



FROM OZARK TO ARIZONA

CORPORATE TRANSPARENCY ACT HAS
CHANGES LOOMING FOR SMALL BUSINESSES

PAGE 6

5 Cultural Experience
*Associates praise
collaboration, advancement
opportunities at firm*

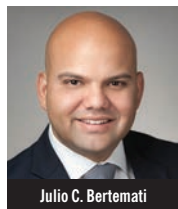
8 Towering Feat
*T&B Attorney Conquers Mt.
Kilimanjaro to Support Arizona
Burn Center at Valleywise Hospital*

10 Time's Up
*New rules outlaw arbitration of sexual
assault and harassment claims in
pre-dispute employee agreements*

ANNOUNCEMENTS

PROFESSIONAL & PERSONAL ACHIEVEMENT

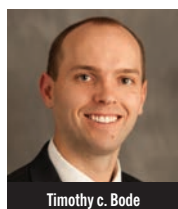
JULIO C. BERTEMATI was named to the Florida Legal Elite in the Banking & Financial Practice Area by *Florida Trend Magazine* for the second consecutive year.



Julio C. Bertemati

Florida Trend invited all in-state members of the Florida Bar to name attorneys who they highly regard or would recommend to others. The honor encompasses the state's top 1.4% of licensed and practicing attorneys selected by their peers.

TIMOTHY C. BODE presented two sessions at a CLE entitled "Advanced Insurance Bad Faith In Arizona" on May 5, 2022. Tim's sessions included information on bad faith damages, policy interpretation, and



Timothy C. Bode

tactics to avoid common claimant pitfalls, and were titled "Bad Faith and Punitive Damages: Tactics to Maximize/Minimize" and "Issues with Multiple Claimants or Defendants."

JODI R. BOHR was selected as one of *Phoenix Magazine's* first ever Top Lawyers (Employment Law). This past year, Jodi received recognition

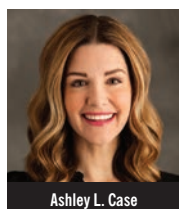


Jodi R. Bohr

from *AzBusiness* as "AzBusiness Leaders 2022 (Employment & Labor Relations)." Jodi presented at the State Bar of Arizona's Business

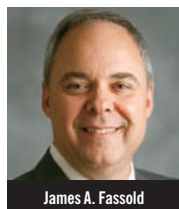
Law Track at the 30th CLE by the Sea held at the Hotel del Coronado on July 8. She presented on the importance of small business owners retaining employment law attorneys before the first employee is hired to ensure compliance with the vast employment laws that apply upon the hiring of the first employee.

The State of Arizona Board of Legal Specialization has recognized **ASHLEY L. CASE** as a Certified Specialist in Estate and Trust law, a distinguished honor reserved for lawyers who have demonstrated exceptional knowledge, skills, and proficiency in a specialized area of law. Ashley is currently one of only 45 attorneys in Arizona with this certification.



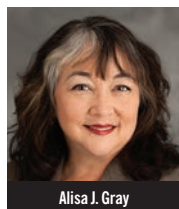
Ashley L. Case

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.



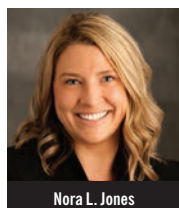
James A. Fassold

ALISA J. GRAY presented a 30-minute chair yoga presentation for the Ohio State Bar Association's Lawyer Wellness Initiative in May. Alisa also presented at the Maricopa County Bar Association's Annual Paralegal Conference on October 21. The presentation was entitled "The Paralegal's Path to Wellbeing" and was part of the MCBA Paralegal Section's 20th Anniversary.



Alisa J. Gray

NORA L. JONES chaired and served as a panelist for the April 5, 2022 State Bar of Arizona CLE entitled "Aging as a Masterpiece: Helping Families Navigate and Reframe Conversations about Late Life Transitions." This roundtable discussion engaged a panel of experts in the areas of law affecting aging individuals to answer questions and provide practical tips about helping elderly loved ones navigate their later



Nora L. Jones

years with grace and confidence, from healthcare and financial decisions, to obtaining needed care and transitioning to different needs-based living environments.

