Nevada Business

THE DECISION MAKER'S magazine

Taking Cover

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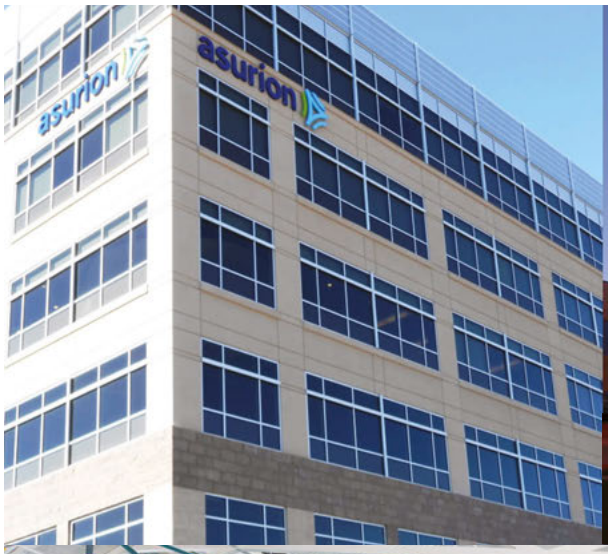

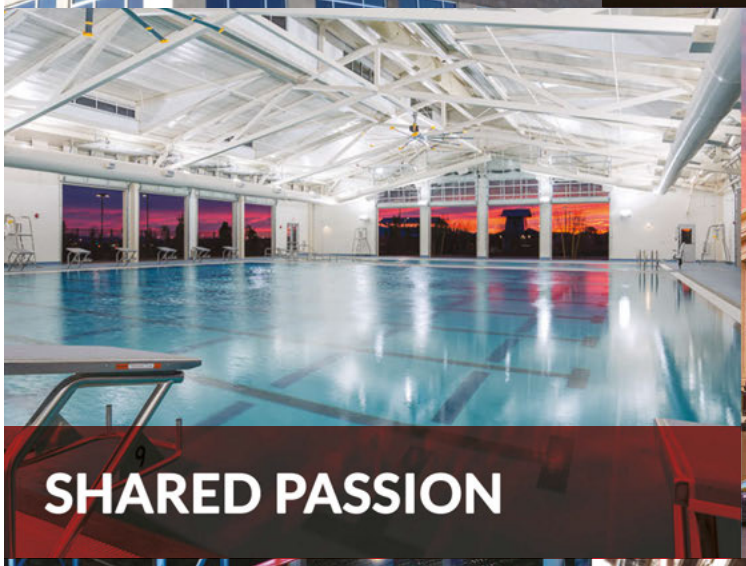

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> > The Commentary

Governor Buries Hope of Education Savings Accounts

A Shot in the Head to School Choice

Almost as soon as they were signed into law by the Nevada Legislature last year, Educational Savings Accounts (ESA's) were contested by those that would hold back a ground-breaking solution to some of Nevada's most serious issues.

If you haven't been following the ongoing battle for school choice, here's a brief history. SB 302, or the ESA program, as originally passed by the legislature, allowed public funds to be transferred from the State Distributive School Account into a private education savings account maintained for the benefit of children in school. The account pays for a student's private schooling, tutoring and other non-public educational services and expenses and those funds are used at the discretion of the parents, rather than the state.

The program was challenged on three fronts from two separate lawsuits. A recent judgement from Nevada's Supreme Court resolved two of those complaints but left a gaping hole in the ESA program that will need to be resolved, and quickly.

In their official opinion, the Supreme Court stated that ESAs did not violate the Nevada constitution Article 11, Section 2 which requires a uniform system of common schools for the state. The Justices also maintained that the program did not violate Article 11, Section 10 which prohibits the use of public funds for a sectarian purpose.

However, the Justices did find that SB 302, as it was originally passed, violated Article 11, Section 6 which obligates the Legislature to appropriate funds to operate public schools before any other appropriation is enacted. Essentially, the opinion finds that ESAs are constitutional in every way but cannot be funded through the distributive account set up for public education. This unfortunately, leaves the program with around 8,000 applicants and absolutely no funding, a situation that needs to be remedied immediately.

I had hoped that since Governor Sandoval had already called a special session to discuss the now approved football stadium and he's been so vocal about his supposed support for education in this state that he would ensure this vital issue was added to the agenda for that special session. Unfortunately, my hope was in vain.

In a statement, Governor Sandoval said, "After consulting with legislative leadership I have decided that any potential budget challenges for the next biennium will be addressed during the next regular session." Essentially, the Governor and his cronies have left 8,000 parents in the lurch when it comes to their children's education with a simple, "we'll deal with that later" attitude. The problem with dealing with it later is that the elections will change the roster of lawmakers and the issue may never be resolved.

When you consider how vocal Sandoval has been on ensuring we have have a diversified economy to grow the state and the fact that education is a cornerstone to that growth, I would expect that funding ESAs would be at the top of his priority list. Well, our kids may not be able to get the education choices they deserve and our state can carry on at or near the bottom when it comes to education rankings, but at least we were able to find a way to fund a new stadium. State Treasurer Dan Schwartz said it best, "That the Legislature can pass a $750 million tax hike to fund a football stadium yet fail to find $25 million to fund the ESAs is incomprehensible."

Call to Action: Get involved! It's up to us to ensure that our governor and legislators know that the ESA program is a priority. Together we can make sure children don't miss out on any more school years without more choices for a quality education.

2 Chronicles 7:14 *(NKJV) "If my people who are called by My name will humble themselves, and pray and seek My face, and turn from their wicked ways, then I will hear from heaven, and will forgive their sin and heal their land."*

Lyle E. Brennan
Publisher

COMMENTS
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By Whose Authority?

For more information on my Commentary and to see some of my backup research, or if you wonder why I take the position I take, go to www.LyleBrennan.com.

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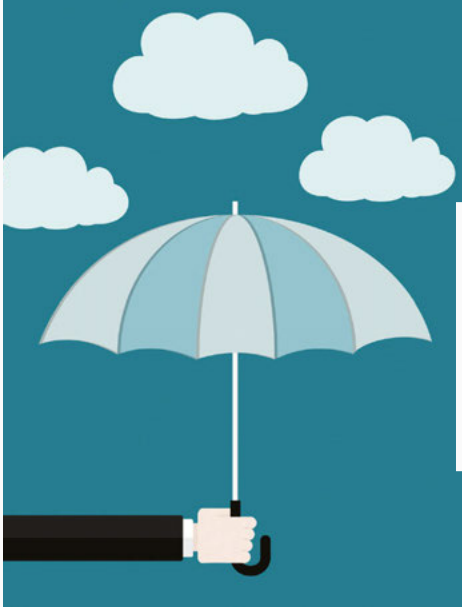

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Taking Cover

TRENDS IN NEVADA'S COMMERCIAL INSURANCE

By Doresa Banning

WHEN it comes to risk and managing risk, successful CEOs understand the importance of thorough planning and solid insurance with up-to-date information on the latest rules and regulations. While the commercial insurance industry in Nevada has overall remained relatively static, some new trends have emerged and are growing. Those are highlighted here along with an overview of the foundation on which to build a company's coverage.

Mandatory Insurance

Statutorily, companies must have two types of insurance coverage.

"If you don't insure for them, they could create significant financial harm and potentially bankrupt your business," said Nick Rossi, president, LP Insurance Services Inc., an insurance brokerage and risk management services company with Nevada offices in Reno, Las Vegas and Elko.

Francie
Stocking
Western Risk
Insurance Agency

One is workers' compensation insurance, to cover lost wages and medical costs for employees injured on the job. Some business owners who think they're exempt, for various reasons such as they erroneously believe their workers are subcontractors rather than employees, really aren't.

"The Nevada Department of Business and Industry is cracking down. They will shut you down within 24 hours if you don't provide workers' compensation," said Francie Stocking, CEO, Western Risk Insurance Agency, a Las Vegas-based independent agency and brokerage firm.

Criminal penalties are also a possibility. Auto liability insurance, too, is a must if the company owns and uses automobiles.

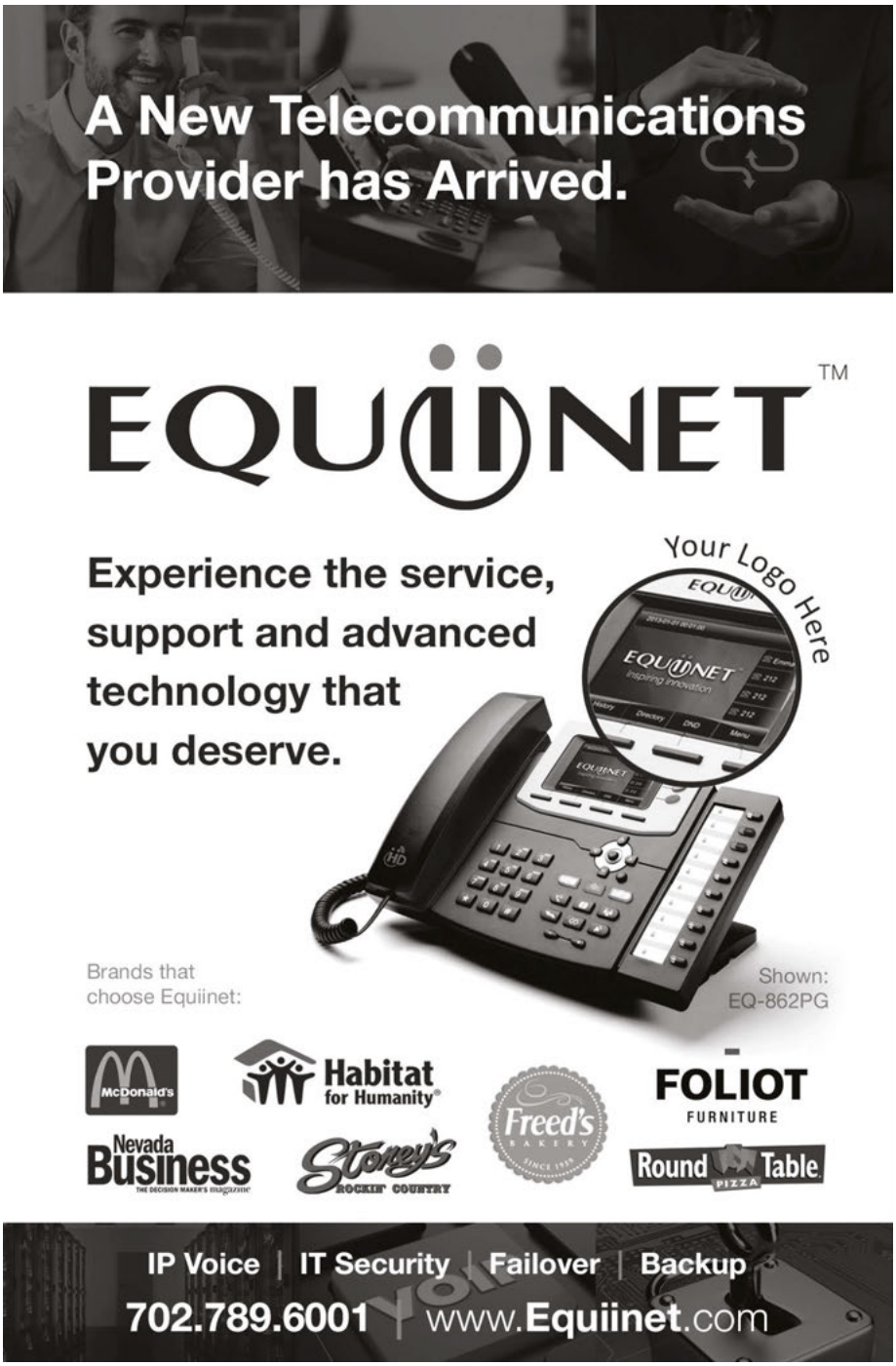
A common commercial package, Rossi said, typically includes those two required coverages along with property insurance to protect a company's physical assets and general liability, in the event the business is held liable for causing property damage or personal injury.

Other non-universal mandates might be required by contract, said William Allen Kaercher, president, Kaercher Insurance, a brokerage in Las Vegas that offers risk management and financial products and services. If a financial institution, for example, has given a company a loan, as a condition, the company might have to have certain types of insurance coverage. Sometimes commercial landlords will require they be added as an additional insured onto a tenant's property and liability insurance policy.

Optional Insurance

Various other types of insurance coverage are optional. The type of business and its inherent risks dictate what other policies a company might need, Rossi said. Some coverages available are:

- **Professional liability:** This type of insurance includes directors and officers (D&O) for company executives and board members of homeowners associations and nonprofit organizations. Errors and omissions (E&O) coverage, for certain professionals, is another.



- **Employment practices liability:** This protects against employee claims of discrimination, wrongful termination, harassment and other employment-related issues.
- **Contingency liability:** This is for businesses that depend on other companies for their products.
- **Crime:** This protects against numerous types of employee crime, such as dishonesty, embezzlement, forgery or alteration, computer and funds transfer fraud.
- **Business life:** This provides funds to keep a business going should a key business partner or shareholder pass away.
- **Terrorism:** Some companies may want specific coverage in the event of a terrorist attack. This insurance is particularly important if the company has operations overseas or is located in a high-profile area like the Strip, venue or building. Additionally, it's sometimes required by, say, a lender. Carriers typically include terrorism coverage in a property and liability package. In some cases, it's optional while others are not. Some insurers specifically cover liability for workplace shootings.

"If you don't have insurance, you've decided to self-insure," Stocking said. "Insurance is a financial tool to negotiate the risk that you're taking on yourself."

Because insurance and risk management are complex areas, companies should meet with a broker initially and annually to review, reassess and update its needs and coverage, the experts said.

Stagnant Rates

In general, rates for commercial insurance products have been relatively flat or decreasing slightly, adjusted for inflation, said Kaercher, whose firm specializes in construction, bonds, gaming and hospitality, employee benefits, medical malpractice, technology and business.

Exceptions exist, however. For instance, due to the large number of law-

William Allen
Kaercher
Kaercher Insurance

suits involving homeowners associations in Nevada over the last two decades, premiums for D&O insurance for board members have increased, as have the deductibles on those policies, said Stocking, whose brokerage targets habitational (HOAs, apartments) and commercial property. Similarly, deductibles have risen on property insurance policies that include theft and vandalism, due to the rampant stealing of copper and other materials from construction sites the state has experienced.

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Cyber Insurance

Cyber liability insurance is one of the fastest-growing areas of commercial insurance coverage, Rossi said. Any company that's handling personal data and/or credit card information is at risk. Whether due to an attack, a system malfunction or a negligent employee, a cyber breach can damage a company's reputation and balance sheet.

Companies of all sizes are vulnerable. According to *Internet Security Threat Report 2016* by Symantec which produces Norton security products, 43 percent of targeted businesses are small, 22 percent are medium-sized and 35 percent are large.

Generally, cyber insurance acts as a liability-type coverage should a financial or personal loss occur from a system breach and private data are accessed. Also, it covers the extra expense involved in informing customers about the event, enhancing security and other preventive measures.

Several insurers offer cyber liability, each with its own coverage applications, from identity theft to website extortion, within these two broad groups.

