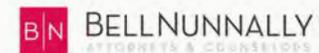




THE ESSENTIALS:

CREDIT APPLICATIONS AND GUARANTY AGREEMENTS

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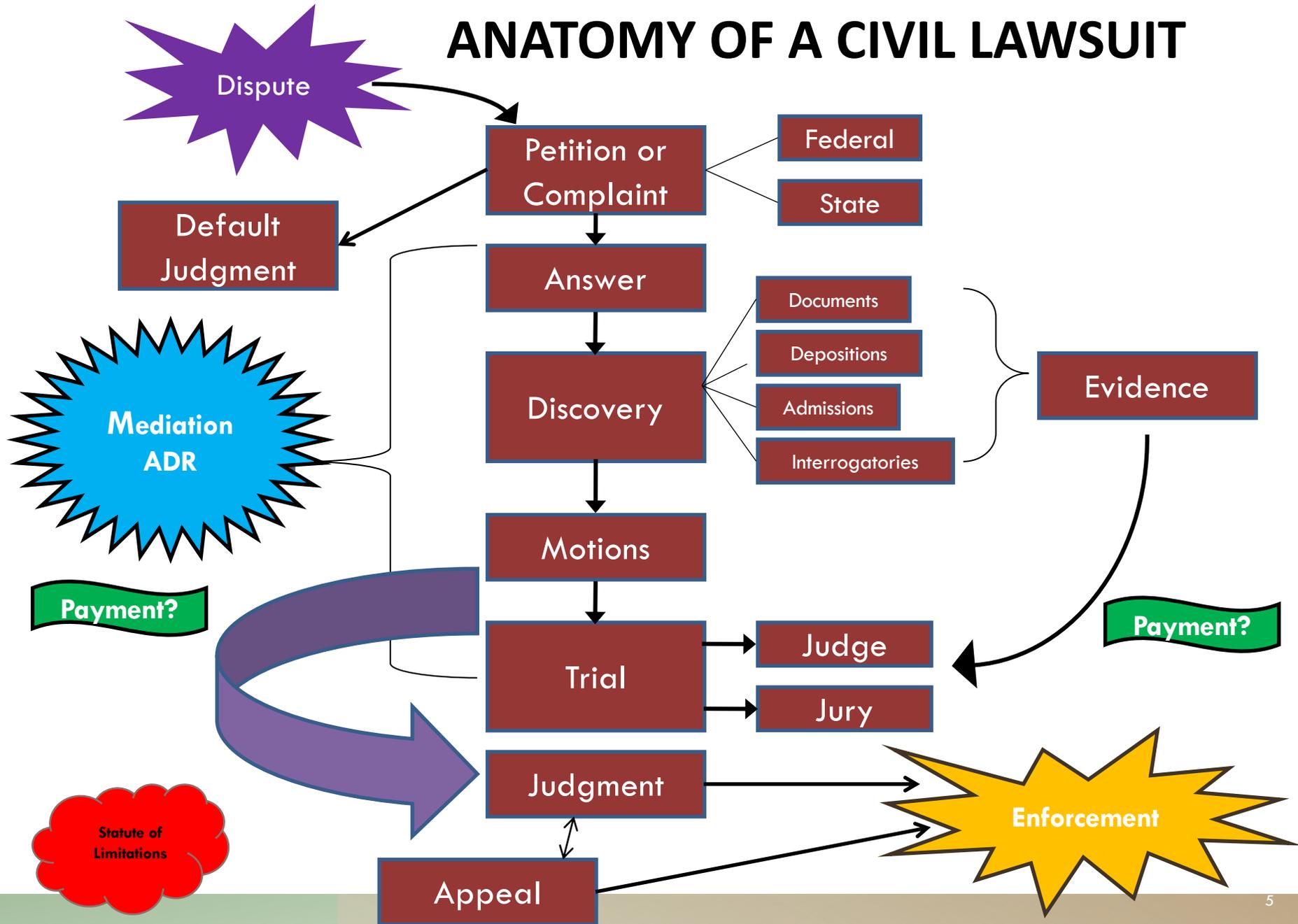


ELBOW BUMP

CONTRACTS — PURPOSE

- Documenting the “deal”
- Your governing contracts
- Harmonize with other documents
 - MSA, invoices, POs, etc.
- Covering your “B-Hind”
- Information
- Leverage
- Mitigating uncertainty
- Managing risk
- Evidence

ANATOMY OF A CIVIL LAWSUIT



CREDIT APPLICATIONS – TIPS/TRAPS

- Binding agreement
- An information tool
- Know your customer
- Get it right – at the start
- Investigate, research, verify
- Where are the assets?
- Who is signing?
- Update



KNOW YOUR CUSTOMER

- Correct, Legal Name
 - DBA(s)
 - Type of Company
 - Sole Proprietorship
 - GP, LP, LLP
 - LLC
 - Inc
 - Where incorporated
 - When incorporated



KNOW YOUR CUSTOMER

Officers, Partners, Directors, Owners
Tax ID / Social
Correct Contact Info
Internal Company Contacts
-Accounting/AP, Ext.