MAY LU co-presented a webinar on "Letters of Intent: Avoiding Legal Pitfalls" for Strafford in July. She presented on business formation and entities at the State Bar of Arizona's Annual Solo Practitioner & Small Firm Institute in September and gave a seminar titled "A Little Knowledge (About Arizona LLCs and Corporations) Goes a Long Way" for the 2022 Maricopa County Bar Association's Paralegal Conference. In addition, May was voted as a *Phoenix Magazine* Top Lawyer for 2022 (Civil Law Transactional and Corporate Counsel).

JAMES P. O'SULLIVAN and **MAY LU** co-chaired and presented the State Bar of Arizona's Business Law Track at the 30th CLE by the Sea held at the Hotel del Coronado. Jim and May also presented on a webinar panel titled "Diversity and Inclusion: Trends and Equality in the Legal Profession" through The Knowledge Group on June 14, 2022. The webinar discussed the promotion of diversity and inclusion (D&I) in the legal profession and shared actionable insights and recommendations to improve D&I practices.

JAMES P. O'SULLIVAN was a panelist for "Progressing Beyond Bias and Seats at the Table: Diverse Voices, Better Results," the plenary continuing education program at the State Bar of Arizona's Annual Convention on June 29, 2022. On September 30, 2022, Jim moderated a discussion among leaders in the legal community about inspiring leadership experiences at "Meeting Your Moments – Insights on Leadership and Professionalism for Lawyers in Challenging Times" for the State Bar of Arizona. Jim was also voted as a *Phoenix Magazine* Top Lawyer for 2022 (Corporate Counsel).

ANNOUNCEMENTS

GOOD WORKS

Putting the 'Fun' in Fundraising

Trivia contest, casual Fridays raise funds for local charities

Tiffany & Bosco has a long and proud history of supporting charitable organizations throughout the Valley. Through that tradition, the firm is able to accomplish its goal of contributing toward the betterment of the community. The first quarter of 2022 provided yet another opportunity for Tiffany & Bosco's attorneys and staff to honor this commitment by raising money for Phoenix Rescue Mission and the Boys & Girls Club of Greater Scottsdale. Everyone at the firm looks forward to future opportunities to support organizations throughout the Valley and hopes the firm's unwavering commitment to service inspires others as well.

PHOENIX RESCUE MISSION TRIVIA CONTEST FUNDRAISER

In May, Tiffany & Bosco raised money for the Phoenix Rescue Mission by encouraging donations through a week-long trivia contest. Participants were encouraged to make a minimum donation and answer daily trivia questions for the chance to win prizes. All money raised went to support Phoenix Rescue Mission.

Phoenix Rescue Mission is a non-profit organization that provides assistance to individuals struggling with homelessness, addiction, and trauma. The organization operates several facilities focused on the stated goal of transforming lives and providing assistance to those in need. During the summer of 2022, Phoenix Rescue Mission launched its 10th Code: Red Campaign, providing essential resources to homeless individuals dealing with the Valley's daunting heat. The money donated by Tiffany & Bosco helped support Phoenix Rescue Mission and its critical programs.

CASUAL FRIDAY FOR BOYS & GIRLS CLUB OF GREATER SCOTTSDALE

In July, Tiffany & Bosco continued its support of the Boys & Girls Club of Greater Scottsdale by raising money for the Back to School Kid Spree. Attorneys and staff were encouraged to make donations in support of the Back to School Kid Spree in exchange for the ability to wear blue jeans on Fridays during July. The Back to School Kid Spree helps provide children with clothes for their return to school. These new clothes help the children feel more confident and prepared to face the looming challenges presented at the beginning of every school year.

RECOGNITION

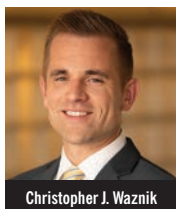
T&B STILL 'THE BEST'

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:

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), Enslin Crowe (Bankruptcy and Credit Debtor Rights/Insolvency and Reorganization Law), Sarah K. Deutsch (Commercial Litigation), 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), Jacob Kiser (Litigation – Real Estate), May Lu (Corporate Law), Robert D. Mitchell (Commercial Litigation; Litigation-Securities), Diane Murray (Litigation-Bankruptcy), Kevin P. Nelson (Litigation – Construction), 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: Chelsea A. Hesla (Real Estate Law), Elizabeth Loeffgren (Real Estate Law), and Mina C. O'Boyle (Real Estate Law; Litigation-Real Estate).