One newer application, though, is called business email fraud or corporate account takeover. Typically, the criminal, posing as an existing client, vendor or even co-worker, sends an email to an individual at a company or hacks into the company's email system and sends it internally and requests a certain dollar amount be wired to them or claims they never received payment on an order. The unsuspecting employee sends the money.

Few carriers cover this as a component of cyber insurance. It's not covered either by crime insurance because an executive or employee voluntarily takes the action that causes the loss.

"The goal is to put together a customized cyber liability package that is in line with the particular business activities," Rossi said.

Cyber insurance is considered a management liability product. Others include D&O, E&O, employment practices and crime. These are the areas in which the small and mid-sized markets are growing in terms of new, emerging offerings, Rossi added. Therefore, a number of carriers are bundling them so companies get them all under one management liability policy.

Captive Insurance

A trend gaining ground in Nevada is captive insurance, a regulated form of self-insurance. Whereas onshore captives have been around since the 1980s, it wasn't until the early 2000s that the federal government officially recognized them as legitimate insurance arrangements, and more and more states began passing legislation to become captive insurance domiciles.

Nevada is one of the 29 captive domiciles in the U.S. Among those, The Silver State ranks fourth in the number of captives it has — 202 in 2015, according to the Insurance Information Institute. In 2014, the state had 160, representing a 26 percent year-over-year jump to 2015. These numbers compare to those of Vermont, at the top with 596.

"As the economy has been increasing, we are seeing more clients looking to do this. The more people that became aware of it, as long as they're aware of it for the correct reason, the industry is going to grow," said Keith Langlands, co-managing member of Synergy Insurance, a Las Vegas commercial insurance agency that specializes in captives.

Captives still, however, aren't a well-known risk management strategy. Langlands, who heads his firm's captive division, spends much of his time educating companies about them.

Keith
Langlands
Synergy Insurance

Here's how a captive works. A company can create their own captive (single captive), band with other companies to create one (group captive) or join a group captive that already exists.

With a single captive, a parent company creates its own insurance company as a subsidiary according to the regulations and paying the requisite fees. The newly formed insurer, or captive, a C corporation and licensed in its domicile, issues an insurance policy and administers whatever insurance elements the parent company delineates.

A company may use a captive simply for its deductible or retention, for coverage that's difficult to get or is excluded from most traditional policies, for partial coverage or for all of a certain type of coverage. Workers' comp is an example.

Whatever insurance components are in the captive are risks the parent company is taking on itself, unlike with traditional insurance products where the carrier assumes the risk.

The parent company pays premiums to that captive and deals with it just as it would an external insurer. The captive can invest the money in various ways. Should claims arise, monies from the captive are used to cover them.

Say a medium-sized company has cyber insurance through a traditional insurer that's expensive. If they deem their risk to be minimal and they project having the revenue to

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cover any potential claims, they could create a captive for either so it routinely would transfer money for the monthly premium for the cyber coverage into the captive. Ten years later, assuming no claims have been made, those funds remain the possession of the parent company. If a few small claims have been made, the difference remains that of the parent company.

"Our goal is to surround their commercial insurance and fill in the gaps," said Langlands, who primarily works with companies with gross revenue between $20 and $150 million.

Captives might be an option for residential contractors for their home warranties, physicians for their medical malpractice, manufacturers for their product liability, import companies for supply chain interruptions and more, Langlands said. A new application is doctors using a captive to cover penalties should Medicare or private insurance company auditors find errors in the medical coding associated with their practice.

Larger companies are different because they have more revenue. Most use a captive for their property and casualty insurance. They still, however, often have some type of traditional coverage as well, like for catastrophic, Langlands said.

Captives can provide better risk management, peace of mind and, potentially, money savings.

"If you have good [few to none and low dollar figure] claims and your captive is invested and doing well, you could probably make some money on it," Kaercher said.

Other benefits involve taxes. Nevada offers a tax credit of up to $5,000 applicable to the first year of a captive's acquisition of a Certificate of Authority.

In addition, companies that write up to $1.2 million a year in captive insurance can deduct it on their federal tax returns. Money they pay into their captive isn't taxed. Any dividends they earn from investment of the captive monies are taxable at the C corporation level. When the parent company terminates its captive, it pays capital gains taxes at whatever the rates are then.

"It's just a tremendous way to plan for that rainy day," Langlands said. "If it doesn't rain, then you really win. You get out and you win."

However, captive insurance isn't ideal for every company. Businesses are best served by discussing with a broker or expert the options, pros and cons for their specific entity and type of business.

Captives cost money to open and must meet a lot of criteria, Kaercher added. They must be set up correctly or tax deductions could be forfeited and even penalties assessed. Companies who opt for a captive must really commit to it and understand what it is and how it works, especially that

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they're taking on the risk. Captive funds, for instance, are not monies that can be dipped into for, say, emergencies.

Other Trends

Now that medical marijuana is legal in Nevada, insurance products have emerged that cover all parties involved in the supply chain, such as growers, processors and dispensaries, Rossi said. Should Nevadans vote this month to legalize recreational marijuana through Question 2, it likely would bolster the trend and grow that segment of insurance.

A notable industry shift, Rossi said, is brokers today are required to do more and more of the transaction process with existing and prospective clients than ever before, which he calls an opportunity. Not only must they develop an insurance program for a client that might encompass multiple carriers, but they're also asked to develop a risk management program that complements and supports that insurance program. Consequently, LP Insurance, for instance, along with traditional insurance brokerage services, provides extras like OSHA training and certification, work comp claims analysis and advocacy and contract risk management assessment.

At the same time, finding qualified talent is challenging for brokers, especially since it's a learn-on-the-job type field.

"As agency owners, we're looking for younger people to come in, to groom and train them and to keep [the business] growing," Stocking said.

Looking Ahead

Overall, insurance executives agreed that their firms were growing, although some more than others. LP Insurance, for example, has grown 20 percent per year for the past six and a half years, Rossi said. The health of commercial insurance in Nevada should mirror that of the strength of the state's economy, he added.

With an improving and diversifying economy come new risks, Kaercher said, such as those related to unmanned aerial vehicles, and new insurance types.

"The rates are stable," Rossi added. "Market capacity is good. But most importantly, our clients and prospective clients seem to be growing and prospering. At least my crystal ball, over the next 12 to 24 months, looks pretty sunny."

? SAY WHAT

According to statistics released by the Obama Administration last month, while graduation rates for the nation have risen to a record high of 83.2 percent, Nevada remains at the bottom of the list with a 71.3 percent graduation rate for the 2014-2015 school year.

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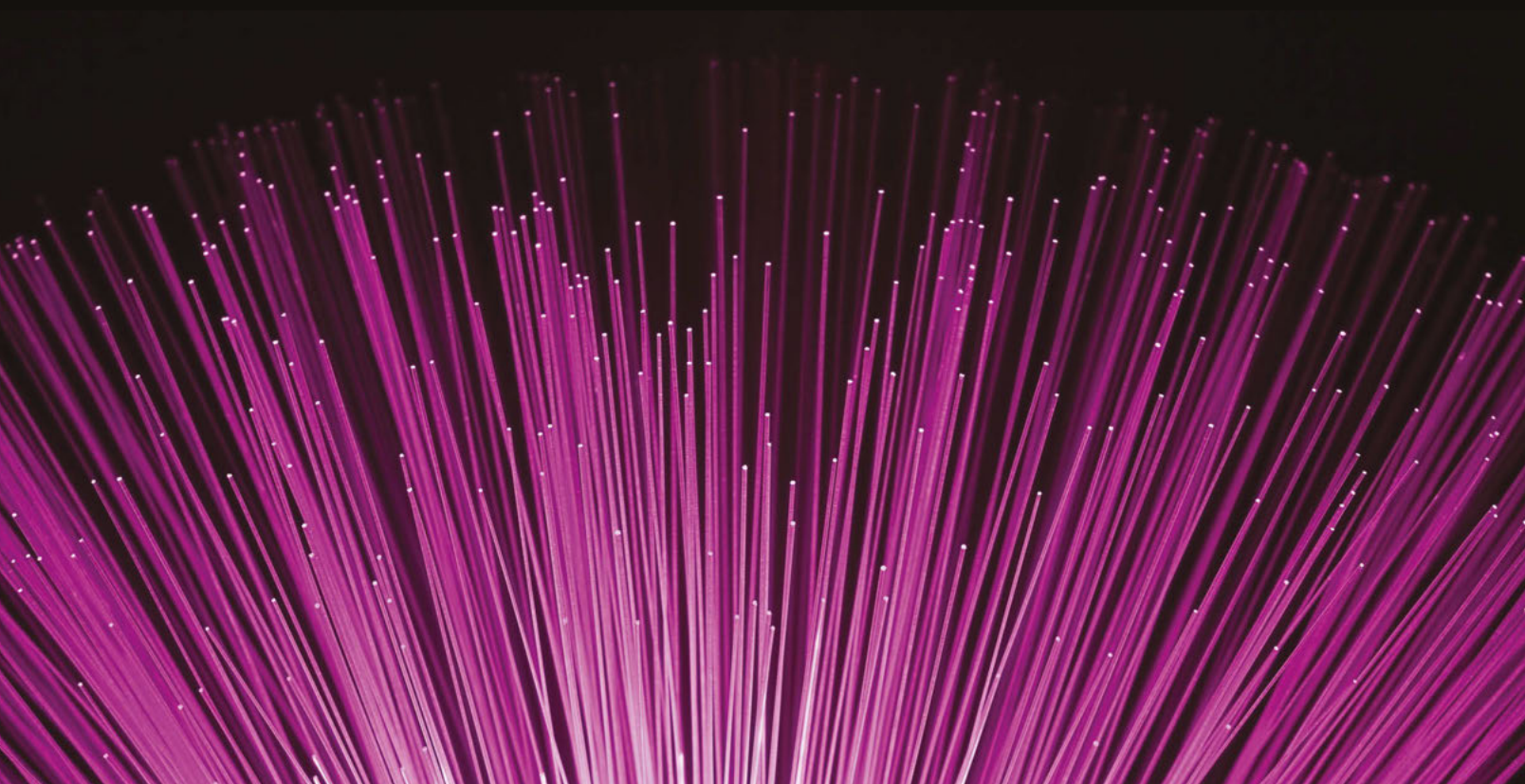
CONNECTING TO TOMORROW

Telecommunications in Nevada

By John Seelmeyer



TELECOMMUNICATIONS providers in Nevada find themselves spinning in a virtual cycle.

More telecommunications capacity continues to come on line, either through incremental improvements to networks or massive construction projects. Just about as fast as capacity increases, business users of voice and data service want powerful new devices and sophisticated data-and-voice tools that soak up bandwidth.

The cycle is driven by the growing awareness among companies, large and small, that telecommunications services provide their operational heart — creating new value in their interactions with customers and improving back-office efficiencies.

"This is a period of accelerated rapid change," said Derrick R. Hill, the Las Vegas-based vice president of Cox Business/ Hospitality Network.

Increased reliance on the Internet by businesses and consumers alike, not to mention the advent of the Internet of Things (IoT) such as coffeemakers controlled by mobile devices and refrigerators that learn the habits of their owners, place ever-greater demands on the capabilities of the telecommunications backbone.

Finding a Bandwidth Balance

Among business users, two big factors drive demand for better data service, said Suehyun Johan Chung, president of the Sprint region that covers most of Nevada along with Northern California.

On one hand, he said, businesses are looking for competitive advantage in the digital experiences that they provide to their customers. That translates into demand for faster-loading pages, more video and a richer digital experience.

At the same time, Chung said businesses are looking for the most powerful and reliable tools they can find to power their own internal operations – everything from videoconferencing to cloud-based human relations operations.

Derrick R.
Hill
Cox Business / Hospitality Network

"If a business doesn't have enough bandwidth, the result is a lot of congestion and a poor customer experience," said the Sprint executive.

At Cox, Hill noted network reliability is a critical issue for businesses whose revenue streams may depend almost entirely on digital transactions with their customers.

All this is happening, Chung said, in a fast-growing economy in Nevada, an economy in which new and expanding companies are creating a steady demand for expanded telecommunications capacity. "Everyone wants to be in this market," the Chung said.

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At the same time, telecommunications providers continue to roll out new business-focused services that place even more demand on networks. Cox, for instance, will roll out a business security offering later this year. That follows the introduction of a hosted voice service that Cox positioned as a way for business customers to stay on top of new voice technology without the requirement of a big capital investment.

Cloud-Based Systems

For some of the biggest business users of telecommunications systems — call centers, for instance — cloud-based telephone systems are delivering remarkable new technology.

In Reno, which is home to a plethora of big call centers, Pacific States Communications works with Interactive Intelligence to provide cloud-based systems that rely on the almost limitless capacity of Amazon Web Services.

Suehyun Johan
Chung
Sprint

Michael W. Buis, chief executive officer of Reno-based Pacific States Communications, said Interactive Intelligence provides tools such as analysis of call-center data to make predictions about staffing needs for the next day — or the next year — while allowing managers to conduct sophisticated what-if analysis about the services they provide.

Cloud-based services, which shuffle immense quantities of data between a user's desk and a distant data center, require large-capacity, highly reliable and fast networks to deliver their promise.

However, fast broadband service hasn't yet arrived in many rural areas of Nevada because providers haven't been able to make the investment pencil out, given sparse population.

That's beginning to change.

Rural Expansion

Valley Electric Association Inc. (VEA), a Pahrump-based electricity cooperative, is in the midst of a large construction project to expand broadband coverage into rural areas of the state.

The first phase of the expansion will bring fiber-optic broadband to the business district in Pahrump and to Beatty, said John Spracklen, Valley Electric's executive vice president for broadband operations and services.

The remainder of Valley Electric's customers will be served with wireless broadband in the first phase of the project, although the cooperative plans to extend

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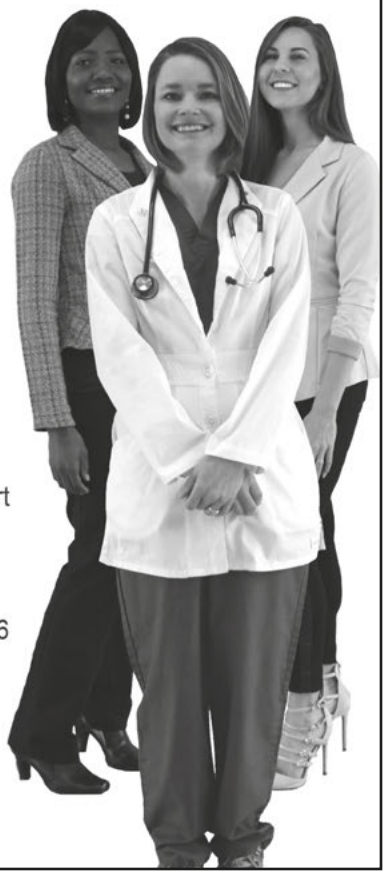

fiber optic line to every home and business in its territory in future phases of the project.

The first phase alone is estimated to cost $26 million for installation of 250 miles of fiber optic line and the associated electronics, said Spracklen. The cooperative is financing $15 million of the cost through a bank loan and has leased $11 million in electronics.

By the time future phases are complete, Spracklen said Valley Electric will be operating approximately 1,200 miles of fiber across the 6,800 square miles of the territory it serves.

The use of wireless broadband — far faster than the commercial data services now available, but not as fast as fiber-optic service — will allow Valley Electric to meet the strong demand of customers who otherwise would have to wait for the much slower construction of fiber lines.