Industry Type
Trade/Credit References
Banking References
Bank Account Info

- ✓ **Get the Information Up front**
- ✓ **May not have opportunity or leverage later**
- ✓ **Do your homework....**



BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number: 802545541
Original Date of Filing: September 20, 2016
Formation Date: N/A
Tax ID: 18139070785
Duration: Perpetual
Entity Type: Domestic Limited Liability Company (LLC)
Entity Status: **Forfeited existence**
FEIN:
Name: **Virus Transport LLC**
Address: 2409 POET POINT PL
 EL PASO, TX 79938 USA

REGISTERED AGENT	FILING HISTORY	NAMES	MANAGEMENT	ASSUMED NAMES	ASSOCIATED ENTITIES
Name	Address		Inactive Date		
Ezequiel Munoz	2409 Poet Point El Paso, TX 79938 USA				

REGISTERED AGENT	FILING HISTORY	NAMES	MANAGEMENT	ASSUMED NAMES	ASSOCIATED ENTITIES	
View Image	Document Number	Filing Type	Filing Date	Effective Date	Eff. Cond	Page Count
	690486110002	Certificate of Formation	September 20, 2016	September 20, 2016	No	2
	800137280001	Public Information Report (PIR)	December 31, 2017	March 14, 2018	No	1
	864075744530	Tax Forfeiture	January 25, 2019	January 25, 2019	No	1

REGISTERED AGENT	FILING HISTORY	NAMES	MANAGEMENT	ASSUMED NAMES	ASSOCIATED ENTITIES
Last Update	Name	Title	Address		
September 20, 2016	Ezequiel Munoz	Managing Member	2409 Poet Point El Paso, TX 79938 USA		

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number: 803595020
Original Date of Filing: April 16, 2020
Formation Date: N/A
Tax ID: 32073994355
Duration: Perpetual
Entity Type: Domestic Limited Liability Company (LLC)
Entity Status: In existence
FEIN:
Name: Virus Clean Today, LLC
Address: 710 N 11TH ST
 BEAUMONT, TX 77702-1502 USA

REGISTERED AGENT	FILING HISTORY	NAMES	MANAGEMENT	ASSUMED NAMES	ASSOCIATED ENTITIES
Name Michael J Lindsay		Address 710 N. 11th St. Beaumont, TX 77702-1502 USA		Inactive Date	

BEAUMONT, TX 77702-1502 USA

REGISTERED AGENT	FILING HISTORY	NAMES	MANAGEMENT	ASSUMED NAMES	ASSOCIATED ENTITIES	
View Image 	Document Number 964125230002	Filing Type Certificate of Formation	Filing Date April 16, 2020	Effective Date April 16, 2020	Eff. Cond No	Page Count 2

BEAUMONT, TX 77702-1502 USA

REGISTERED AGENT	FILING HISTORY	NAMES	MANAGEMENT	ASSUMED NAMES	ASSOCIATED ENTITIES
Last Update April 16, 2020	Name Ugo Tombolini	Title Manager	Address 5773 Woodway Dr. #279 Houston, TX 77057-1501 USA		

TERMS AND CONDITIONS

— WHAT TO LOOK FOR

- Payment terms
- Harmonized with related contracts / controlling
- Interest rate
- Inspection/Rejection/In Writing /Deadline (10 days)
- Attorneys' fees and expenses
- Authorization to sign on behalf of the company
- Forum Selection Clause
- Venue Selection Clause
- Jury Waiver Clause
- Payment location
- Arbitration/Mediation?
- Choice of Law to Govern the Agreement
- Change of entity/form/structure/ownership/status
- Warranties- disclaimers
- Limitation of Liability/Liquidated damages
- Right of offset
- Notices
- Force Majeure....!



GUARANTY AGREEMENT

A contract

Person or entity

Agrees to Pay

The debts of another

Must be in writing

Must be signed by guarantor

KEY
GUARANTY
TERMS

Personal/individual liability

Continuing

Unlimited

Irrevocable

CONTINUING OBLIGATION

- More than a single transaction
- In effect indefinitely
- Past (?), Current, Future obligations of primary debtor

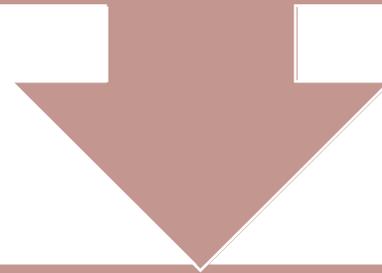


UNLIMITED LIABILITY

**NO
AMOUNT
LIMITATION**

**NO TIME
PERIOD
LIMITATION**

Without qualifier that guaranty is irrevocable, Guarantor could seek to terminate or revoke the guaranty.