Meet Our Newest Shareholder



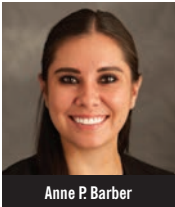
Christopher J. Waznik

CHRISTOPHER J. WAZNIK was promoted to Shareholder at Tiffany & Bosco in July 2022. Chris concentrates his practice on complex commercial litigation, with the majority of his clients in the business, securities, and real estate sectors. Using sharp advocacy and creative analysis, Chris thrives in challenging situations and focuses on securing the best possible results for his clients. Chris graduated *cum laude* from the Sandra Day O'Connor College of Law, served on the Arizona State Law Journal, and had the privilege of completing two federal clerkships.

ANNOUNCEMENTS

NEW FACES

Tiffany & Bosco Welcomes Six New Attorneys

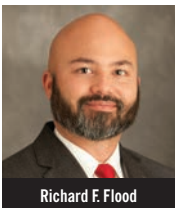


Anne P. Barber

ANNE P. BARBER joined the firm in September 2022. She practices primarily in the area of commercial litigation, including business

disputes, and financial, securities, and real estate litigation. Anne is a proud member of the Navajo Nation Indian community. Her prior legal practice includes insurance defense litigation and construction defect disputes. Anne received two undergraduate degrees in Political Science and Psychology from Arizona State University. Anne received her Juris Doctor in 2019 from Lewis & Clark Law School in Portland, Oregon. Outside of the firm, Anne enjoys Pilates, traveling, and spending time with family and friends.

RICHARD F. FLOOD joined the firm in May 2022. He practices primarily in the areas of business, construction, insurance bad faith, and personal injury litigation. Prior to joining the firm, Richard had practiced law in Phoenix, the San Francisco Bay Area, and Chicago. Richard received his J.D. from the University of California, Davis School of Law in May 2012. While



Richard F. Flood

in law school, he completed a judicial externship for the Honorable Jeremy Fogel of the U.S. District Court for the Northern District of California. Prior to law school, Richard received a B.S. in business management from Louisiana State University. In his spare time, Richard enjoys physical fitness and outdoor activities.

CM MATTHEW LUK joined the firm in September 2022. He focuses his practice in the areas of commercial and financial litigation, as well as bankruptcy. Matthew earned bachelor's degrees in economics and politics from New York University and his law degree

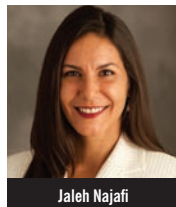
from Georgetown University Law Center, where he was a Student Fellow of the Institute of International Economic Law. During his years in Washington, D.C., he interned for the U.S. Securities



CM Matthew Luk

and Exchange Commission and the FDIC. After graduation from law school, Matthew worked as an associate investigator for the Financial Industry Regulatory Authority. Matthew then returned to his roots in Arizona to serve for two years as a law clerk for the Honorable Scott H. Gan of the U.S. Bankruptcy Court for the District of Arizona in Tucson.

JALEH NAJAFI joined the firm in June 2022. Jaleh's practice concentrates on commercial and civil litigation and appellate litigation. She received both her undergraduate and law degrees from Arizona State University and is admitted to practice in the state and federal courts of Arizona. Jaleh has experience in both civil and criminal law as a former Assistant Federal Public Defender and as a civil appellate

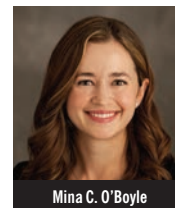


Jaleh Najafi

litigator in governmental liability cases. In addition, for over a decade, Jaleh advised the Arizona appellate courts in hundreds of cases and drafted proposed case resolutions in a wide range of legal disputes involving contracts, real estate, zoning, elections, parental severance, and appeals from administrative agencies. For fun, Jaleh enjoys live music, photography, and gardening.

MINA C. O'BOYLE joined the firm in August 2022. Mina's practice focuses on all aspects of real estate, including acquisitions, dispositions, financing, leasing, and litigation. Mina advises real estate companies, borrowers, lenders, and developers on all aspects of

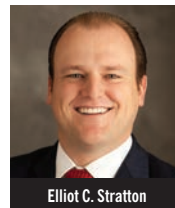
complex commercial real estate transactions. She also represents property owners, title insurance companies and their insureds, escrow agents, lenders, developers, brokers, real estate agents, and property managers in various stages of negotiations, litigation, alternative dispute resolution, and administrative



Mina C. O'Boyle

matters, including demand letters, complaints, answers, motion practice, discovery, hearings, depositions, appellate briefs, and mediations. She has been recognized several times by *Super Lawyers* (2018-2022) and *The Best Lawyers in America* Ones to Watch (2021-2022). In her free time, she enjoys traveling and spending time outside with her husband, daughters, and dogs.