John
Spracklen
Valley Electric

Spracklen explained that the cooperative will reach many of its 17,000 member-customers this year by shooting wireless service to homes, ranches and businesses from the tops of existing infrastructure. Valley Electric will then upgrade those customers to faster, wired service as construction of fiber lines moves along.

The move into broadband service reminds some of VEA's longtime members of its start 50 years ago, when the cooperative was created to bring electric service into remote areas that couldn't be served by traditional utilities.

The new project follows the same pattern, bringing the benefits of broadband to communities that otherwise might not be able to tap into many services — ranging from financial management to Netflix — available only to broadband users.

Valley Electric executives have said their cooperative's project reflects the reality that high-speed Internet isn't a luxury that can be delivered only in urban areas. It's a necessity for everyone.

Farmers in the Pahrump area, for instance, look forward to using Internet technology that helps pinpoint the best times to plant and apply fertilizers. Schools in communities such as Gerlach will be able to use videoconferencing, YouTube and online learning to enhance the education of their students.

The availability of fast Internet delivered over fiber-optic lines will also allow

businesses and professionals in Pahrump to widen their markets to include the entire world.

Upcoming Projects

Not all the projects to improve the telecommunications networks in Nevada are that big. Sprint, for instance, is building capacity on its network in Nevada through progressive upgrades — an additional repeater here, installation of briefcase-sized small-cell technology there.

"It's not a rip-and-replace strategy," said Chung, who notes that much of the Sprint strategy is driven by a need to build a dense network that meets the needs of heavy consumers of data in 4G and the coming, super-fast 5G systems.

Those 5G systems may prove particularly important in an era of self-driving vehicles, where even the smallest improvement in data speeds may prevent collisions.

Dominic
Marrocco
Equiinet

For businesses that are looking to upgrade their voice and data systems, the new age of telecommunications is all about accessibility, said Buis at Pacific States Communications. "Where you are is where you are," he said. "Work is where you are, not what you do."

That means that business telephone users want seamless integration between all of their voice systems — work, home and mobile. New systems, for instance, allow for calls that begin on office phones to be easily handed off to cell phones. No more of this: "I'm on my way out of the office. Can I call you back on my cell in a minute?"

Clients these days can expect integrated systems that deliver voice, email, instant messaging, presence (the ability to check the availability of a co-worker), calendaring, video and audio conferencing and desktop sharing in one package.

Convergence

The next new world of telecommunications — the one that's begun to peek over the horizon — is defined by convergence, said Dominic Marrocco, co-founder and chairman of the board of Las Vegas-based Equiinet.

The company, with 15 employees in Nevada, includes over 50,000 customers in the United States, Europe and China and delivers all-in-one voice and data services to business customers.

Marrocco said enterprise-sized telecommunications customers want a single source for all their voice and data requirements, no matter what legacy equipment they may be operating, no matter where their operations may be located, no matter how widely scattered their employees may be.

Equiinet, for example, uses a broadband connection and a single device to provide business phone systems, Internet services, threat management, off-site and on-site backup and bandwidth optimization in a single package.

Convergence, however, becomes more complicated by the day as IoT brings more devices, more data and more demand onto business voice-and-data networks.

"Equiinet is able to bridge the gap between the old world and the new world," said Marrocco. A popular product, for instance, allows the use of passive technology that allows outmoded legacy telephone systems to deliver the features of smart dial tone.

Ironically, all of the new features and new technology often increase the need for human beings to sort things out and ensure that users actually use all the features they're buying.

"Nothing is truly plug-and-play. Nothing," explained Buis. His team routinely returns to clients' offices a few months after completing a new installation just to show folks how to use all the features that they missed originally.

"There's a lot to learn, and if it's not easy, people aren't going to use it," he said. "There's always a lot to learn."

His company has carved a profitable niche during its 30-year history by handling products from multiple vendors — NEC, ShorTel and Allworx among them — then finding the right product for each customer.

"Our job is to understand the client and put together the best combination of products and services to meet the client's needs," Buis said.

Learning Curves

The accelerated change and the growing complexities of the market mean that business customers of Cox look to the telecommunications company as a trusted advisor.

"We're more than technology advisors to them," said Hill. "We listen to what their requirements are, then we craft solutions for them. We are their technology partners."

"The people of Cox are interested in enabling customer success. It's always about the customer and their user experience and their technology experience,"

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said Hill. "This is an exciting time to be in the telecommunications business."

The demand for excellent service, however, occasionally sounds a cautionary note for fast-growing Equiinet.

The company's business model is unusual, Marrocco noted. It doesn't charge clients for use of its hardware, but collects a monthly fee for technical support. "It builds a relationship," he said. "Customers learn to rely on us to meet their needs."

However, the business model, with its heavy emphasis on customer service, occasionally taps the brakes on the growth of Equiinet. Marrocco said the company doesn't want to take on new customers unless it's absolutely, dead certain it can provide excellent service to them.

Even at that, privately Equiinet is racing along at a 300 percent compounded growth rate.

Competition

While companies across the telecommunications industry emphasize the importance of service and expertise, business customers are highly sensitive to price as well.

For Sprint, Chung said customers' price sensitivity has led to a strategy in which the company markets the value of its offering rather than focusing exclusively on its capabilities or its price.

Competition is particularly stiff among the mostly local companies that work directly with businesses to provide voice and data equipment and services. "Anyone with a server can open a phone system these days," said Buis.

In addition, not all clients want to pay for the experience and advice of firms such as Pacific States, opting instead for a lower-priced system that provides limited ongoing support.

Often, Buis said, his firm sees those clients — chastened by a bad experience — return a couple of years later to take another stab at the problem, this time with some expert advice.

30 YEARS

The El Cortez Hotel & Casino celebrates its 75th anniversary this month. The property is Las Vegas' longest continually-running hotel and casino and has had the same façade since 1952. The hotel has seen a number of milestones over the years and has spent millions in changes, renovations and expansions since opening, most recently with the addition of Siegel's 1941, a 24-hour restaurant. As of 2013, the El Cortez has been included on the National Register of Historic Places and is the only operating casino to make the list.

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SPECIAL Legal Opinions 2016 REPORT

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November 2016

NOW in its fifth year, the Legal Opinions special report gathers the collective knowledge of attorneys throughout the state. Sharing their specialites in a variety of areas, these attorneys have written articles that cover the gamut of information executives need to know.

This annual feature is a valuable resource for business professionals throughout the year. Topics for this year's report include information on marijuana, protecting a company's brand, cyber law and estate planning, to name a few. For any business in need of an expert legal opinion, read on.


Alicia Ashcraft

Jeffrey Barr

Compliance is Key in the Marijuana Industry

By Alicia Ashcraft, Managing Partner & Jeffrey Barr, Partner, Ashcraft & Barr, LLP.

In the United States, 25 of 50 States permit some form of legalized marijuana use. However, business owners and operators in this industry face the frustrating and risky morass of conflicting government regulations. Marijuana is illegal under federal law, but it is legal under Nevada law. And when the laws, rules, and regulations are ferreted out, compliance by business owners and operators is essential to avoiding potential Federal prosecution and possible imprisonment.

A Short History of the War on Marijuana

Prior to 1937, marijuana regulation was left up to the individual States, but in 1937, the U.S. Congress passed the Marijuana Tax Act, which, of course, taxed cannabis. A few years later in 1952, Congress passed the Boggs Act, which provided for stiff, mandatory sentences for certain drug offenses, including marijuana. By and large, however, marijuana regulation was still a matter of individual State control.

This changed in 1970, however, when President Nixon declared war on drugs. Congress obliged, passing the Controlled Substances Act of 1970. The CSA placed marijuana on Schedule I, the most restrictive category, asserting that cannabis was highly addictive and had no medicinal use. States soon followed the Federal example, and marijuana became illegal under both Federal and State laws. Placing marijuana on Schedule I has ensured that there has been no formal medical or scientific research on the plant in the last 50 years. Moreover, according to the Federal Bureau of Prisons, drug offenses account for the overwhelming majority of Federal inmates, nearly 50% of all prisoners in the Federal system.

Nevada's Truce

In 2001, Nevada legalized medical marijuana by an amendment to the State's Constitution. Patients could apply for a registry identification card, which permitted them to grow and use their own marijuana strains, but there was no commercial availability of marijuana products until 2013 when the Nevada Legislature authorized, "medical marijuana establishments." Nevada licenses four types of establishments: (1) cultivation facilities; (2) facilities for production of edible or marijuana-infused products; (3) dispensaries; and (4) independent laboratories.

Cultivation facilities grow marijuana. Production facilities produce edibles or infused products. Dispensaries act like pharmacies and dispense marijuana products. Finally, independent laboratories test the marijuana products for purity and strength. In effect, Nevada has set up a shadow pharmaceutical system to circumvent Schedule I.

Federal Détente?

The Federal Government has maintained its hardline on marijuana. The U.S. Supreme Court has ruled that State legalization is not a defense to Federal offenses, and the DEA recently refused to reconsider whether marijuana should remain on Schedule I. But cracks in this edifice are beginning to emerge.

For example, in 2009, the Department of Justice published guidelines for Federal prosecutors and declared that while cannabis remained illegal under Federal law, it was no longer a priority to prosecute marijuana establishments who were in "clear and unambiguous compliance" with State law. In 2011, the DOJ issued the famous "Cole Memo," reiterating the 2009 guidelines. The Cole Memo has been seen as a significant change in Federal drug enforcement policy. In 2014, Congress prohibited the DOJ from spending money prosecuting marijuana cases in States where cannabis is legal, and in August 2016, the Ninth Circuit Court of Appeals interpreted the 2014 law and ruled that the DOJ could only prosecute marijuana cases of "[i]ndividuals who do not strictly comply with all state-law conditions regarding the use, distribution, possession, and cultivation of medical marijuana…."

The enforcement priorities set out in these guidelines are intended to guide the DOJ's enforcement of the CSA against marijuana-related conduct. Outside these enforcement priorities, the federal government relies on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. Accordingly, strict compliance with Nevada law is essential for marijuana-related businesses and is key for owners and operators to avoid the risk of becoming a federal enforcement priority.

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Erin Lewis

Making Your Mark:

The Basics of Brand Protection

By Erin Lewis, Shareholder, Brownstein Hyatt Farber Schreck

Picture a laundry detergent. Let me guess … Tide®? You have just demonstrated the power of branding. In today's crowded marketplace, a company's brand can be its single most valuable asset. In fact, the world's top brands are estimated to be worth as much as $150 billion. With so much at stake, you should be thinking about brand protection before you ever open your doors for business or put a product on the market.

All Brands Are Not Created Equal

Legally speaking, a company's brand refers to its legal rights in a trademark—defined as a word, name, phrase, symbol or design that distinguishes the goods or services of a particular source from the goods or services of others. Thus, brand protection begins with selecting a strong, enforceable trademark. Naturally, you may gravitate toward a trademark that informs consumers about the goods or services you are selling. However, these marks are generally deemed "descriptive" and therefore the weakest and hardest to protect.

Under trademark law, the strongest and most protectable marks are "fanciful" or "arbitrary." A fanciful mark is comprised of a made-up term or terms—think Google®—with no independent meaning or significance beyond its trademark function. In contrast, an arbitrary mark has independent meaning, but that meaning is insignificant as applied to the goods or services offered under the mark. For example, Apple® is an arbitrary mark because the term "apple" has no significance when applied to computers and electronics.

Getting the "All Clear"

After selecting a potential trademark, you should "clear" the mark to confirm it is available for use. This important step in the brand development process will help ensure that another party has not already acquired rights in the same or similar mark in connection with overlapping goods or services. If you skip this step, you run the risk of adopting a protected trademark, which may subject your company to costly consequences. If you are found liable for trademark infringement, you may be forced to pay monetary damages in addition to the costs associated with rebranding.

Because of the potential legal implications, companies will often engage legal counsel to conduct clearance searches. However, if financial constraints prevent you from hiring a trademark attorney, legal service providers like Thompson CompuMark and CSC offer some helpful clearance tools. In addition, federal trademark applications and registrations are searchable through the United States Patent and Trademark Office (USPTO) website. At the state level, some registration records are searchable online through the applicable Secretary of State website. Finally, it is important to remember that you do not need a registration to develop rights in a trademark. Unregistered trademarks can also pose an infringement risk. Thus, the trademark clearance process should always include a robust internet search for potentially conflicting trademarks.

Bulletproofing Your Brand

Once cleared, you should strongly consider securing registrations for your trademark. Although not necessary to establish trademark rights, registration confers on the registrant certain additional rights and remedies, including by expanding the geographic scope of trademark protection..

In the United States, you cannot secure a trademark registration until you begin using your mark in connection with the sale of goods or services. However, the USPTO allows you to "reserve" trademark rights through the filing of a federal intent-to-use application. This can be an invaluable brand protection tool for companies who intend to invest heavily in the brand development process. Finally, if your company has an online presence, you should also consider securing pertinent domain names and social media usernames before you launch your brand. Attempting to reclaim these post-launch can prove difficult.

Brands are powerful assets and critical to a company's success and longevity. Using the tools outlined, you will be well on your way to developing a strong, protectable brand.

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Arbitration's Dirty Little Secrets

By R. Duane Frizell, partner and Jonathan C. Callister, partner, Callister & Frizell

This article is not an attack on the widespread use of arbitration. Good arbitrators daily shoulder the burden of adjudicating parties' rights in a manner that is economical and sound. That said, as with anything, there are risks. Businesses need to consider them before agreeing to arbitration or including arbitration clauses in contracts. "As a matter of public policy, Nevada courts encourage arbitration and liberally construe arbitration clauses in favor of granting arbitration." The same is true in Federal court. Moreover, unlike mediation, arbitration is generally binding. Thus, a party cannot usually walk away from or retry an arbitrator's decision.

The U.S. Supreme Court has noted that the benefits of arbitration may include "lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes." Nevertheless, these assumptions do not always hold true. There are also some additional tradeoffs.

Lower Costs?

Arbitration is not always cheaper than court. Arbitration filing fees are usually higher. Furthermore, parties do not have to pay judges, but they do have to pay arbitrators. That can get expensive, especially if there is more than one. Large deposits are often required upfront.

Many believe this is offset by arbitration's shorter and limited discovery (attorney fact-finding). Hence, the argument goes, attorney time and fees are reduced. This may be true in some cases, but certainly not all. Often, a party can convince an arbitrator to allow for as much, or nearly as much, discovery as in a court case. In addition, although the discovery time is usually shorter, that often only compresses the process, making monthly attorney fees higher over a shortened period of time—with no net savings and perhaps a net loss.

Expert Adjudicators?

It is not uncommon for arbitrators to be attorneys (or even lay persons) without any expert knowledge and with less experience than a judge. Some industries do have arbitration associations, but even those may not result in better decisions. Some industry arbitrators bring no special knowledge to the table. In local trade associations, arbitration outcomes may be influenced by the prestige of local "big wigs," even without underhanded tactics. Some associations even allow an arbitrator to throw a party's attorney out of the room!

The Tradeoffs?

