

Kingman Municipal Airport: Just Bury It! The Mystery, The Challenge, The Success

Recently, the City of Kingman concluded remediation of a former World War II U.S. Army training base site, which posed a decades-old environmental concern impacting the current Kingman Airport apron. The project required the



The airport site following the end of WWII.

removal of more than 96,000 tons of contaminated soil and aluminum dross (a toxic by-product). The road to remediation and settlement with the federal government presented many hurdles and challenges—not to mention a mystery of where the dross was buried.

At the end of WWII, the airbase became a storage ground for thousands of returning aircraft. More than 5,000 of these aircraft were sold to a private contractor who recycled them on-site. The company constructed three furnaces, which were operated continuously to recycle the aluminum aircraft parts into nearly 57 million pounds of aluminum ingots.

In July 1948, the furnaces were removed but the contaminated soil and aluminum dross were left on-site, exposed to the elements or partially buried. Ownership of the airbase was later

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Does the Corporate Transparency Act Impact Bankruptcy Cases?

Much has been made lately about the reporting requirements of the Corporate Transparency Act, and legitimately so. The Act imposes significant compliance and reporting responsibilities on certain U.S. and foreign business entities. The Act became effective January 1, 2024.

Does the Act impact bankruptcies and, more specifically, bankruptcy trustees? In bankruptcy, there are numerous different types of trustees, with varying roles. The key questions are whether the particular trustee exercises substantial control over the debtor entity and whether the debtor entity is a reporting company.

The Act has already generated uncertainty for the various bankruptcy trustees that will undoubtedly require further clarification by the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN) and developing case law in the bankruptcy courts. A key concern is whether the bankruptcy trustee is subject to the Act's beneficial ownership information

reporting requirements. A beneficial ownership report must be filed with FinCEN by any corporation, L.L.C. or other entity that meets the definition of a reporting company, unless that entity expressly qualifies for one of the enumerated exceptions.

This uncertainty recently percolated over in two bankruptcy cases in North Carolina. Both bankruptcy cases involved a Chapter 7 liquidating trustee, and the debtor in each was a North Carolina corporation that qualified as a reporting company under the Act. The Chapter 7 liquidating trustees filed a motion seeking a declaration from the bankruptcy court that the Chapter 7 liquidating trustees were not subject to the beneficial ownership information requirements of the Act. FinCEN filed a brief in both bankruptcy cases clarifying the definition of a senior officer for a reporting company and stating that a Chapter 7 liquidating trustee of a bankruptcy estate does not fall under this category and therefore is not subject to beneficial ownership information reporting requirements of the

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transferred to Mohave County and then to the City of Kingman, becoming the Kingman Municipal Airport.

The presence of the dross impeded the airport's economic development of the approximate 15 acres impacted by the dross site. In the 1990s, the federal government designated the site as a "formerly used defense site" and the U.S. Army Corps of Engineers began an investigation of the site. The Corps



The remediation phase of the Kingman Municipal Airport.

concluded that the dross should be buried on-site and covered with an asphalt cap. A contractor buried the dross in eight trenches somewhere within the site, each approximately 20 feet deep, 200 feet long and 40 feet wide.

The Mystery – The exact location of the eight trenches was never clearly documented or identified.

With the dross disposal seemingly handled, the remediated site was then used as an aircraft apron, with multiple tenants constructing and operating hangars around the apron. Aircraft needing repairs or maintenance were taxied over the apron to be serviced at one of the hangars. Within a few years, the asphalt cap exhibited cracks and heaves. The largest heave was approximately 40 feet long and 2 feet high.

In 2006, the Corps brought in a new contractor who concluded that the cap had failed due to elevated concentrations of ammonia and hydrogen gases emitted from the buried dross.

The Challenge – How to remediate the site.

In 2013, Gust Rosenfeld was engaged to assist the city in pursuing a resolution with the federal government for the remediation of the site. A lawsuit was filed on behalf of the city. In support of that litigation, the engineering and environmental consulting firm of Haley & Aldrich (H&A) was retained to provide technical support to define the scope of the contamination, recommend methods of remediation and

estimate cost of remediation. Over the next 10 years, each phase was negotiated as to scope and cost with the Department of Justice (DOJ) and paid for by the federal government.

In 2023, with much support and input from the city and H&A, a final settlement with DOJ was negotiated. A consent decree was then entered by the U.S. District Court by which the federal government agreed to pay \$52.5 million to the city for the remediation of the site, including the restoration of the apron.