ELLIOT C. STRATTON joined the firm in July 2022. Elliot's practice focuses on civil and business litigation. He earned his J.D. from Southern Illinois University School of Law, and his MBA, *magna cum laude*, from Southern Illinois University School of Business. After law school, Elliot served as a staff attorney and a law clerk to the Honorable



Elliot C. Stratton

Vance E. Salter at the Miami Third District Court of Appeal, and as a law clerk to the Honorable Ryan T. Holte at the U.S. Court of Federal

Claims in Washington, D.C. Determined to return to Arizona, Elliot started his litigation career at the Arizona Attorney General's Office in the Criminal Division. The State of Arizona unanimously nominated Elliot as the Arizona Prosecuting Attorneys' Advisory Council's rising prosecutor of the year. Elliot graduated from the W.P. Carey School of Business at Arizona State University, earning a B.A. in Business Law and an International Business Certificate.

GET TO KNOW US

Cultural Experience

Associates praise collaboration, advancement opportunities at firm

BY WILLIAM M. FISCHBACH,
Co-Chair of Associate Committee

For the past two years, the job market for new associate attorneys has become exceptionally competitive. With newer attorneys having greater choices as to where they wish to work, showcasing firm culture has taken on a key role in recruiting associates to firms of all sizes. Since its inception over 50 years ago as a small law office with two attorneys, to its current configuration of over 80 attorneys in seven states, Tiffany & Bosco has prided itself on its ability to continually attract some of the best and brightest new talent



William M. Fischbach

in the legal profession with its culture. But do not just take my word for it—take it from our associates in their own words.

When asked what drew her to Tiffany & Bosco, estate planning associate Claudia Grajeda said, “The reputation of Tiffany & Bosco speaks for itself. The firm delivers unparalleled representation from attorneys who have more than experience and talent—they have personality. This, to me, is what made me gravitate towards an opportunity here.”

Elliot Stratton, a commercial litigation associate, shared similar sentiments. “Tiffany & Bosco represented the pinnacle of the premier business law firms in Arizona. Wanting to work with the top business legal minds led me to apply. Additionally, the firm’s unique structure with individual departments was very appealing, and the opportunity for eventually growing my own department solidified my choice.”

Sometimes, even attorneys on another side of a dispute become new associates

at Tiffany & Bosco. Litigation associate Anne Barber is among them. At her prior firm, she represented a client in a litigation dispute involving two Tiffany & Bosco attorneys with whom she now works. “I was super impressed by the both of them and thought their work product and writing were excellent and beyond thorough. They were also very professional and nice.”

When asked to describe the firm’s culture overall, Nicholas Beatty, also a commercial litigation associate, noted, “Many firms advertise their ‘culture’ as a selling point. But I believe Tiffany & Bosco practices what it preaches. Between the attorney retreat and the Waste Management Open, Tiffany & Bosco is regularly scheduling opportunities for associates—and other attorneys—to interact with their colleagues and their loved ones. I have friends at many firms throughout the Valley, and I truly believe that no other firm prioritizes getting to know its associates outside of work like ours.”

Vanessa Heim, a probate litigator, said, “Collaborative best describes our firm culture. The structure in place allows for and encourages a particular focus within our chosen practice areas, while also permitting us access to other highly-skilled colleagues in areas that might occasionally come up in our matters. The goal of collaboration is further promoted by the economic system, which ensures fair compensation for both the referring and responsible attorney.”

Regina Habermas, a bankruptcy and real estate associate in the Nevada office, noted how the firm’s strong “commitment to customer service and the teamwork required to satisfy our clients’ expectations” help the various offices work cohesively as a team despite being located in several states. She observed, “I have worked for firms with teams spread across multiple offices in the past and have seen people use the physical separation and lack of personal interaction as an excuse to blame others for missteps and a failure to communicate. At Tiffany & Bosco, I have found that the distance and options for communication do not cause such issues.”

What makes the culture at Tiffany & Bosco different from other firms? Michael Wrapp, who practices in the area of real estate transactions, had this to say: “Tiffany & Bosco’s entrepreneurial and meritocratic culture results in a number of advantages that may not be present at most other firms. The firm’s transparent, objective financial model and compensation system provide attorneys with a solid foundation on which to build their practices, while minimizing any disagreements over money and promoting a collegial and supportive work environment.”