"In bilateral arbitration, parties forgo the procedural rigor and appellate review of the courts …." By agreeing to arbitration, parties often unwittingly forgo such rights. Such parties may be consumers and employees, but they include businesses too. Generally, an arbitration award can be overturned only when it "was procured by corruption, fraud, or undue means"; "there was evident partiality or corruption"; "the arbitrators were guilty of misconduct"; or if the "arbitrators exceeded their powers." This means that arbitrators' errors of fact and law are commonly left uncorrected.

For all of these reasons, instead of agreeing to or insisting upon arbitration as a matter of course, a business person should critically think about the assumptions and tradeoffs. Factors to consider include risk management, business objectives, litigation types, arbitration experience, and the size of the business's and its actual (and potential) adversary's pocketbooks. And by all means, talk to an attorney!

1 *Tallman v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 71, 359 P.3d 113, 119 (2015); see also Nevada Uniform Arbitration Act of 2000 (UAA), NRS 38.206–38.248.*
2 *See AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 339 (2011); see also Federal Arbitration Act (FAA), 9 U.S.C. § 1 et seq.*
3 *Exceptions include the court-annexed arbitration program in Nevada, which handles cases with amounts in dispute under $50,000. See NAR 3(A), 18(A).*
4 *Concepcion, 563 U.S. at 348.*
5 *Id. at 348.*
6 *While the arbitration agreement must be in writing, neither the FAA nor the UAA require it to be signed. See Tallman, 359 P.3d at 119.*
7 *See Concepcion, 563 U.S. at 352.*
8 *See Tallman, 359 P.3d at 121.*
9 *9 U.S.C. § 10; accord NRS 38.241.*

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John L. Krieger

Cybersecurity

Protecting Personally Identifiable Information

By John L. Krieger, Member, Dickinson Wright's Intellectual Property and Entertainment and Sports Departments

Privacy laws are becoming more consumer-focused and companies that collect personally identifiable information about their consumers, and who fail to tell those customers what they are doing with that information, are beginning to find themselves in uncomfortable situations. New regulations aimed at protecting people's privacy are on the rise; defining what constitutes personally identifiable information; and defining what encryption is and when it should be used. Moreover, with the growth of Internet commerce, businesses are gathering even more particularized information about their customers' buying habits and personal tastes, which is potentially even more valuable. Simply put, companies need to know what their obligations are, particularly if they have an Internet presence and are gathering personally identifiable information about their customers by way of a website.

If a business collects personally identifiable information—which is currently defined in most states as a combination of someone's first initial, last name, and an account number, such as a credit card, bank account, or driver's license number—then it has an obligation to keep that information safe and tell customers what they are doing with it by way of an informative and accurate privacy policy.

For example, Nevada, with one of the strictest encryption standards in the nation, requires companies to adopt encryption technology for the personal information the company gathers and stores; and it must use a recognized standard of encryption to do so. What makes Nevada's law particularly troublesome is that it applies to "any" "personal information," which could be interpreted broadly to encompass any one element of the "personal information" combination identified above. Furthermore, because the law applies to business "in the State," companies located outside of Nevada should evaluate the nature and the quantity of business conducted within Nevada.

Although the laws regarding the specifics of handling a data breach are unclear, the sooner consumers are notified a breach occurred, the quicker they can act to protect themselves (e.g. change account numbers, notify banks, etc.) and the less liability the company will have for the breach. It is important to plot out an appropriate response and notification process.

To protect your company, it is imperative good data protection policy and safeguards are in place, and to consult with the appropriate legal counsel and IT personnel to ensure that all relevant data protection issues facing the company have been addressed, and are included in privacy policies and/or employee handbooks. All data collection sources need to be considered (e.g., smart phones and laptops), particularly those sources that "feed" information back to the company's servers. Companies would do well to modify their practices and update their internal policies to cover stored as well as transmitted data.

When creating a data security compliance strategy, it is important to perform cybersecurity and cyber-liability audits, usually conducted by both the company's IT and legal counsel, to ensure that all appropriate policies are in place. Keeping encryption and anti-virus spyware software and firewalls up to date, and use of strong passwords is also necessary, along with creating and enforcing computer usage policies.

Attorneys who practice in the area of privacy law can be especially helpful in assisting with creating non-disclosure agreements—to be signed by the company's employees—and security policies, as well as conducting on-site education programs/seminars and audits. Knowing the dangers of a data breach and taking appropriate measures to protect personally identifiable information is critical.

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Robert L. Bolick

Nevada Asset Protection Trusts

How Effective Are They?

By Robert L. Bolick, Shareholder, Durham Jones & Pinegar

It took hard work to get where you are, so how do you protect what's yours? Nevada is well known for having some of the best and strongest asset protection laws in the country. Perhaps the strongest weapon in our arsenal is our asset protection trust. The following are FAQ's regarding Nevada Asset Protection Trusts (NAPTs):

Won't my living trust provide asset protection?

No, living trusts don't offer any asset protection. As a revocable trust, your creditors can access any assets held in your living trust.

Can I really achieve asset protection?

Yes, Nevada has the strongest asset protection trust in the nation. *Forbes Magazine* gives Nevada trusts the only A+ rating in the country.

Is it legal?

Yes. All you have to do is comply with the statutory requirements. The key is to get your asset protection trust in place well before a liability or claim arises. If you already have known liabilities and claims, an asset protection trust might offer less protection.

How does the trust work?

You can be the trustee of your trust and maintain control over all trust assets throughout your life. You can buy, sell, trade or reinvest assets at any time without the knowledge or consent of anyone else.

Is the trust recorded or filed?

No one even knows that your trust exists. All assets and transactions are strictly confidential. You can distribute assets to yourself at any time. If your trust is properly and timely created and funded, no creditor can attach any assets held in trust or any distributions from your trust.

When do the asset protection features become effective?

Asset protection begins after the assets have been held in your trust for two years. After two years, no creditor can penetrate or attach any assets in your trust. Similarly, you cannot be forced to distribute any assets.

What assets can I hold in my trust?

Your trust can hold your home, any other real estate, investments, cash, securities and any other asset whether located in Nevada or elsewhere. Most people hold their rental properties or businesses in an LLC which in turn is held in their trust, to protect their other assets held in trust from any claims or liabilities arising from their rental or business.

What if I move out of Nevada?

You do not have to be a Nevada resident to have a Nevada Asset Protection Trust. The only requirement is that at least one of your trustees be a Nevada resident. This person can be a friend or relative residing in Nevada, a Nevada bank or trust company, your attorney, accountant or other advisor. You still retain your position as the principal trustee with complete control over your assets held in your trust.

Why doesn't everybody create an asset protection trust?

They should. With all of the uncertainties of life, bizarre outcomes of lawsuits and exorbitant jury awards, you can never be too safe. You can realize huge dividends by arranging your affairs now to protect yourself from the unforeseen. Nevada law affords you this excellent protection. Why not take advantage of it?

Is a NAPT expensive?

No. Not having a NAPT can be. Creating a NAPT is a one-time expense. There are no annual administration costs or maintenance fees.

In order to ensure that an Asset Protection Trust will be effective for you in your particular circumstances, you should seek advice from a competent attorney. Robert L. Bolick is a Shareholder and Asset Protection Attorney with Durham Jones & Pinegar. Serving Southern Nevada since 1987, with offices located in Summerlin, Durham Jones & Pinegar is a top firm serving businesses and families. Practice areas include litigation, real estate, business transactions, estate planning, elder law, tax planning, family law, intellectual property, and more.

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Brandon M. Garrett
Matthew J. Kreutzer

Franchisors as Joint Employers

Strategies for Avoiding the NLRB

By Brandon M. Garrett, Attorney and
Matthew J. Kreutzer, Attorney, Howard & Howard Attorneys PLLC

If you've ever been involved with franchising, then you know first-hand that the regulatory landscape for franchise companies can be daunting – particularly for those that aren't familiar with the nuances of state and federal franchise laws. Navigating this already challenging geography became even more complicated for franchisors recently. This is because the National Labor Relations Board ("NLRB") adopted a new "joint employer" test, deciding that McDonald's Corporation should be considered the joint employer of its franchisees' employees.

In December 2014, the NLRB – the agency tasked with protecting employees against unfair labor practices – identified McDonald's (the franchisor) as a joint employer by alleging that it engaged in various unlawful employment practices against its franchisees' employees. The NLRB argued that McDonald's was a co-employer because of the indirect influence it had on those employees by way of the policies, procedures, and rules McDonald's requires all of its franchisees to follow. Many have speculated that this move is a political one stemming from the NLRB's motivation to allow employees of these large franchise systems to unionize so that they can collectively bargain with their employers.

This move caught the franchise community off guard. Historically, franchisors have been found time and again to be shielded from such liability because they lack direct control over their franchisees' employees. Now however, with this change in position and focus by the NLRB and other governmental agencies, many franchise companies are reconsidering the aspects of the franchisor-franchisee relationship and are seeking ways to limit their risks of being found jointly responsible as an employer of their franchisees' employees.

This sea-change has created a series of new challenges for lawyers who advise franchise brands. On one hand, a franchisor's primary responsibility is to protect the brand and integrity of the franchise system as a whole. As a result, it is crucial for the franchise company to have strong rules and policies in place to ensure the uniformed replication of an exceptional customer experience. On the other hand, the position taken by the NLRB and other governmental agencies has made it clear that greater control by a brand owner can be a contributing factor in the joint employer test.

What follows from this tension is the need for balance in the controls exerted by franchise companies over their individual franchisees. For a trademark owner, it is critically important to create uniform standards to protect the use of the brand and quality of the products and services to the end user. When these controls start to seep into matters of the employment relationship, however, the franchisor finds itself deeper within joint employer territory. As a result, experienced franchise attorneys typically seek ways to achieve a happy medium between dictating rules that ensure brand consistency and quality system-wide, while at the same time avoiding a direct or indirect nexus to the relationship between the franchisees and their employees.

Without much in the way of direct guidance from the NLRB or other authorities, finding the right balance between these competing concerns can be elusive. The prevailing wisdom is that a franchisor should draft its legal documents in a way that ties operational rules to brand-protection justifications, and leave it to individual franchisees to determine the way their employees follow those rules. By way of example, franchisors likely won't find themselves to be joint employers if their manual dictates what type and style of uniforms the employees must wear; they may, on the other hand, find themselves deeper in joint employer territory if the manual dictates employees' hours, pay, and/or benefits.

The devil is in the details, and unfortunately there is no silver bullet to protect against these risks. Concerned franchise companies should consult with legal counsel experienced in franchising to best arm themselves in this increasingly perilous environment.

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Debbie Leonard

Jeff Silvestri

Can you get appellate review in the middle of your case?

By Debbie Leonard, Partner and Jeff Silvestri, Partner, McDonald Carano

It happens more than we'd like. You're in the midst of contentious litigation and the judge issues a "bad" ruling. Most times, you just lick your wounds and press on. Some rulings, however, can throw your case into a tailspin, derail your trial strategy or, worse, dismiss your claims entirely while allowing other parties to proceed. Can you appeal that ruling right away to get the case back on track?

The short answer is generally "no." By rule or statute, only select types of decisions are appealable, and for the most part, appeals from interlocutory – or midstream – rulings are prohibited. However, there are exceptions: for example, preliminary injunctions; orders regarding trial location; and orders denying a motion to compel arbitration are all immediately appealable. But overall, because appellate courts have limited jurisdiction and want to avoid piecemeal review, a litigant must wait to appeal until after final judgment is entered.

Here are two specific procedural tools to obtain appellate review before final judgment.

Certify a Final judgment as to Certain Parties

Rule 54(b) certification allows for immediate appeal of an order that disposes of all claims and defenses of one or more parties in a multi-party action. To obtain this relief, the aggrieved party must ask the court to make an express finding that there is no just reason for delay. The court must then enter final judgment as to the party or parties who seek the interlocutory judgment, which can be appealed.

Beware though; if the certified order's subject matter is sufficiently interrelated with the claims that remain to be decided, a Rule 54 certification may not stand. The question is whether the prejudice to the eliminated party from having to delay appeal until the district court resolves the entire case would be greater than the prejudice to the parties remaining in the case. The district court has discretion to make that determination.

Seek a Writ of Mandamus or Prohibition

A petition for writ of mandamus or prohibition invokes the original (as opposed to the appellate) jurisdiction of the appellate court. A writ of mandamus compels the district court to follow the law or controls an arbitrary or capricious exercise of discretion. A writ of prohibition stops the district court from acting either without, or in excess of, its jurisdiction.

These are extraordinary remedies that are only available if there is no plain, speedy, and adequate remedy in the ordinary course of law. The appellate courts have complete discretion to consider writ petitions and do not do grant them very often, particularly where the writ would only partially resolve the underlying action and the issue can be reviewed on appeal from a final judgment. However, when there is special urgency or strong necessity; the facts are well developed and undisputed; only important legal question(s) of statewide importance are presented; or there are conflicting lower court decisions, an appellate court is more likely to consider a writ petition.

The Bottom Line

Are these tools worth employing? The answer usually comes down to time, cost and novelty of the issue presented. Seeking writ relief or Rule 54(b) certification can often become an expensive procedural side show that distracts litigants, lawyers, and the court from the merits of the underlying dispute and burns up large portions of a litigation budget. Also, appellate review can often take years. Anyone thinking of asking an appellate court to intercede in ongoing litigation should seriously consider whether they want to go through the appellate process more than once.

But where you need an important legal question answered or will be irreparably hamstrung by the trial court's erroneous ruling, immediate appellate relief makes good sense. It's a case-specific inquiry that litigants and lawyers should evaluate when the stakes warrant it.

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Alexander LeVeque

Trust & Estate Litigation

No Longer Confined to Stiffs & Gifts

By Alexander G. LeVeque, Partner, Solomon Dwiggins Freer, Ltd.

Over the years, my firm has represented scores of business owners who never imagined that they would need the services of a trust & estate litigation attorney, especially when no one had recently died. While it is common for business owners to retain attorneys for estate and business planning (and sometimes litigation counsel to handle garden-variety contract and employment claims), trust and estate litigation counsel is not a number typically saved on a contact list.

The fact of the matter, however, is that modern business planning (especially for closely-held family businesses) more often than not has a trust component. Family trusts and asset protection trusts are routinely used to hold ownership interests in businesses. Such planning is intended to create an extra layer of protection from creditors, to streamline succession, and also to minimize the chances of family feuds concerning the ownership and control of the business through the generations.

Nevada has wisely positioned itself to be attractive to entrepreneurs and high net worth individuals due to its business-friendly tax laws, absence of a personal income tax, and its strong asset protection laws. For these reasons, more and more businesses and trusts are being formed in Nevada. What results are hybridized business formation models which hold the assets and the control of the business in both a trust and a traditional legal entity like a limited-liability company. For example, the business could be formed as a limited-liability company with its sole member being a trust. In this common scenario, the business owner wears two hats: the first being the manager of the company, and the second being the trustee of the trust. With each hat comes distinct duties (e.g. duties of care, fiduciary duties, marital duties) owed to certain people or other entities. And to make matters more complex, the duties owed by the trustee to the trust could potentially conflict with the duties owed by the manager to the company's owners, especially if the company is not wholly owned by the trust.

When such a business gets sued (or needs to sue), a trust and estate litigator is usually a better option than a general civil litigator. Here are four reasons why:

First, trust and estate litigation is a different style of litigation. Notice and due process requirements are different than general civil litigation. If your attorney is not aware of these different requirements, you could miss a case dispositive deadline, for example a deadline to file a creditor's claim. There are 38 chapters of the Nevada Revised Statutes (Chapters 132-167) dedicated to wills, trusts and estates.

