becerra*, 438 F. Supp. 3d 1078, 1097-100, 1108 (E.D. Cal. 2020).

³ 13 F. 4th 766, 780-81 (Ninth Cir. 2021).

⁴ *Id.*; see also *Bonta*, 13 F. 4th at 790 (Ikuta, J.) (dissenting).

⁵⁻⁷ See *id.*

MANAGING LIABILITY?

If you need assistance navigating employer liability issues, or other employment law matters, please contact the attorneys at Tiffany & Bosco, P.A.

All attorneys are licensed in their home state, as well as: ¹Alabama; ²Arizona; ³California; ⁴Colorado; ⁵Idaho; ⁶Nevada; ⁷New Mexico; ⁸Texas; ⁹Utah; ¹⁰Georgia; ¹¹Washington

ALABAMA

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