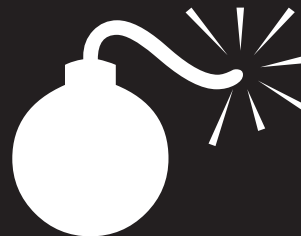
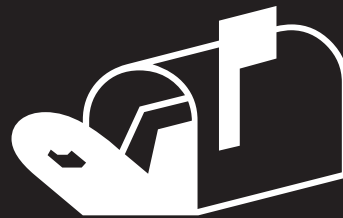
Emily Fann, also a real estate transactional associate, said, “Because we are able to start ‘building our book’ from day 1 of being an associate, you are able to figure out your own personality as a lawyer. In other firms, associates don’t traditionally get to have that relationship with clients, so their lawyer personality is whatever their senior partner tells them it is.”

In today’s market, it is not enough for firms to simply recruit great talent; they have to work to keep it by maintaining a culture that makes associates feel valued. Therefore, Tiffany & Bosco will always maintain a keen focus on promoting a positive and inclusive culture for all who join the firm’s team.



BUSINESS LAW

CORPORATE TRANSPARENCY ACT BRINGS LOOMING CHANGES FOR SMALL BUSINESSES



FROM OZARK TO ARIZONA

BY JILLIAN A. BAUMAN, MAY LU & JAMES P. O'SULLIVAN

Even if you may not be forming shell companies similar to those used by Marty Byrde, the fictional character in the popular Netflix series *Ozark*, you could still be impacted by the reporting requirements in the federal Corporate Transparency Act (CTA).

The goal of the CTA, a product of rare congressional bipartisanship, is to create a national database targeting “shell” companies and individuals involved in money laundering, funding terrorism, and similar illegal activities. The 23 exemptions listed in the CTA and discussed in the regulations do not provide a blanket exemption for legitimate, private, for-profit mom-and-pop, closely-held, and family-owned

businesses. Therefore, those entities will soon be burdened with compiling and maintaining sensitive identifying information about themselves, their owners, their attorneys and other professional advisors, as well as others within their organizations to provide to the U.S. Treasury Department’s Financial Crimes Enforcement Network (FinCen).

The final regulations, which were issued on September 29, 2022 but will take effect on January 1, 2024, provide supplemental guidance on the scope of those reporting requirements. As companies prepare to comply with the CTA and the final regulations, business owners should be aware of the following:

WHO MUST FILE A “BENEFICIAL OWNERSHIP INFORMATION REPORT”?

Each “reporting company” that does not fall within one of the CTA’s 23 exemptions must file a “beneficial ownership information report” with FinCen. Reporting companies include all corporations, limited liability companies, or other similar entities that file formation documents with a secretary of state or similar office, such as the Arizona Corporation Commission. Reporting companies do not include common law general partnerships and sole proprietorships.

One of the notable exemptions is a privately-held reporting company that meets all of the following requirements: (a) has an operating presence at a physical office within the United States; (b) employs more than 20 full-time employees; and (c) files federal income tax returns for the prior year showing more than \$5,000,000 in gross domestic receipts or sales. Apparently, reporting companies filing as part of a consolidated tax return can aggregate gross domestic receipts or sales. Because the amount of gross domestic receipts can fluctuate, the analysis of whether a business qualifies under this exemption will need to be completed with each tax return filing.

WHEN MUST A REPORTING COMPANY FILE THE REPORT?

Reporting companies in existence as of January 1, 2024 have until January 1, 2025 to file their initial reports, whereas reporting companies formed after January 1, 2024 have only 30 calendar days from their formation to file their initial reports. Any change in the information reported concerning the reporting company or its beneficial owners must be updated with FinCen within 30 calendar days. Failure to comply can lead to civil and criminal penalties for the reporting company and those who direct or control the filing of these reports.

WHAT INFORMATION MUST BE REPORTED?

In addition to disclosing typical entity information such as its name and street address of the principal place of business, a reporting company must disclose identifying information for each individual who is a beneficial owner or a company applicant. This information includes the person’s full legal name, date of birth, current address, a picture ID, and either a FinCen identifier or a unique identifying number from an acceptable identification document such as a passport number or a driver’s license number. Currently, this breadth of personal information is not typically collected by the entity or the company applicant as

part of the formation process or on an ongoing basis.