Between September 2023 and May 2024, H&A, with its subcontractors and project partners, removed the failed asphalt and the buried furnace foundations, and excavated more than 96,000 tons of hazardous waste. All hazardous materials were transported and landfilled at a facility licensed to accept such



The clean and remediated airport site.

materials. Clean engineered fill was brought in to fill the excavation pits and create an appropriate base course onto which a new asphalt cap was installed to support the intended use of the apron. The remediation was completed ahead of schedule within budget, in coordination with the existing tenants, so as not to disrupt their businesses.

The Success – The light at the end of the tunnel.

The airport can now look forward to the prospect of new economic development around this once contaminated site. Collaboration with the team of lawyers, engineers, environmental consultants, and federal government has made this once environmental nightmare a success.

We congratulate the City of Kingman and the team of Haley & Aldrich, who received the Excellence Award from the American Council of Engineering Companies for this project.

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Class Action Lawsuit: National Association of Realtors

The National Association of Realtors (NAR) has been a defendant in several class-action lawsuits alleging it has engaged in anti-competitive practices. Earlier this year, a judge gave preliminary approval of a settlement, and two key provisions of that settlement became effective on August 17, 2024. On November 26, 2024, the settlement was approved by the court.

The first key provision that became effective in August is that NAR will prohibit its listing agents from showing a buyer's commission split on a Multiple Listing Service (MLS). That practice is referred to as "tying" the commission split. The plaintiffs in the cases argued that this led to buyer agents "steering" buyers to only see homes that offered the highest buyer agent commission. However, with the increase in companies like Zillow and Redfin that allow buyers to search listed properties without an agent, there may be less steering at play than before. Additionally, the new rule does not prevent listing agents and buyer's agents from negotiating commission splits; it just needs to be done outside the MLS.

The second key provision is that NAR will require its buyer agents to enter into binding, written agreements with

buyers prior to the buyers visiting any homes with the agent. The provision also prevents buyer agents from receiving compensation more than what their agreement with the buyer states even if a seller is offering more.

The terms of the settlement have some positive and negative aspects to it. For instance, the new requirement provides clarity on exactly what services the buyer's agent will provide and what the terms of the compensation will be. However, if a seller is unwilling to pay the commission for the buyer's agent, the buyer could potentially be on the hook for paying the commission to the buyer's agent. This could arise in a seller's market where the seller receives multiple offers and does not have to make concessions to close the deal.

As in all things, buyers will need to carefully review any agreement placed before them before signing.

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Kyle's estate planning practice includes wills, trusts, and probate and trust administration.

Artificial Intelligence and Healthcare

"Calling Dr. Robot!" Artificial intelligence (AI) is playing a more prevalent role in the delivery of healthcare. AI technologies present new opportunities and challenges for healthcare providers. There is great promise that AI has the potential to augment existing healthcare services and make the delivery of healthcare more equitable. As with any transformative change, though, AI presents uncertainty and the promise of future challenges.

A few examples will illustrate the breadth of AI in healthcare. PeriGen, Inc. has developed several AI applications to assist with perinatal care. PeriWatch Vigilance, one of its products, is a maternal-fetal early warning system that automates the identification of patients who may be at risk for adverse labor and delivery outcomes.

VirtuSense develops AI powered solutions with a focus on prevention. The VSTBalance product is an automated platform that uses AI and machine vision to assist with fall prevention by identifying deficits in balance, gait, and function. Another product, VST Alert, uses AI and machine vision to detect a patient's intent to get out of a hospital bed 30 to 65 seconds in advance and alerts the correct staff.

The healthcare profession has taken note of the rapid development of AI. The response from the profession shows that these are not isolated and random implementations of new technologies, but the beginning of a transformational shift in

the delivery of healthcare. The American Board of Artificial Intelligence in Medicine offers AI educational programs and board certification. The September 2024 issue of *JACC Advances*, a Journal of the American College of Cardiology, was devoted to AI in cardiology. There are many other examples of education programs, seminars and articles focused on AI in healthcare.

With a changing healthcare landscape comes a changing legal landscape. The use of AI in healthcare presents new legal issues and tests the boundaries of existing law. AI in healthcare raises ethical, consent, compliance, and regulatory issues. Complex medical malpractice litigation will become more complicated with the integration of AI. Even without AI, medical malpractice litigation can involve multiple experts from different medical specialties. With AI, medical malpractice litigation will more commonly include product liability claims and require technical knowledge and expertise not previously needed.

Gust Rosenfeld's health law attorneys are available to assist healthcare providers as they navigate the exciting, but sometimes uncertain, developments AI presents.

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Bob focuses his practice on health care institutions and providers in medical malpractice, employment law, and other civil and commercial litigation matters.