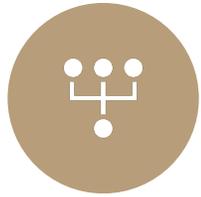
IRREVOCABLE

Yikes!

MULTIPLE GUARANTORS

- Good!
- Joint and several liability
- NOT pro rata share
- Creditor can hold each guarantor 100% liable, unless the parties agree otherwise.
- Creditor can sue only one or all guarantors – creditor's choice.

RETIREMENT OF GUARANTOR



If continuing, unlimited, irrevocable terms....



Guarantor is not off the hook typically unless creditor agrees to release



Retiree may be entitled to contribution from new "owners" but not necessarily off the hook with creditor



Creditor must typically release retiring guarantor.



Did the new owners sign guaranty agreements with creditor?



Common mistake by creditor and retiring guarantor getting new owner guaranties and release of retiring owner guaranty agreement

DEATH OF GUARANTOR

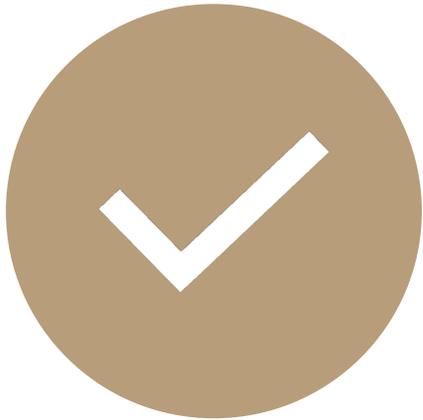
If continuing, unlimited,
irrevocable terms....

If product/service
ordered while alive....

A claim against
Guarantor's estate,
typically.



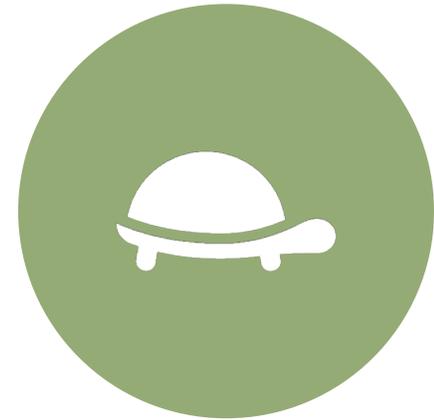
CORPORATE GUARANTORS



ONLY AS GOOD AS THE
ASSETS



DO YOUR DUE DILIGENCE
AND INVESTIGATE



IS THIS A SHELL GAME?

- Guaranties strictly construed in guarantor's favor
- Clearly identify
 - guarantor
 - debt
 - primary obligor
- Confirm personal, individual liability of guarantor

GUARANTY- TIPS/CONSIDERATIONS

- Update as business evolves, is sold, merged etc.
- Ask for execution and get them signed.
- Watch signature blocks
- Legible signature? Printed name included?

GUARANTY- TIPS/CONSIDERATIONS



QUESTIONS?



THANK YOU!

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About Karen ...

Karen L. Hart is a business attorney with 20 years of experience litigating commercial and real estate disputes.

Karen counsels clients on creditor's rights issues, real estate and landlord-tenant matters as well as various other contract and business disputes. She is a tireless advocate for her clients, providing guidance on business legal matters, such as lease, purchase and sale, brokerage and property management disputes, specific performance claims, commercial evictions, lis pendens, lien and bond claims, lien priority disputes, promissory note claims, commercial foreclosures, bankruptcy claims, professional ethics and liability matters, bills of review, confidentiality, non-competition and non-solicitation agreements and related disputes and injunctive proceedings, and business tort claims, including tortious interference with contracts and business relationships, civil theft, fraud, and misappropriation of trade secret claims.

Prior to joining Bell Nunnally, Karen served as a law clerk to the Honorable Hayden Head, Jr., United States District Court, Southern District of Texas, Corpus Christi Division. Karen is a 2001 honors graduate of the University of Texas at Austin School of Law.

Karen's recent accolades include: Best Lawyers in America (2017-2021); Litigation Star, Benchmark Litigation (2020); Best Lawyers®' Texas' Best Lawyers (2020); Dallas Top 50 Women Lawyers Award, Texas Diversity Council (2017); Winning Women Award, Texas Lawyer (2014); Women in Business Award, Dallas Business Journal (2012). Karen also serves as Bell Nunnally's General Counsel.

Karen is a long-time NACM member, supporter and educator.