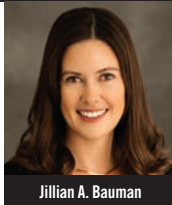
A “beneficial owner” is any individual who, directly or indirectly, exercises substantial control over the entity or owns or controls at least 25% percent of the ownership interests of the entity. An individual exercises “substantial control” if such individual serves as a senior officer, has authority to appoint or remove any senior officer or a majority of the board of directors (or similar body), directs, determines, or has substantial influence over important decisions made by the entity, or has any other form of substantial control over the entity. “Ownership interests” is broadly defined to include voting and profits interests (including settlors, trustees, and beneficiaries of a trust in certain situations), as well as other interests that are convertible into equity interests such as options and warrants.

A “company applicant” includes the individual who directly files the formation document to create a reporting company and the individual who is primarily responsible for directing or controlling such filing if more than one individual is involved in the filing. For example, a company applicant would likely include the paralegal who submits the Articles of Organization to the Arizona Corporation Commission for filing as well as the supervising attorney who directed the paralegal to make the submission. Please note that entities formed before January 1, 2024 are not required to report information about their company applicants.



James P. O'Sullivan

May Lu




Jillian A. Bauman

NEXT STEPS

The sweeping scope of the CTA and the final regulations are complex and confusing. We are here to help you navigate these new requirements as they arise in your current and future business endeavors. Although the CTA will not be effective until January 1, 2024, business owners should take the following steps now in anticipation of CTA compliance requirements:

- > Identify who are beneficial owners or company applicants of the reporting companies;
- > Start obtaining the required identification information from those persons; and
- > Review governing documents and internal policies to determine whether amendments are needed that will obligate the owners and management to take all necessary steps to comply with the CTA. This includes requiring that beneficial owners: (i) provide the information for FinCen on an annual basis and provide notifications of any interim changes; (ii) appoint someone in management with the primary obligation to monitor compliance; and (iii) implement procedures to ensure timely filing of the reports and updates, and to protect any sensitive information from unintended disclosure.

GET TO KNOW US



GOOD WORKS

*T&B attorney
conquers
Mt. Kilimanjaro
to support
Arizona Burn
Center at
Valleywise
Hospital*

Towering Feat

BY ASHLEY L. CASE

Its distinctive flat top looms effortlessly against the blue sky on a clear day. But that day, our first day of hiking, we found ourselves under a canopy of clouds with no view of where we were heading. As we posed for pictures at the mountain's base, I suddenly realized what was happening, as if for the first time. I was about to hike Mt. Kilimanjaro. The efforts that led to us standing there had taken so long—initially planned for 2020—that it was

difficult to fathom that the moment had finally arrived. Our team of eager hikers gathered in a circle just beyond the Machame Gate and heard our guide speak the words that made everything suddenly real, “We’re here. Welcome.”

For me, the hike was a thing of beauty—a checkmark on a bucket list and an incredible adventure. But for the Elite Eight—Christin Lipinski, Isabella McCune, Isla Cook, Hailey Boyce, Christian and Stephanie Nielson, Jason Nelson, and Susie Fawcett—reaching the top of

the mountain meant much more. For them, it symbolized what they had each previously experienced as burn survivors—endurance and forbearance in the face of the seemingly impossible. Our team, Team Courage Rising, was formed to raise funds for the Arizona Burn Center at Valleywise Hospital. But perhaps more importantly, by reaching the summit, the Elite Eight would showcase that through personal fortitude and with the help of others, you can accomplish anything when you “Rise Together.”



The following days would be a series of firsts for me, despite many years of hiking experience: my first time sleeping in a tent for a whole week, my first time at fifteen thousand feet and beyond, and my first time hiking for 5-8 hours a day only to wake up and do it all over again the following day. The trip itself marked another series of firsts: my first time south of the equator, my first time to Africa, my first time spending more than a week away from my husband and my three kids, and my first time hearing first-hand the incredible stories of the Elite Eight who hiked alongside me.