Second, although there have recently been efforts made to codify more trust and estate law in Nevada, much of the law is still governed by the common law (law decided by judges), much of which is in the form of unpublished Supreme Court decisions or common law trends from other jurisdictions. What this means is that competency in the trust/estate area of law is achieved almost entirely by experience and keeping up with trends in the common law throughout all jurisdictions in the United States.

Third, competency in this area requires the ability to see the whole forest and not get confused by the trees. Trust and estate cases routinely touch upon other practice areas like tax, community property law, and fiduciary law. Practically every business dispute which concerns a trust has fiduciary duty issues. The fiduciary duties of a trustee of a trust are not identical to the duties of an officer, director or manager of a company. This is a common pitfall for business litigators. The business judgment rule, for example, may not be a valid defense to a claim against a trustee of a trust for a breach of fiduciary duty.

Fourth, settling a contested trust or estate matter almost always requires a tax analysis. Forgetting this important step could lead to adverse estate, gift and/or personal tax consequences.

The hope is that no business owner will ever have to consult with a trust & estate litigation attorney. However, if and when a dispute arises concerning your business and your business is owned and/or managed by a trust, an initial consult with a competent trust & estate litigation attorney is worth its weight in gold and could save you thousands of dollars in the long run.

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Nevada Awarded $283,000 for Export Expansion

The U.S. Small Business Administration (SBA) has pledged $18.85 million to support export growth for small businesses and Nevada has been awarded $283,000 of the total. The funds were awarded through SBA's State Trade Expansion Program (STEP) and the Nevada Governor's Office of Economic Development (GOED) has been awarded the grant for the state.

Sierra Angels Launches Program and Fund for UNR-based projects

An early-investor funding group, the Sierra Angels, has launched Sierra Innovations and the Entrepreneur Fund to help incubate ideas and projects created through the University of Nevada, Reno (UNR) that have the potential to reach the marketplace. The program and fund are expected to develop start-up companies in Northern Nevada and opportunities to participate are open to UNR faculty, staff and students.

Nevada Road Projects Receive Additional $20 million in Funding

The Nevada Department of Transportation has announced that an additional $20 million in federal highway spending authority has been been made available for state projects. The funding has been released through a redistribution of the Federal Highway Administration's fiscal year-end funds. Projects expected to receive the additional monies include Project NEON improvements on Interstate 15 in Southern Nevada and enhancements to Interstate 580 in Northern Nevada, among others.

UNLV Collaborates with Lockheed Martin on Space Exploration

The University of Nevada, Las Vegas (UNLV) and Lockheed Martin have entered into a commercially sponsored master agreement. Under the agreement, UNLV faculty and students will work on NASA's Orion program as well as other space exploration projects. Over the course of the five-year collaboration, Lockheed Martin will provide as much as $5 million in funding to UNLV's Howard R. Hughes College of Engineering through a series of commissioned work related to space exploration.

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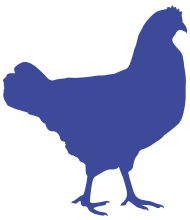
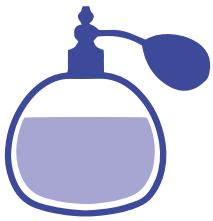


Chick-fil-A

The Atlanta-based eatery, known nationally for its southern style chicken sandwiches and waffle-cut fries, will make its debut in Nevada with two new locations in Henderson. Construction is underway on the fast-food restaurants and both are expected to open in early 2017. The company plans to add up to 10 more locations in the Southern Nevada region over the next five years, each locally owned and operated.



Cosmetic Enterprises Ltd.

A cosmetic and skin care company, Cosmetic Enterprises, Ltd. (CEL) is expanding their manufacturing facilities into Dayton, Nevada. The company will invest a substantial amount into the new facility and plans to hire up to 30 employees in the first year of operations with an average wage and benefits exceeding current labor standards. The company purchased a 60,000 square-foot building and adjacent property for possible future expansion.

MMC Contractors

As an extension to its Las Vegas location, MMC Contractors recently opened an office in Reno. The company is currently building their team within the disciplines of estimating, project management, field supervision and administration. The company specializes in healthcare construction, local government work, energy and industrial markets with plans for strategic growth in the Northern Nevada market.

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NON-COMPETE AGREEMENTS LOSE VALUE IN NEVADA

A SHIFT IN STRATEGY MAY BETTER PROTECT BUSINESSES, EMPLOYEES

Matthew Digesti is Chief Legal Officer of Bristlecone Holdings

After a July Nevada Supreme Court decision, Nevada business owners must revisit their non-compete agreements. The decision creates so much uncertainty, businesses should strongly consider revising their non-compete strategy altogether.

In Golden Rd. Motor Inn, Inc. v. Islam, the Supreme Court held that the employer's non-compete provision unlawfully extended beyond what was necessary to protect the employer's interests, which resulted in an undue hardship on the employee. As a result, the Court voided the entire agreement and the former employee is now free to work for any direct competitor without restriction. This unexpected outcome sets a precedent fraught with landmines for businesses that fail to address the issue proactively.

The conventional wisdom passed from Nevada lawyers to their business clients has always been to draft reasonably broad non-compete provisions. If a court found that the provision was too broad, the court had the power to lighten the restriction, but still enforce the agreement. Thousands of non-compete agreements in Nevada are drafted in this way. All of them need to be revisited.

Now, if a judge finds an agreement "unreasonable," the entire agreement is void. Nevada joins a tiny minority of states that follow this rule. Employers cannot expect their non-compete agreement will be enforced at any level. They must weigh the risk that the agreement could be thrown out entirely. Uncertainty now clouds employment agreements in Nevada, potentially opening the flood gates to expensive litigation.

Nevada businesses have three options. First, wait for cases to be litigated and for the law to develop into a clear blueprint. This option could take years and will leave business owners at risk if they choose to keep existing non-compete agreements in place. Second, wait for the composition of the Nevada Supreme Court to change because a court composed of different justices might reverse this change. Only four of the seven justices supported the decision. However, a guard change at the Supreme Court level will likely take longer than waiting for a new case to be litigated and it provides no guarantee the law will change. Meanwhile, both business owners and employees remain at risk with today's unclear rules. Third, businesses can do away with non-compete clauses entirely and instead focus on the information they would like to protect. This new protection option is the quickest and cleanest way to bring clarity to the muddled issue.

Perhaps a counterintuitive solution, banning non-competes has the potential to help Nevada-based businesses. They could instead consider strengthening confidentiality and trade secret protections in lieu of employee-focused laws.

When a business honestly reviews what it is trying to protect, they usually find it is the information and intellectual property, not the services. Non-competes lose relevance as the value of services gives way to the value of information and technology. A casino VIP host does not hurt casino A by going to work for casino B. But if that VIP host takes valuable information to casino B, therein lies the problem. That valuable information can be adequately protected, and more accurately managed, through thoughtful confidential and trade secret strategies.

If businesses instead rely on confidentiality and trade secret protections they can leave less room for interpretation to the courts, create greater certainty that businesses' confidential information is protected, and potentially save thousands, if not hundreds of thousands, on litigation fees.

THE ELECTIONS AREN'T THE END

THEY'RE JUST THE BEGINNING

Michael Schaus is communications director for the Nevada Policy Research Institute.

For far too long now, Nevada has been increasing the regulatory and tax burden on businesses, while simultaneously giving special handouts to politically connected companies and industries.

It's an environment that is ripe for corruption, abuse and political shenanigans. It breeds "protectionist lobbying," allowing politically connected companies to squeeze out small businesses and innovation.

Given the popularity of anti-crony political candidates on local, state and federal levels in the last year, it's clear that a sizeable portion of the electorate are tiring of the status-quo.

So, the question is, will voters tolerate more of the same in 2017? Some people may think the answer to that question was going to be obvious this month, after the elections. But in truth, we will have to wait much longer to fully assess if this is the case.

The individuals we select to head to Carson City aren't nearly as important as the public policy solutions they advance when they finally convene in February of 2017.

Ensuring that these candidates-turned-lawmakers advance fiscally sound policies that are in line with Nevada's tradition of individual liberty, requires more than simply showing up to the polling location in November. It requires a constant engagement from citizens, voters and taxpayers.

As with politicians on every level, when lawmakers arrive at the capital, they are bombarded with information from special interests, embedded political powers and profiteers from the status quo of big-government largess. In short, the voice of the voters is drowned out by the bias of well-established crony elites.

This isn't the fault of any particular political party — in fact, it's an environmental reality in almost every level of government.

It's easy for candidates to speak to people's concerns during election season, but it is substantively more difficult for lawmakers to actually address those same concerns in the bubble of intra-government politics.

Largely, this is because lawmakers simply aren't armed with a wealth of policy knowledge going into the session — and their "education" is too often instructed by the very special interests they once campaigned against.

For this reason, the Nevada Policy Research Institute makes it a point to widely distribute our Solutions policy booklet, containing limited-government policy proposals and objective policy analysis on more than 60 individual topics.

It's a good start toward giving average Nevadans a stronger voice in Carson City — but it's not enough by itself.

In 2015, over two dozen policy proposals from NPRI's Solutions booklet inspired bills and legislation. The state's key educational choice program — Education Savings Accounts — was even taken almost verbatim from Solutions.

And yet, the state still saw a $1.5 billion tax increase, a slew of new regulations and special carve-outs for politically-favored industries and companies. Subsequent special sessions have extended this cronyist tradition, giving special tax incentives to key companies — such as Faraday Future.

The truth is, lawmakers did, in fact, have better policy solutions at their fingertips — but the big-government culture in Carson City simply drowned out many of the alternatives that should have been discussed. And that's why the elections in November are just the beginning.

As the regular legislative session approaches in 2017, there are many issues lawmakers will be preparing to tackle. A legislative fix to the state's sweeping educational choice program, economic development, the Commerce Tax and countless other priorities will all be on their agenda.

Arming these legislators with the information they need to make well-informed decisions about the direction of the state is critical. And just as important is letting them know that voters, taxpayers and citizens will remain engaged long after November.

There's a reason that activists always encourage voters to call their lawmakers when a particular issue is being discussed: It works.

In the Assembly and Senate, lawmakers are insulated from the rest of the state. They are surrounded by apologists for the status quo, who insist there are no alternatives to another tax increase, another regulatory overhaul or another expansion of government.

The voice of average Nevadans must be a part of the session. Together, we are far more powerful than any lobbying group, special interest or union offering political cover — but only if we remain engaged.

So, will Nevadans tolerate more of the same going forward? It's a question that won't be answered until February 2017.

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Nevada Business THE DECISION MAKER'S magazine

Overall, commercial real estate (CRE) in Nevada has been seeing an uptick from the recession. However, some markets are recovering more quickly than others and there are still many challenges the industry must face moving forward. Recently, CRE experts met at the Las Vegas offices of City National Bank to discuss the changes, challenges and opportunities, facing the industry in Nevada.

Connie Brennan, publisher and CEO of *Nevada Business Magazine*, served as moderator for the event. These monthly meetings are designed to bring leaders together to discuss issues relevant to their industries. Following is a condensed version of the roundtable discussion.

WHAT ARE SOME **CHALLENGES FACING** THE **INDUSTRY**?

CHRIS EMANUEL: The biggest challenge is maintaining the velocity that we have right now. There's great positive momentum. There will be that pivot where we start focusing more on redeveloping rather than just the "buy land, build, lease and sell." That will be a challenge, but I think all of us can meet that.

MICHAEL NEWMAN: On a macro level, there is uncertainty that exists about what's going to happen in 2018, what's going to happen to the national economy and how that's going to filter down to the local economies is crucial. Most economists agree there's more than a 50 percent chance we're going to see some kind of adjustment in 2018. That uncertainty may be causing a lot of investors to pause a little bit on acquisitions and investment locally.

MIKE MONTANDON: With the BLM restricting what becomes available, there is an absolute lack of available land. The big developers who would all like to build a 300,000 square foot development are just scratching for a piece of land to do so.

RICHARD TRUESDELL: We have a shortage of labor here for construction; we see it in every project we're involved with. Just getting people to bid half the time has become a greater hurdle, but tenant demands are still there.

HOW IS EACH **MARKET SEGMENT** FARING?

Retail

EMANUEL: We need to thank retail because it led us out of the recession. The consumer always needs to consume. We've had a good launch with Natural Grocers in the market and they're going to continue opening stores. That's the grocery thing that the Internet can't change, people going and shopping. Hopefully the building departments don't stand in our way with shopping center REAs (Reciprocal Easement Agreements) from continuing to give what the consumer wants. That can be a challenge in redeveloping some locations in retail. Overall, retail is strong.

DANIEL ADAMSON: Part of it is recovering. From the tenants that are expanding, you look at a heat map and there's 10 or 12 really hot spots, then a block away, not. So it's the hot spots and the not spots all over town, which is pretty incredible. I've seen site plans and know that retailers are looking. There's probably eight to 10 grocery-anchored stores on the drawing boards now to come out of the ground. It feels like we're getting back to where we were or close to it, so that's game on again. Maybe it's going to take a couple years to get there, but it's encouraging.

BRENDAN KEATING: All real estate is so specific to which corner or which street you're on. In the retail business, we're seeing rents at or above peak pricing. We've done some deals at Canyon Point that were $4.00 a square foot. Those prices haven't been around for a while. With new construction, the best pads are getting $3.50 or $4.00 [per square foot], so we're definitely seeing some strong pricing. It feels very healthy. I think of everything as supply and demand and there's new supply coming on where it needs to be.

CAROL CLINE-ONG: In the retail arena for the smaller units, say 2,000 square feet, we are seeing some concerns with some people that are not making it just recently. Going into 2018, what's happening, are we going to see an adjustment? The big box is great, but with the smaller mom-and-pops, we have some concerns.

ADAMSON: I don't think we see as much leasing activity. We've seen it dwindle. We've seen some impact with the Internet and Amazon.

MIKE MIXER: On the other side of the coin is the resort corridor which is seeing a robust retail experience. We're seeing Wynn expand his

retail offerings. The Linq, obviously, has gone through some changing but it's very successful on the Strip. We're seeing a large number of investment groups coming in to buy resort corridor retail assets. We're on the map as a destination place like Beverly Hills or New York City to come to and shop.

MONTANDON: At ICSC (International Council of Shopping Centers) last year, I saw a list of the top grossing sales per square foot retail centers in the world, and I think four of the top 10 were in Vegas. It was really quite shocking.

Industrial

TRUESDELL: Industrial has spun off residential in some of the markets. The pressure on that is up in North Las Vegas. The Southwest [area of Las Vegas] is in the CMA (comparative market analysis). The county desires to change the CMA a little bit. That affects everybody. The retail in the CMAs have already driven the prices up there, which should have been industrial.

NEWMAN: I've heard people voice skepticism about the strength of the big box industrial market going forward because there has been so much of it delivered and there's so much under construction right now. I'm not as concerned by it because I think what's driving that is a change in strategy in the supply chain from the large regionally-located million square-foot distribution hubs to now an intermediate facility a couple hundred thousand square feet closer to a population. Then in some locations like in Southern California, you got people buying obsolete infill buildings and using those for last mile distribution.