NEW FACES



John A. Butzer
Associate Attorney

John Butzer is an associate in the Public Law group at Gust Rosenfeld. His practice focuses on education, municipal, and employment law. While in law school, John served as a law clerk in a private law firm and interned at the United States Attorney's Office. After law school, he served as a judicial law clerk for Justice James P. Beene of the Arizona Supreme Court and Judge Susan M. Brnovich of the United States District Court.

John was born and raised in Southern California and graduated *cum laude* from the Sandra Day O'Connor College of Law at Arizona State University. He was inducted to the Order of Barristers in recognition of his oral advocacy and legal writing. While in law school, John was a Note and Comment Editor for the *Arizona State Law Journal* and served on the board of the Corporate and Business Law Society. He also served as a teaching assistant for the first-year legal writing course.



Rachelle Barr
Associate Attorney

Rachelle Barr is a member of the firm's Litigation Section. She focuses on general litigation matters, including personal injury defense, premises liability defense, and insurance coverage.

Rachelle is passionate about building compelling cases and achieving positive client outcomes. Rachelle also has extensive business transaction experience and a strong track record in negotiating complex contracts and providing strategic legal advice.

Rachelle earned her J.D. from the University of Cincinnati and holds a Master of Arts and Bachelor of Arts from Northern Arizona University.

2024 Top Lawyers

PHOENIX magazine generates its Top Lawyers list via an online survey of practicing attorneys in the Greater Phoenix area. Partnering with information research firm Data Joe, *PHOENIX* magazine disseminates emails to each of the roughly 16,000 active attorneys licensed with the State Bar of Arizona, directing them to an online portal managed by Data Joe. Three Gust Rosenfeld attorneys received top honors from the survey. Congratulations.

Charles Wirken, Appellate law

John Shoaf, Aviation law

Robert Williams, Bankruptcy and Reorganization law



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Life And Politics

It may seem these days, with expectation or doom, that politics (attributed to the 15th Century Medieval Latin “politica” or Old French “politique” meaning the science or art of public affairs) has overtaken our lives. The name and practice, though, has been with us from much earlier times. Aristotle (384 BC to 322 BC) wrote a treatise on politics (ta Politika), observing that man is a political animal, rubbing shoulders with each other in cities and communities. Today's politics is merely a continuation of our communal interaction as a democracy (from the Greek “demokratia”), which allows citizens to determine what government we have.

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Rick, our etymologist, practices in the areas of commercial law and litigation.

2025 Best Law Firms

Since 2010, Best Law Firms® has served as a definitive law firm guide and trusted resource for those seeking authoritative legal insight. Through a rigorous, data-driven approach, Best Law Firms® identifies firms known for quality, specialized knowledge and commitment to excellence.

Best Law Firms® tiered ranking system—national and regional—highlights distinguished practices across diverse legal fields, helping businesses and individuals alike make informed decisions with confidence. Below are the categories in which Gust Rosenfeld is recognized.



National

- Appellate Practice
- Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law
- Franchise Law
- Litigation - Real Estate

Phoenix

- Appellate Practice
- Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law
- Corporate Law
- Education Law
- Franchise Law
- Litigation - Real Estate
- Media Law
- Medical Malpractice Law - Defendants
- Municipal Law
- Real Estate Law
- Employment Law - Management
- Environmental Law
- Litigation - Health Care
- Litigation - Insurance
- Litigation - Trusts and Estates
- Personal Injury Litigation - Defendants
- Product Liability Litigation - Defendants
- Professional Malpractice Law - Defendants
- Public Finance Law
- Tax Law
- Commercial Litigation
- Land Use and Zoning Law
- Litigation - Labor and Employment
- Natural Resources Law

Tucson

- Construction Law
- Litigation - Construction
- Litigation - Real Estate
- Personal Injury Litigation - Defendants
- Real Estate Law
- Commercial Litigation
- Corporate Law
- Insurance Law
- Litigation - Banking and Finance

Fred Rosenfeld Inducted Into Maricopa County Bar Hall of Fame

With more than 63 years in practice, Fred Rosenfeld is a living legend in the Arizona legal community. Fred was recently inducted into the Maricopa County Bar Association Hall of Fame for his significant contributions and leadership in service to Arizona and the legal profession.



Fred H. Rosenfeld

Fred graduated from the University of Arizona and was admitted to practice in 1961, starting practice the following year. In 1964, Don Bolles, investigative reporter for The Arizona Republic, wrote a series of articles about the alleged improprieties by members of the Arizona Corporation Commission.