It is hard to put the journey itself into words, and I find myself reflecting on the video of the moments leading up to the summit. In the distance, just beyond Team Courage Rising's single-file line, the remnants of Furtwängler Glacier gleamed in the afternoon sun. In the foreground was the view we had all been waiting for: Uhuru Peak. The Elite Eight reached it first and, as is tradition, touched the wooden sign displayed at

the top. There wasn't a dry eye on the summit that day. We hugged, smiled, and posed for pictures, basking breathlessly in our 19,341-foot accomplishment. The rest of the hike seemed like a blur: hours later, we were down to our camp at 12,000 feet, and by the next day, we had left the mountain that had taken us six days to climb. After a few more days, we were all home, and after a few weeks, we had all returned to our regularly scheduled lives.

Many remarked after the trip that the experience felt like a dream, but the benefits to the Elite Eight, Valley burn survivors, and Valleywise Hospital are undeniably real. Team Courage Rising raised over \$350,000 for the Arizona Burn Center. At Uhuru Peak, the Elite Eight successfully demonstrated that being a survivor doesn't define them. The bonds Team Courage formed on that magnificent mountain will keep us forever connected, and as planned, the team proved that when you "Rise Together," even the most towering feats are attainable.



EMPLOYMENT LAW



TIME'S UP

Employers can no longer mandate arbitration of sexual assault and harassment claims in pre-dispute agreements

BY JODI R. BOHR

RAMPIXELIMAGES/DEMANSTIME

Under the Federal Arbitration Act (FAA), courts have long favored arbitration as a method of dispute resolution. In 2018, the United States Supreme Court reinforced the policy favoring arbitration agreements in *Epic Systems Corp. v. Lewis*. The Court held that the FAA requires enforcement of arbitration agreements that fall within its scope, including agreements in which employees prospectively waive their rights to file a collective or class action lawsuit against their employers.

Shortly thereafter, arbitration agreements came under significant attack largely due to the #metoo movement. Congress responded to such attacks by passing The Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021.

WHAT DOES THE ACT PROHIBIT?

The Act, which took effect earlier this year, amends the FAA, and provides that pre-dispute agreements by employees to submit a claim of sexual harassment

or sexual assault to arbitration will be invalid and unenforceable. Simply put, while an employer and employee may agree to pre-dispute arbitration in an offer letter, employment agreement, or arbitration agreement, that clause will not apply to any sexual harassment dispute that may arise later.

The Act does not prohibit post-dispute arbitration agreements. In other words, if an employee asserts a sexual harassment claim against an employer and signs an arbitration agreement after asserting the claim, that dispute may be submitted to binding arbitration.

The Act also bans enforcement of class or collective action waivers in sexual assault or sexual harassment cases. To be clear, class or collective action waivers not related to claims alleging sexual harassment or sexual assault are still enforceable under the *Epic* decision.

Critically, the Act gives employees, not employers, who are subject to a pre-dispute arbitration agreement the ability to choose whether to pursue

their sexual harassment or sexual assault claims in arbitration or in court.

WHAT DO EMPLOYERS NEED TO DO?

Employers who previously executed arbitration agreements with their employees should consider revising those agreements to be certain that they comply with the new restrictions placed on employers by the Act. This suggestion is a best practice, as the Act only invalidates the portion of an arbitration agreement requiring arbitration or waiving a collective action as to sexual assault or sexual harassment claims.

Employers who want to implement arbitration agreements and class action waivers going forward—with new hires or existing employees—should consider the Act when drafting and implementing new agreements.

WHAT'S NEXT?

The passage of the Act comes at a time when employers are already seeing an increase in collective and class action lawsuits filed by (typically former)

employees. In 2020, labor and employment class and collective actions comprised 22.5% of all class action lawsuits, according to a survey of more than 400 major corporations in more than 25 industries. This figure increased more than three percentage points to 25.6% in 2021.

Employers should remain vigilant and be prepared for possible further restrictions on the use of arbitration agreements with employees. The Biden administration has expressed its intent to work with Congress to expand restrictions on arbitration agreements.

Further restrictions are not farfetched considering that the House of Representatives passed the Forced Arbitration Injustice Repeal Act (the FAIR Act) earlier this year, but there has been no progress on the FAIR Act since it reached the Senate. The FAIR Act protects the rights of everyday consumers, workers, and small businesses by prohibiting the enforcement of forced arbitration clauses in consumer, labor, antitrust, and civil rights disputes that are often buried deep within the fine print of everyday contracts.

READY FOR THE CHANGES?

Employers with specific questions about arbitration agreements, class action waivers, or any employment law matters are encouraged to contact the attorneys at Tiffany & Bosco, P.A.

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