MICHAEL DUNN: The thing that strikes me with [Apex] is you take a look at the Inland Empire which is all a direct supply line from the ports of LA. Apex is closer than the Inland Empire to the ports in Long Beach and LA to service it. I don't think we should preclude that the industrial market will flow out to Apex. Maybe that's a positive thing.

Office

LARRY SINGER: I wouldn't call the office market particularly healthy, but I think it's good. We're seeing tenants moving around. The tenants have gone from Class B to Class A spaces to take advantage of lower rental rates to actually needing to relocate because their space is tired and they want to expand. A lot of them are utilizing space more efficiently. It allows them to spend more on finish than on rent. I'd like to see more product coming online. My issue is that lenders and investors really aren't taking serious looks at Southern Nevada at this time. They shied away from our market. As a result, we can't get any traction to build new office buildings. We're running out of office space, particularly large box.

DUNN: Businesses still have to operate. Overheads, outside of employee costs, is your second largest cost. So what are they doing? They're getting denser which puts pressure on parking requirements. The T.I. (tenant improvement) costs are challenging. The financing is challenging. From the standpoint of these landlords, it's a lot of pressure on them financially. [In regards to] investors coming to the market, diversity is part of [the issue] - the endless conversations about our education system, taxes and a whole variety of things. They're looking at things and scrutinizing.

MIXER: At 17 percent vacancy, the office segment of the market is the last to recover. It's the last product type to see benefits from the improvement in the economy.

BRET DAVIS: It's not 17 percent across the market. It's 30, 40, 50 percent on East Flamingo and East Sahara, the older parts which are arguably more obsolete. We're coming across more tenants competing for the same space. That's really becoming more of a problem in the Summerlin area or in the high desirable areas.

DUNN: With office product, location plays a big role. I'm not quite sure where we're going to push out to. Land values are up $15 or more a foot, which means you've got to go vertical. Going vertical, you've got to get into a different type of lender and that lender is going to require a lot of pre-leasing. You're going to have to obtain 50 percent pre-leasing to come out of the ground. We have never, in my 30 years here, been a big pre-leasing market.

EMANUEL: I'm really bullish on Class B and C office. We have a very small Class A market here. Sometimes we need to not confuse a nice Class B as Class A. It's not. We're coming off dollar per square foot rents. Those rates are starting to creep up and eventually the tenants will have to pay what it takes to build new. It will help when the banks are lending on that.

> "It's getting close to where developers would want to start building, but it's all driven by lenders."
>
> **— Brendan Keating**

HOW DOES **LENDING AFFECT** THIS **INDUSTRY**?

KEATING: It's getting close to where developers would want to start building, but it's all driven by the lenders. If the lenders will lend it, people will build it. In the last cycle, we saw that. Lenders will drive this cycle, not the borrowers. Borrowers are greedy enough that they'll take whatever the lenders give. If the lenders will do it, it will drive new construction.

BRUCE FORD: Speaking as a banker, it's not as easy as a few years ago. Eighteen banks failed [during the recession]. That's a concern if you're a banker. The regulation burden has increased on bankers. We're still typical bankers and we do prefer owner-occupied. The regulations have changed to almost force that.

KEATING: And to that regulation, CMBS (com-

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mercial mortgage-backed securities) debt made up 20 percent of the debt last year. In December, they made a rule, now called risk retention, where the originator of this debt no longer gets to pass the hot potato down the line and can sell out of their position. They have to own 5 percent of the debt that they're originating. It's just like if you sold a building and you had to own 5 percent of it. Not only do you have to hold back 5 percent of it, you have to own it until 80 percent of that pool of mortgage bonds is paid off. So you have a non-liquid asset. Before you could package it, sell it on and have no risk.

DUNN: These lenders are not loaning 70 percent loan-to-value on a conventional basis. Typically with conventional, it's tough to get above 60 [percent] with them. You have more skin in the game and the banks have more skin in the game if they go the bond route. It's a natural knee jerk reaction to what we went through and probably is appropriate because risk got really discounted on everything.

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DO YOU HAVE ANY **STAFFING ISSUES**?

MIXER: It's a tight-knit industry. It's not super deep in terms of talent, so we all know each other and, by and large, we're respectful to each other.

CLINE-ONG: I'm glad you brought that up because I believe we've gotten back to, in the brokerage community and property management arena, that it's okay to pick up the phone and reach across the aisle of our competitors and have a conversation. They can be real and they can also be transparent. That's important because I care what you have to say. I think that makes us, as an industry, more relevant for the investors that are coming into this community.

DAVIS: Our industry has a very high barrier to entry just because of the commission structure. Somebody gets out of college and they can go work for a bank, law firm or even parking cars and get a salary

of $40,000 to $60,000. Then you walk into a brokerage and we say, "we'll give you a computer and a phone, and by the way, whatever you go earn is what you're going to get paid." Unless you have an "in" through a family member of somebody you know, it's very hard to just walk in and say, "Hey, I want to be a broker."

EMANUEL: We didn't want to be the lily pad brokerage where people are jumping from lily pad to lily pad. We try to do it organically with recruiting. We have internship programs with multiple universities including the University of Nevada, Las Vegas. I started with a computer and a phone and the world just opened up to me, so I'm going to try to give that opportunity to more and more people and try to deliver them great product and service and mentorship.

DUNN: It puts more pressure on the management of various firms to stay in touch with your people and be able to monitor if they're happy. What are their frustrations? Why do they think the grass is greener with any number of the good shops we have in town? Some people just need a change.

HOW DOES **CRE** PLAY A **ROLE** IN **ECONOMIC DEVELOPMENT**?

DUNN: We used to be a low cost alternative to California, Arizona and surrounding states. The cost of living is increasing, especially from a tenancy standpoint. Labor costs and construction costs are all much higher than they should be compared to surrounding states outside of California. Combine that with our education system here, we're not going to attract, outside of the gaming industry, large relocations. That's problematic. Our land values have jumped right back to where they were at the peak. It's a giant circle here between the labor, construction and land costs.

DAVIS: We're just hoping Nevada maintains our current tax structure in the sense of the incentives. We've seen a lot of companies relocate from California to get away from the negative tax structure there. I hope we can continue the good thing we have going here. We're seeing a rise in construction costs, which are negatively impacting tenants when it comes to T.I.s. Talking with contractors, there's seem to be a shortage of really skilled labor. With the downturn, we lost so many people and I'm concerned with all these big projects they talk about on the Strip. If something really big takes off, there's going to be a vacuum where all those workers are going to head to the Strip and it will raise T.I. costs even more.

RICHARD TRUESDELL: On the positive side, we have a legislature that's been willing to spend money on bringing business here. From Faraday to Tesla in the North and several other companies, they are planning. That has pushed up industrial values.

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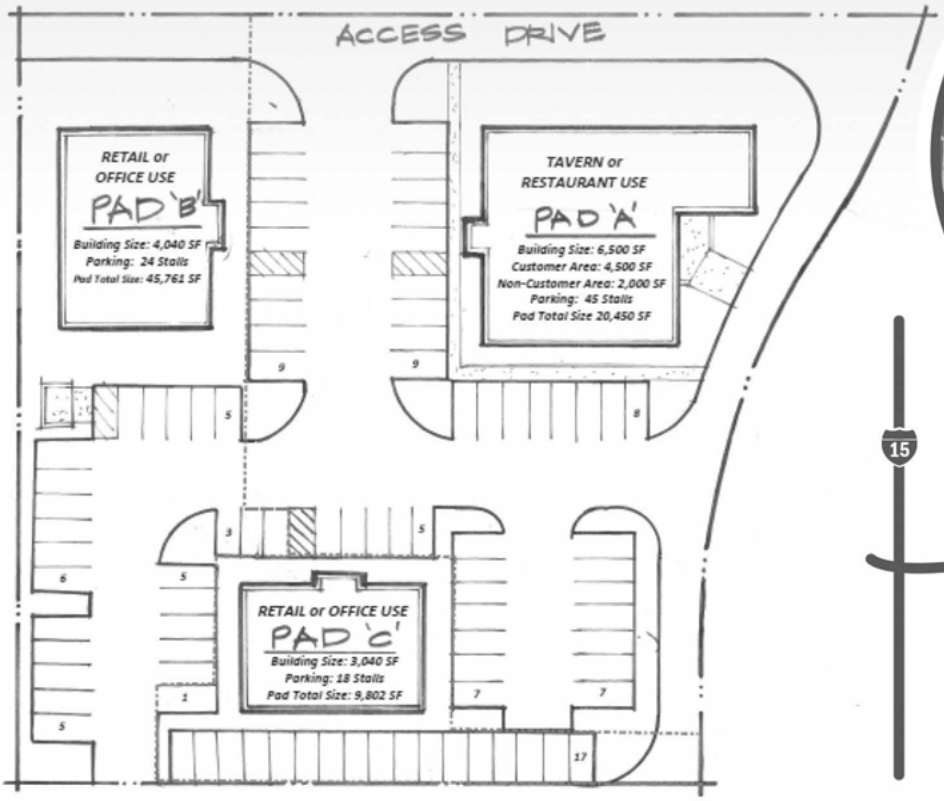

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Face to Face

MOVERS & SHAKERS

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JOHN DOUGHERTY, DO

Dean – College of Osteopathic Medicine
Touro University Nevada *(12 years in NV)*

Type of Business: Higher Education, Health Care
Hails from: Joplin, Missouri | Based in: Henderson

What is the best moment of your career?
Best and worst on the same day. Watching physicians I trained as medical students and then residents and knew from the time they were in junior high, respond and care for the victims of the E5 tornado that destroyed a third of the city of Joplin in May 2011.

What do you want your legacy to be?
Developing competent, confident physicians who care for the people of Nevada and our surrounding regions

What do you wish you would have learned at the beginning of your career?
Work smarter, not harder.

What business advice would you give someone just starting in your industry?
Be engaged, be involved, learn from other people's success and failures and never stop learning.

What is a little known fact about yourself?
I attended 5 different elementary schools due to my family following my father to his next job as a construction superintendent.

What is your favorite thing about living in Nevada?
The people and the food. Everyone has been so nice everywhere we go and from well-known to unknown, the restaurants have been amazing!

If you could be any fictional character, who would you be and why?
Peter Pan, I won't grow up. (Just ask my kids!)

What is your pet peeve?
Bullies.

If you could take back one sentence you've ever spoken, what would it be?
"I don't think so." when asked if would be interested in applying for a position with the Secret Service

If you could have coined a single phrase of wisdom, what would it be?
"To give anything less than your best is to sacrifice the gift." – Steve Prefontaine

BUILDING NEVADA

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THE DECISION MAKER'S magazine

Photo By Chris Tucker

A PLACE TO LIVE

NEVADA'S RESIDENTIAL MARKET

By Jennifer Rachel Baumer

CALL it flattening or softening or just call it a leveling off – Nevada's housing market seems to have found an even keel in the second half of 2016, and most professionals in the industry are calling that a good thing.

After the housing bubble hit Nevada in the early 21st century when demand outstripped supply and prices rose over weekends and overnight, the inflationary bubble burst and Nevada's housing market crashed.

Now the market is seeing cautious optimism on both ends of the state. Inventory of standing houses has been absorbed, the so-called shadow inventory seems to have disappeared and, at least in Southern Nevada, the population is growing at approximately 5,000 new residents a month.

Everybody's got to live somewhere. In pockets where demand for homes is rising, it's not necessarily traditional demand for single family houses. The market is changing, and that may well be a good thing for Nevada's economy.

Nevada's Residential Market

"As far as home building goes, we're pretty status quo," said Nat Hodgson, executive director, Southern Nevada Home Builders Association (SNHBA). "We've got little blurps up in the single digit increases, so I just tell everybody we're pretty even keel, just holding our own with no spikes this year. It's been pretty pleasant."

"It's definitely a strong market [in Northern Nevada]," added Don Tatro, director of public affairs, Builders Association of Northern Nevada (BANN).

What a strong building market means after the last recession is that companies at every level are running into labor shortages, time delays, material and land costs increases.

Nat
Hodgson
Southern Nevada Home Builders Association

All normal operating procedure, to some extent, when it comes to residential building, but with some added emphasis this time around. For one thing, pre-approved projects that were ready to build when the recession happened are coming to fruition.

"What we're seeing is that pre-approved ready-to-go projects and lots have been or are being fully absorbed at this time, so all incoming projects are having to go through the entire [time consuming] project planning phases and city council and building department approvals, so that's really causing lag time to market for new projects and finished lots," said Tatro.

"On the front end, building a new project can be more time consuming and not as defined a process to go through and get a map approved and get a plan put in, infrastructure and things like that. It's definitely more time consuming," said Rob McGibney, president, KB Home. "There's

Inspirada, a master-planned community, includes four parks, such as the one pictured above. The community also has 35 miles of trails and open spaces.

challenges with different municipalities, like getting your plans approved on a schedule you would like. But when permitting houses, we don't see a lot of delays or challenges."

Master planned communities don't face the same challenges with permitting. For example, Cadence, in Henderson, not only benefits from Henderson's streamlined process with guaranteed turnaround time frames, but the project is zoned as a planned community rather than individually zoned parcels.

Smaller developments may find the process more difficult. Artisan is building in Spanish Springs and Fernley, and while there's energy in the Northern Nevada market, there are also challenges.

"When trying to get permits from the Division of Real Estate to sell these communities, there's anywhere up to a six month backlog just to get approved," said Androo Allen, director of operations, Artisan Communities.

The Vanishing Construction Trade

By far, though, the biggest struggle for builders is finding labor.

"This has been a tough year for trade labor," said McGibney. They are finding it, but not on the same schedule as 2012 or earlier. "As the market has improved and permits gone up and we're building more houses in Inspirada as well as across the Valley, labor is tight and that presents challenges. Still, it's nothing we haven't been able to overcome and get homes built near schedule."

"We're having a problem with specialty trades, primarily finding plumbers and electricians," said Gregory Peek, vice president, ERGS Properties. "It's difficult to even find people who want to bid on a project, let alone take one on."

One initiative aimed at replenishing the construction trades is a program put together with the Department of Immigration and Mexico to bring skilled workers into the U.S. with work visas. Workers remain in the same construction job for eight months and can then apply for citizenship.

"The program is in its infancy, but it's starting to bring some really good qualified labor into the workforce," said Allen.

By The Numbers

It's hard to blame tradesmen who left the construction field, Hodgson notes – the volume of new building is still below the numbers at the time of the last recession in home building in 1991.

"We're still far off from those numbers. It is kind of depressing, but it was about 11,200 homes in 1991, that was the last crash, and we might be breaking the 8,000 barrier this year."

In Northern Nevada, there's a perception that builders are building more than they actually are. There are pockets of growth, projects in Spanish Springs, Sparks and Fernley, and still Northern Nevada will probably see around 2,000 permits pulled in 2016.

What building is taking place in Southern Nevada is spread across the Valley. Master planned communities cover compass points, from Skye Canyon in the northwest to Mountain's Edge in the southwest, Cadence in Henderson off Lake Mead, and Inspirada in Henderson in the southeast.

Sales at Inspirada, a master planned community located east of Anthem in Henderson, has accelerated in recent years. Collectively, the four builders in the project have pulled more than 2,100 building permits, and there are 66 models completed and ready to tour.