Fred was hired by the state House of Representatives as an investigative attorney where he played a pivotal role in investigating and prosecuting two Arizona Corporation Commissioners. Fun fact: Fred worked side by side with the other Phoenix-based attorney hired by the state House, former U.S. Supreme Court Chief Justice William Renquist.

In 1964, Fred joined his father's firm—Gust, Rosenfeld, Divelbess & Henderson. The firm already had a long history of prominence in public finance, and Fred became a bond lawyer. Fred helped shape Arizona's statutory framework, drafting legislation and providing expert testimony to help influence Arizona's public financing laws.

Significant among the bond issues is the then-biggest bond deal ever completed by a water conservation district - the Central Arizona Water Conservation District's issuance of nearly \$700 million in bonds. The 336-mile canal system delivers water from the Colorado River to approximately 80 percent of the state's population.

Another significant achievement occurred when Fred presented and won a landmark case before the U.S. Supreme Court, successfully arguing *City of Phoenix, Ariz. v. Kolodziejski*, 399 U.S. 204 (1970), a case challenging Arizona's voting restrictions the Court determined violated the U.S. Constitution.

His expertise and leadership have earned him the unofficial title of Dean of Bond Law in Arizona. More broadly, Fred is a founding member of the national American College of Bond Counsel, serving as a board member and officer.

Perhaps the greatest of Fred's achievements are his mentoring and service to the legal profession through his active participation in legal organizations. His service extends beyond the legal profession, contributing his time and participation in worthy organizations such as Arizona Town Hall and the Kenilworth Foundation.

Please join the firm that bears Fred's surname in saluting him for a lifetime of excellence.

Regulation Raising Minimum Salary Thresholds for Exempt Employees Struck Down

On November 15, 2024, a Texas federal judge found that the U.S. Department of Labor (DOL) regulation (2024 Rule Change) raising the minimum salary thresholds for the Fair Labor Standards Act (FLSA) overtime exemption exceeded DOL's statutory authority. The effect of this ruling in *Texas vs. Department of Labor* was to strike down the 2024 Rule Change nationwide and invalidate past and future increases in the minimum salary test for exempt employees. The DOL 2024 Rule Change raised the minimum salary level on July 1, 2024, to \$43,888 per year, which was set to increase to \$58,656 per year on January 1, 2025. The effect of the ruling was to revert back to the pre-2024 threshold amounts.

The 2024 Rule Change increase applied to employees exempt under the FLSA's executive, administrative, and professional (EAP) employee overtime exemption. To qualify for the EAP exemption, the position must meet both a duties-based test and a salary-based test.

The court ruled that "because the EAP Exemption requires that an employee's status turn on duties—not salary—and because the 2024 Rule's changes make salary predominate over duties for millions of employees, the changes exceed the Department's authority to define and delimit the relevant terms."

Gust Rosenfeld will continue to monitor the status of this case and provide updates. If you have questions, you may contact any of our employment law attorneys.

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THE ACT FROM FRONT PAGE

Act, except in rare limited circumstances. Significantly, FinCEN noted in its brief in both bankruptcy cases that it anticipates "issuing official guidelines to provide clarity for Chapter 7 liquidating trustees." To date, however, FinCEN has not issued an FAQ regarding the Chapter 7 liquidating trustee's obligations for a reporting company under the Act.

A Chapter 12 family farmer trustee and a Chapter 13 individual wage earner trustee are historically standing trustees. Simply put, these trustees generally have little or no control over the debtor's affairs. Accordingly, much like a Chapter 7 liquidating trustee, these types of trustees are not likely subject to the beneficial ownership information reporting requirements of the Act for a reporting company, except in rare limited circumstances. In the case of a Chapter 11 operating trustee, however, the answer may likely be quite different. A Chapter 11 trustee often times exercises substantial control over the debtor entity. Accordingly, a Chapter 11 trustee may likely be subject to the beneficial ownership information reporting requirements of the Act if the debtor entity is a reporting company. In the case of a small business Chapter 11 Subchapter V trustee, the answer

likely will depend on the individual facts of the particular case. Most small business Chapter 11 Subchapter V trustees have little or no control over the operations of a debtor entity, functioning instead largely as a facilitator for consensual plan negotiations with creditors. In rare instances, though, the small business Chapter 11 Subchapter V trustee can take over the responsibilities of the debtor in possession, and in that event likely could be subject to the beneficial ownership information reporting requirements of the Act, assuming the debtor entity is a reporting company. Stay tuned.

The purpose of the Act is to combat unlawful activities such as money laundering and tax evasion by collecting additional information about the ownership of specific entities affecting the U.S. market.

For questions about the Act contact:

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