The build out limit for Cadence is 13,250 homes. "My guess is it will be somewhere in the neighborhood of 12,500 at build out," said Lee Farris, vice president, land development, Cadence. That number encompasses a full range of homes from apartments to town homes to single family residences.

Ascaya, located above MacDonald Highlands in Henderson, has sold five lots in the last four months, more than what was sold in the second half of 2015. Ascaya is a luxury community where seven world-renowned architects are designing custom homes ranging from 7,500-square-feet to 10,000, and from $6.5 to as much as $10 to $12 million, according to Darin Marques, sales manager.

On The Map

Even if new residents are buying in master planned communities, the numbers still look like there are more people than homes. Figuring that Southern Nevada in-migration is somewhere around 5,000 a month, and figuring each new family is 2.2 members, that's a lot of people needing homes.

"All the economists, whenever they show numbers, they tell you what demand should be," said Hodgson. "They've all agreed that we should be building more than we're building with those numbers and no one has explained why we're not. Which is encouraging to me. It's not like I'm looking over my shoulder. I think we're under

Gregory
Peek
ERGS Properties

serving but we can't build anymore at this time so I think we're in a pretty decent spot, especially compared to where we were eight or nine years ago."

Especially given the fact that Southern Nevada is landlocked. It's not that there's a lack of land, Hodgkin says; there's just a lack of land that can be covered in houses. No other state in the nation has as much federal government-owned land as Nevada.

Northern Nevada is also landlocked, with less a shortage of land than an increase in land costs. Projects that were ready to go before the recession have already gone, they're built and finished.

"So what you're seeing now is new developments coming back into the market and land value has gone up, so that's driving project costs up, so it's difficult to make those things pencil," said Tatro. "The other thing is, you still have restricted access to capital money for development."

Land costs aren't the only costs going up. According to a National Association of Home Builders study, the average cost of regulation per single family home is 24.3 percent, and that number has increased 30 percent in the last five years, according to Tatro.

"It's really regulation creep at all levels," Tatro said. "Not that we shouldn't have any regulation, but it's really compounded the price of everything going up including local regulation. For instance, in just permits and fees anywhere in the Washoe County area, you're looking at a cost of $30,000 to $40,000 per house. That includes [utilities

Rob
McGibney
KB Home

connection fees], but that's before you ever pound a nail or buy a single piece of lumber. That's significant. At 24.3 percent, rough numbers, with a $330,000 house, you're looking at [paying] $80,000 of that house for regulations."

Trending Now

There's movement in the market again, and builders are building, but they're not speculating.

"You're seeing a very risk averse outlook towards building so far – it's really demand centered building," said Tatro. "The housing market doesn't create demand, it reacts to it."

A number of multifamily projects are underway on both ends of the state, and to some extent, a trend for residents to rent rather than buy.

"If you look at data, there's a turn toward multifamily versus single family in 2014," said Peek. "The total units put out [showed] single family represented the vast majority. In 2015 [single family] represented roughly 75 percent of the units. If you look at 2016 year to date, multifamily is 40 percent of the total units being produced and will probably increase." ERGS Properties, a third generation Nevada builder, is currently at work on a 320-unit multifamily project in Lemmon Valley.

"With the change in culture and the change in the economy and other factors, it seems as though people are less willing to buy or maybe less able to afford a single family house and they're putting off that purchase," said Peek.

"There was a basic escalation in the average market price of homes up to $336,000 in Washoe County," said Allen. "That's a bit

of an increase and it was an impact of people standing back and waiting to see what's coming down the line as far as jobs and what's truly going to happen."

"What we're seeing in the real estate market right now, you hear some people use the term 'flattening out.' I don't see it as flattening out," said Marques. "It's leveled out. It's where it should be, and that's better for all of us, because having sharp increases in the market isn't good for anyone, because at some point it's going to come down. It creates a false sense that [buyers] need to buy now. It creates a sense of urgency and that's where you see the huge inflationary increase." Currently increases are slower, more steady, and sustainable.

"The other thing you hear people saying is there's going to be another [housing] bubble," Marques added. "But you have to realize, I think it's close to 50 percent of the home purchases in the last few years have been cash." That's good for the market because if the economy turns again and home owners lose their jobs, they won't lose homes already paid for, and those homes won't end up back on the market.

"There are no spikes up, no spikes down, it's even keel smart growth," said Hodgson. "I like that, especially after what we went through. I like the single digits to low double digits increase every year, I think that's healthy. I think our years of doubling each year are gone."

Not because it didn't work last time, but because it only worked for a while last time. "It worked out for a couple years but now not so much. Now I think you're at a deep actually 7 to 12, 13 percent growth here every year and I think that's good," said Hodgson. "We can maintain that. We can handle that. Hopefully that allows us to bring more labor onboard, there's companies moving here, we've got economic development agencies working, we're being more diverse, and it's going to help everybody out in the long run. Because everybody needs a place to live."

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E


RMCM Law Office Rendering

Project, Office
ADDRESS 700 S. 3rd St., 89101
CONTRACTOR OF RECORD OS Construction Services, Inc.
DETAILS Rogers, Mastrangelo, Carvalhi & Mitchell, Ltd. (RMCM), a law firm, has broken ground on new headquarters in downtown Las Vegas. The 1.2 acre site will undergo the demolition of an existing building and construction of a new two-story building with Class A finishes and 42 covered parking spaces. The estimated cost of the project is $4 million.

Sale, Industrial
ADDRESS 3020-3060 Walnut Rd., 89115
BUYER MCA Walnut, LLC
SELLER Trident Pacific Real Estate Group
DETAILS 135,182 SF; $5.5 million
APN 140-18-512-001 – 140-18-512-002
SELLER'S REP Cathy Jones, CCIM and Paul Miachika of Sun Commercial Real Estate

Loan, Mulit-Family
ADDRESS 50 N. 21st St., 89101
LOAN OFFICER Andy Crawford of CommCap Advisors
DETAILS CommCap Advisors finalized a loan for non-profit borrower Veterans Village 2, LLC for a 204-unit multi-family property (75,828 SF). The loan was structured with a 5-year term and 30-year amortization. The transaction also included grant money from the City of Las Vegas.

H

Lease, Retail
ADDRESS 241 N. Stephanie St., 89074
TENANT God Behind Bars, Inc. dba Castaways Resale
LANDLORD Roxbury Advisors, LLC
DETAILS 15,000 SF; $1,552,393 for 10 years
LANDLORD'S REP Michael Zobrist and Nelson Tressler of Newmark Grubb Knight Frank

N

Sale, Retail
ADDRESS 921-1081 W. Owens Ave., 89106
BUYER Devarim 18, LLC
SELLER Edmond Town Center, LLC
DETAILS 135,182 SF; $5.5 million
APN 139-28-503-025
BUYER'S REP Scot Prince and Neal Anzalotti of Logic Commercial Real Estate
SELLER'S REP Charles Moore and Marlene Fujita-Winkel, CCIM of CBRE

Lease, Retail
ADDRESS 265 W. Centennial Pkwy., 89031
TENANT Dollar Tree Stores, Inc.
LANDLORD Centennial Commerce, LLC
DETAILS 14,180 SF; $1,047,193 for 7 years
LANDLORD'S REP Michael Zobrist and Nelson Tressler of Newmark Grubb Knight Frank

Sale, Land
ADDRESS SWC of Clayton St. & Brooks Ave., 89032
BUYER McBeath Holdings, LLC
SELLER VFC III North LV Land, LLC
DETAILS 9 acres; $1,176,120
APN 139-17-611-006
SELLER'S REP Mike DeLew, SIOR and Greg Pancirov, SIOR of Colliers International

S

Sale, Office
ADDRESS 365 & 385 Pilot Rd. and 6720 Placid St., 89119
BUYER McCarran Commerce Center, LLC
SELLER DM Airport, LLC
DETAILS 85,027 SF; $10.4 million
APN 177-04-612-001
REP (BOTH) Chris Lane and Jerry Doty of Colliers International

Sale, Retail
ADDRESS 9240 S. Eastern Ave., 89123
BUYER MMY, LLC
SELLER Great American Capital
DETAILS 3,500 SF; $3.7 million
APN 177-24-212-003
BUYER'S REP Kaji & Associates
SELLER'S REP Alex Kozakov and Patrick Wade of CBRE

Loan, Industrial
ADDRESS 3058 Sunset Rd., 89120
LOAN OFFICER Kyle Nagy of CommCap Advisors
DETAILS CommCap Advisors finalized a loan for Sunset Vegas Investors, LLC for 27,779 square feet of industrial space. The 4.25 percent loan was structured with a 5-year term and 25-year amortization with the first year being interest only.

Loan, Retail
ADDRESS 440 E. Silverado Ranch Blvd., 89123
LOAN OFFICER Mark Dodson and Scott Monroe of NorthMarq Capital
DETAILS NorthMarq Capital arranged the $2.5 million refinance of Shops at Walmart, a 7,683 square-foot retail property. The transaction was structured with a 10-year term with 5 years interest only, followed by a 30-year amortization schedule.

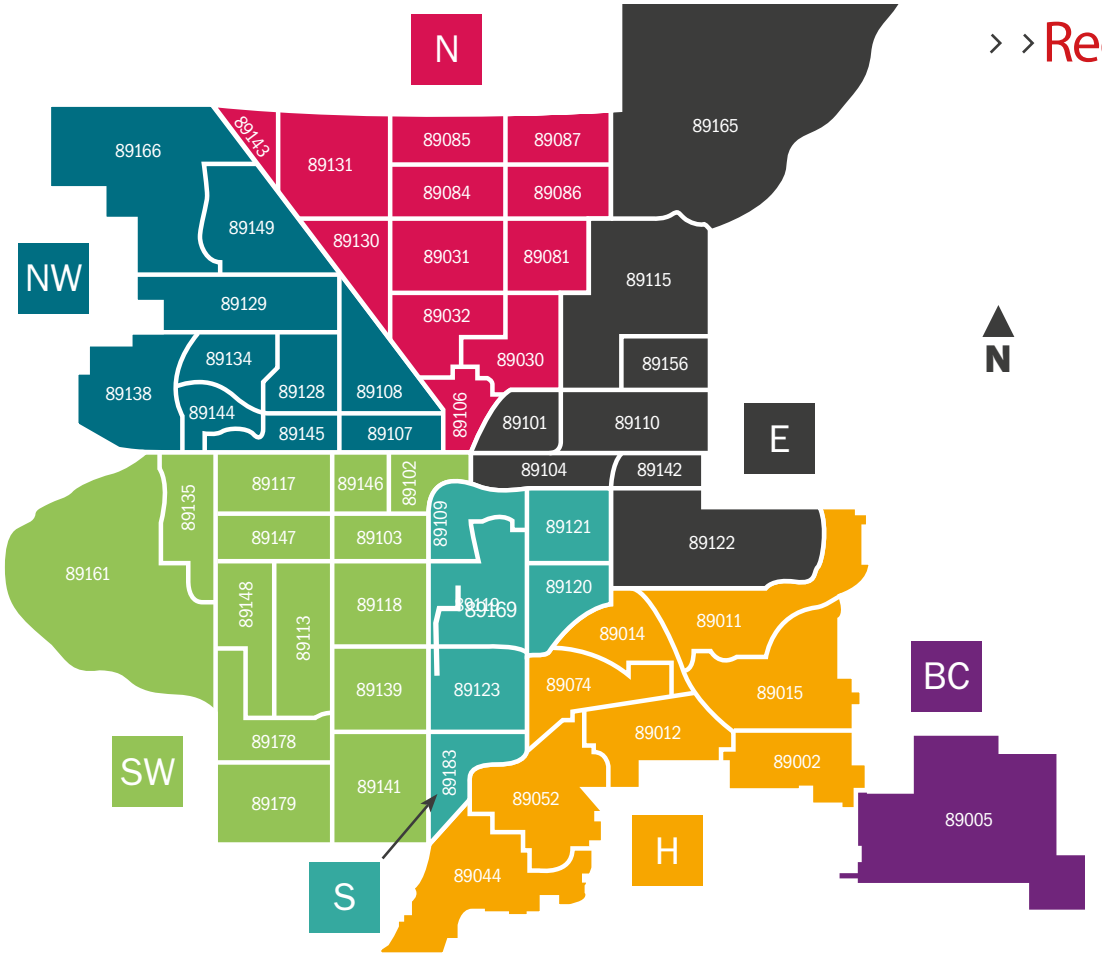
SW

Project, Multi-Family
ADDRESS NEC of Spring Mountain Rd. & Valley View Blvd., 89102
CONTRACTOR OF RECORD Fore Construction
DETAILS Fore Property Company and Argosy Real Estate Partners recently broke ground on a 295-unit luxury apartment community located in Chinatown. Features will include a rooftop terrace, two resort-style pools with DJ booth and cabanas, fitness center and concierge services. The estimated cost for this project is $52 million and it is slated for completion in March of 2018.

Sale, Mixed-Use
ADDRESS 4280 S. Hualapai Way, 89147
BUYER TAG Hualapai, LLC
SELLER C-III Asset Management/US Bank National Association
DETAILS 26,218 SF; $3,858,750
APN 163-19-111-003
BUYER'S REP Chris Richardson, CCIM, Jason Otter and Lesllie Vasquez of Logic Commercial Real Estate

Sale, Office
ADDRESS 6355 S. Buffalo Dr., 89113
BUYER Griffin Capital Corporation
SELLER Southwest Corporate Campus, LLC
DETAILS 222,268 SF; $66,500,000

[BC] BOULDER CITY [E] EAST [H] HENDERSON [N] NORTH [NW] NORTHWEST [O] OTHER [S] SOUTH [SW] SOUTHWEST [WC] WASHOE COUNTY



APN 163-33-801-024
SELLER'S REP Susan Borst, CCIM, SIOR and Dan Doherty, SIOR of Colliers International

Sale, Industrial

ADDRESS 4050 Mesa Vista Ave., 89118
BUYER JMH Properties, LLC
SELLER Mesa Vista Property, LLC
DETAILS 37,483 SF; $4.8 million
APN 162-30-701-018
BUYER'S REP Mike Hillis, SIOR of Avison Young
SELLER'S REP Gregg Tassi of CBRE

Lease, Office

ADDRESS 10777 W. Twain Ave., 89135
TENANT Plaza Bank
LANDLORD TAG Town Center 1, LLC
DETAILS 7,111 SF; $1,219,548 for 7 years
TENANT'S REP Ryan Martin and Patti Dillon of Colliers International
LANDLORD'S REP Brendan Keating and Mark Magliarditi of Logic Commercial Real Estate

WC

Sale, Office

ADDRESS 450 Lillard Dr., 89434
BUYER Fortuna Realty ADA Compliant LTD PTSP
SELLER Icon Pac Nevada Owner Pool 2, LLC
DETAILS 514,464 SF; $55.3 million
APN 037-271-29

Sale, Office

ADDRESS 1140 Corporate Blvd., 89502
BUYER HCPM, LLC
SELLER Incline Development, Inc.
DETAILS 7,680 SF; $800,000
APN 012-402-25

Sale, Office

ADDRESS 6774 S. McCarran Blvd., 89509
BUYER 3774 McCarran, LLC
SELLER Quail Court-Ribeiro Moreno, LLC
DETAILS 9,600 SF; $4,548,541
APN 040-880-21

Sale, Office

ADDRESS 6880 S. McCarran Blvd., 89509
BUYER Luzon Investors, LLC
SELLER Sierra Quail, LLC
DETAILS 21,876 SF; $4,581,461
APN 040-880-21

Sale, Industrial

ADDRESS 85 Isidor Ct., 89441
BUYER Sam Rit Enterprises, LLC
SELLER Degiovanni Properties, LLC
DETAILS 19,200 SF; $900,000

The Taormina Group, Inc.

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Tom Taormina

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· Forensic Business Pathology®

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Tom amassed an extraordinary wealth of knowledge over his 50-year career, beginning 14 years at NASA Mission Control Houston during Gemini and Apollo. A pioneer of the discipline of Quality Control Engineering, he honed his rare talent for precision problem diagnosis running several manufacturing companies before becoming a certified management consultant for 700+ companies.

This skill set, presenting the forensic evidence used during trial, makes him a highly sought-after consultant and eminent expert witness in products liability and organizational negligence cases.

ADVERTORIAL PROFILE

INDUSTRIAL SUMMARY

THIRD QUARTER 2016

SOUTHERN NEVADA

The Las Vegas Valley's overall industrial vacancy rate in Q3, 2016 was 5.2 percent, unchanged from Q2, 2016. As of Q3, it now appears that the industrial market rate is at full occupancy, as the market absorbs new space and the existing inventory is remade to fit the new demand for larger space.

There were 565,340 square feet of industrial completions in Q3 in three projects. These projects were the 232,826-square-foot Black Mountain Distribution Center #3, the 167,280-square-foot Blue Diamond Business Center #3 and the 165,234-square-foot Parc Post warehouse/distribution center. This brought the Valley's Industrial-base up to 112 million square feet.

Net absorption was back in positive territory for the second quarter in a row after an off quarter in Q1. For Q3, absorption was +611,100 square feet. On a year-over-year basis, net absorption was +3.3 million square feet. By subtype, warehouse/distribution led the way with +3.0 million square feet. Light industrial posted +448,400 square feet, followed by R&D/flex (+79,100 square feet) and Incubator (+45,700 square feet). Every product type in the Valley's industrial market posted year-over-year gains in net absorption except for light distribution, which posted -265,600 square feet in losses.

Space under-construction in Q3 was at 5.3 million square feet. Fifteen projects comprised this space, including six large warehouse/distribution projects of more than 400,000 square feet. The market ended Q3 with over 6 million square feet of planned Industrial space.

NORTHERN NEVADA

The industrial market in Northern Nevada posted yet another healthy and balanced quarter for the third quarter with over 2,622,301 square feet of gross absorption, 923,766 square feet of new vacancy and 1,698,535 square feet of positive net absorption.

The largest leasing transaction of the quarter was from Jet.com. The e-commerce company expanded into a 672,000 square foot space in the Tahoe Reno Industrial Center (TRIC). However, it was the North Valley's submarket that took the spotlight landing five of the six top leasing transactions of the quarter. The organic cracker company Mary's Gone Crackers relocated their US headquarters from Gridley, CA to a new 423,001 square foot build-to-suit in Panattoni's North Valley's Commerce Center (NVCC). Also at NVCC, high end outdoor gear manufacturer Kelty leased 217,863 square foot for distribution, absorbing 31 percent of the new 707,000 square foot building B. Sears Outlet leased 179,027 square feet at 400-500 Parr Blvd and a large chunk of 9250 Red Rock Rd. was absorbed. Alltrade Tools took 93,500 square feet and the custom web-to-print company Cimpress leased 72,750 square feet at the location. This concluded 83 percent occupancy of the 200,000 square foot speculative project.

With the addition of the new facilties for Jet.com, Mary's Gone Crackers and Aqua Metals finishing their new 138,000 SF building in TRIC, market expansion continued to thrive during the quarter with 1,233,001 SF of new deliveries. Market growth will carry on over the next few quarters with several new speculative developments underway.

INDUSTRIAL
THIRD QUARTER

TOTAL MARKET	SOUTHERN	NORTHERN
Total Square feet	111,966,405	81,596,832
Vacant Square Feet	5,799,207	5,095,843
Percent Vacant	5.2%	6.25%
New Construction	565,340	1,233,001
Net Absorption	611,054	1,698,535
Average Lease sf/mo (nnn)	$0.68	$0.380
Under Construction	5,271,000	1,200,000
Planned	6,032,000	1,950,000
WAREHOUSE/DISTRIBUTION		
Total Square Feet	49,979,507	49,050,000
Vacant Square Feet	1,988,800	3,739,759
Percent Vacant	4.0%	7.62%
New Construction	565,340	672,000
Net Absorption	553,897	1,515,790
Average Lease SF/MO (NNN)	$0.51	$0.340
Under Construction	5,271,000	780,000
Planned	5,890,200	1,370,000
INDUSTRIAL/LIGHT INDUSTIAL/MANUFACTURING		
Total Square Feet	30,327,286	28,264,985
Vacant Square Feet	1,125,583	474,629
Percent Vacant	3.7%	1.68%
New Construction	0	561,001
Net Absorption	97,162	580,001
Average Lease SF/MO (NNN)	$0.74	$0.300
Under Construction	0	6,800,000
Planned*	54,000	1,000,000
R&D/FLEX		
Total Square Feet	5,885,765	4,281,985
Vacant Square Feet	660,210	542,433
Percent Vacant	11.2%	12.67%
New Construction	0	0
Net Absorption	33,718	43,589
Average Lease SF/MO (NNN)	$0.92	$0.556
Under Construction	0	0
Planned	0	0

NEXT MONTH: OFFICE

ABREVIATION KEY

MGFS:	Modified Gross Full-Service
SF/MO:	Square Foot Per Month
NNN:	Net Net Net

Southern Nevada analysis and statistics compiled by RCG Economics, Northern Nevada analysis and statistics compiled by Dickson Commercial Group.

**Does not include S. Lyon County, Douglas County, or Carson City*

The U.S. real gross domestic product (GDP) grew at a 1.4 percent annual rate in the second quarter of 2016, revised up by 0.3 percentage point from the second estimate. The upward revisions mainly reflected an increase in nonresidential fixed investment, which decreased in the previous estimate. Large gains in consumer spending contributed to a rise in real GDP, while cutback in private business investment lowered the GDP growth to a slow pace. U.S. nonfarm employment added 156,000 jobs in September. The unemployment rate, however, edged up to 5.0 percent from August to September, which is a positive signal as discouraged workers returned to the labor force. Retail sales continued year-over-year increases, while auto and truck sales in August fell by 3.8 percent from a year ago. Note, however, that the auto market sales reached an all-time high last year. Housing starts and housing prices experienced year-over-year gains with the most recent data.

The Nevada economy continues to post strong, positive signals on its economic recovery. The adjusted statewide employment gained 4,800 jobs from July to August, and the unemployment rate fell from 6.5 to 6.3 percent during the same period. Taxable sales and gasoline sales in gallons for July increased robustly by 3.0 and 6.5 percent, respectively, from a year ago. Total air passengers also experienced a 2.7 percent year-over-year increase, while gaming revenue dropped by 5.2 percent from last year after a strong gain in the last month.

The most recent data indicated continuing improvement in Clark County's economic activity, although disappointing housing permit figures continued. Seasonally adjusted employment added 5,300 jobs from July to August, while the unemployment rate dropped from 6.5 to 6.0 percent during the same period. Residential housing permits again declined significantly by 17.6 percent compared to last year, mostly due to a large decrease in the number of single-family residential permits in the City of Las Vegas. Commercial permits remained low and volatile.

Washoe County posted highly favorable signals on its continuing recovery. The Reno-Sparks seasonally adjusted employment added 1,000 jobs for the month. The unemployment rate went down to 5.1 percent in August. Taxable sales and gasoline sales for July experienced year-over-year growth, up by 7.9 and 4.8 percent, respectively. Residential housing permits continued a three-digit yearly increase, rising by 129.6 percent, thanks to a significant jump in multi-family residential permits/units in the Reno-Sparks area.

Stephen M. Miller, Director
Jinju Lee, Economic Analyst
UNLV Center for Business and Economic Research

The views expressed are those of the authors and do not necessarily represent those of the University of Nevada, Las Vegas or the Nevada System of Higher Education.

› › Business Indicators

			DATA			GROWTH		
NEVADA	DATE	UNITS	LATEST	PREVIOUS	YEAR AGO	RECENT	YEAR AGO	COMMENTS
Employment	2016M08	000s, SA	1301.3	1296.5	1264.1	0.4%	2.9%	Up Over Year Ago
Unemployment Rate*	2016M08	%, SA	6.3	6.5	6.6	-0.2%	-0.3%	Reduced
Taxable Sales	2016M07	$billion	4.460	4.873	4.332	-8.5%	3.0%	Up Over Year Ago
Gaming Revenue	2016M08	$million	860.70	1015.67	908.24	-15.3%	-5.2%	Down Strongly
Passengers	2016M08	million persons	4.482	4.560	4.365	-1.7%	2.7%	Up Over Year Ago
Gasoline Sales	2016M07	million gallons	106.47	102.30	99.96	4.1%	6.5%	Up Over Year Ago
CLARK COUNTY								
Employment	2016M08	000s, SA	949.8	944.5	923.4	0.6%	2.9%	Up Over Year Ago
Unemployment Rate*	2016M08	%, Smoothed SA	6.0	6.5	6.7	-0.5%	-0.7%	Reduced
Taxable Sales	2016M07	$billion	3.264	3.601	3.212	-9.3%	1.6%	Up Over Year Ago
Gaming Revenue	2016M08	$million	724.29	867.86	776.80	-16.5%	-6.8%	Down Strongly
Residential Permits	2016M08	units permitted	692	763	840	-9.3%	-17.6%	Significant Decrease
Commercial Permits	2016M08	permits	41	20	29	105.0%	41.4%	Low and Volatile
Passengers	2016M08	million persons	4.098	4.168	4.007	-1.7%	2.3%	Up Over Year Ago
Gasoline Sales	2016M07	million gallons	72.63	69.67	67.98	4.2%	6.8%	Up Over Year Ago
Visitor Volume	2016M08	million persons	3.899	4.136	3.858	-5.7%	1.0%	Up Over Year Ago
WASHOE COUNTY								
Employment **	2016M08	000s, SA	222.2	221.2	210.8	0.5%	5.4%	Up Over Year Ago
Unemployment Rate*	2016M08	%, Smoothed SA	5.1	5.5	6.1	-0.4%	-1.0%	Reduced
Taxable Sales	2016M07	$billion	0.663	0.713	0.615	-7.0%	7.9%	Up Over Year Ago
Gaming Revenue	2016M08	$million	70.15	76.13	69.85	-7.9%	0.4%	Up Over Year Ago
Residential Permits	2016M08	units permitted	365	569	159	-35.9%	129.6%	Up Strongly From Year Ago
Commercial Permits	2016M08	permits	40	46	11	-13.0%	263.6%	Low and Volatile
Passengers	2016M08	million persons	0.350	0.357	0.337	-1.9%	3.9%	Up Over Year Ago
Gasoline Sales	2016M07	million gallons	15.49	14.81	14.78	4.6%	4.8%	Up Over Year Ago
Visitor Volume	2016M08	million persons	0.464	0.476	0.463	-2.5%	0.3%	Up Over Year Ago
UNITED STATES								
Employment	2016M09	million, SA	144.747	144.591	142.300	0.1%	1.7%	Up Over Year Ago
Unemployment Rate	2016M09	%, SA	5.0	4.9	5.1	0.1%	-0.1%	Recent Increase
Consumer Price Index	2016M08	82-84=100, SA	240.3	239.8	237.7	0.2%	1.1%	Up Over Year Ago
Core CPI	2016M08	82-84=100, SA	248.3	247.7	242.8	0.3%	2.3%	Up Over Year Ago
Employment Cost Index	2016Q2	05.12=100, SA	126.0	125.2	122.8	0.6%	2.6%	Up Over Year Ago
Productivity Index	2016Q2	2009=100, SA	105.8	106.0	106.2	-0.2%	-0.4%	Reduced
Retail Sales Growth	2016M08	$billion, SA	456.3	457.7	447.8	-0.3%	1.9%	Up Over Year Ago
Auto and Truck Sales	2016M08	million, SA	16.91	17.79	17.57	-5.0%	-3.8%	Down From Year Ago
Housing Starts	2016M08	million, SA	1.142	1.212	1.132	-5.8%	0.9%	Up Over Year Ago
Real GDP Growth***	2016Q2	2009$billion, SA	16583.1	16525.0	16374.2	1.4%	1.3%	Weak Growth
U.S. Dollar	2016M09	97.01=100	121.727	120.816	119.426	0.8%	1.9%	Recent Increase
Trade Balance	2016M08	$billion, SA	-40.725	-39.547	-44.639	3.0%	-8.8%	Year-Over-Year Deficit Decrease
S and P 500	2016M09	monthly close	2168.27	2170.95	1920.03	-0.1%	12.9%	Up Strongly From Year Ago
Real Short-term Rates*	2016M08	%, NSA	-2.20	-2.40	-2.77	0.2%	0.6%	Recent Increase
Treasury Yield Spread	2016M09	%, NSA	1.34	1.26	2.15	0.1%	-0.8%	Recent Increase

*Growth data represent change in the percentage rate, **Reflects the Reno-Sparks MSA which includes Washoe and Storey Counties, ***Recent growth is an annualized rate

Sources: Nevada Department of Taxation; Nevada Department of Employment, Training, and Rehabilitation; UNR Bureau of Business and Economic Research; UNLV Center for Business and Economic Research; McCarran International Airport; Reno/Tahoe International Airport; Las Vegas Convention and Visitors Authority; Reno-Sparks Convention and Visitors Authority; U.S. Department of Commerce; U.S. Bureau of Labor Statistics; U.S. Census Bureau; U.S. Federal Reserve System.

Note: NSA = Not Seasonally Adjusted, SA = Seasonally Adjusted

"I'm thankful for it all – for my family, friends, pets, clients, our quality team at Foundry, the beautiful fall weather, upcoming holiday gatherings and any Wolf Pack victory of UNLV."

Jim Bauserman | CEO, Foundry

"I am most thankful for laughter. For fun. For funny people. They can make even your worst day sparkle."

Stephanie Kruse | President and Chief Strategist, KPS3

"The health, safety, and well-being of my wife, children and grandchild along with their willingness to live with the integrity and character that allows them to stand tall."

Charles A. Mohler | CPA
Eagle Corporate Advisors

What are you most thankful for?

Robert Ostrea, MBA, MPA
Community Relations Manager
WGU Nevada

"I am most thankful for my wife of almost 20 years who has stood by me through the good times and the bad and for my three children who have made me happy and proud to be a Dad!"

Stana Subaric | Senior Vice President Human Resources, Affinity Gaming

"I'm thankful for so much in my life, especially love and friendship. My wonderful family and friends won't let my smile fade. I'm also grateful for the ability to make today better than yesterday and to learn from my mistakes."

Gabriel Bristol | Founder and CEO, Intelifluence Live

"I am most thankful for the opportunity to be able to utilize my knowledge and talent to contribute to the world in a meaningful way every day."

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