Have Sea Squirts Invaded Your Contract?—Avoiding the Mindless Use of So-Called "Market" Terms You May or May Not Understand

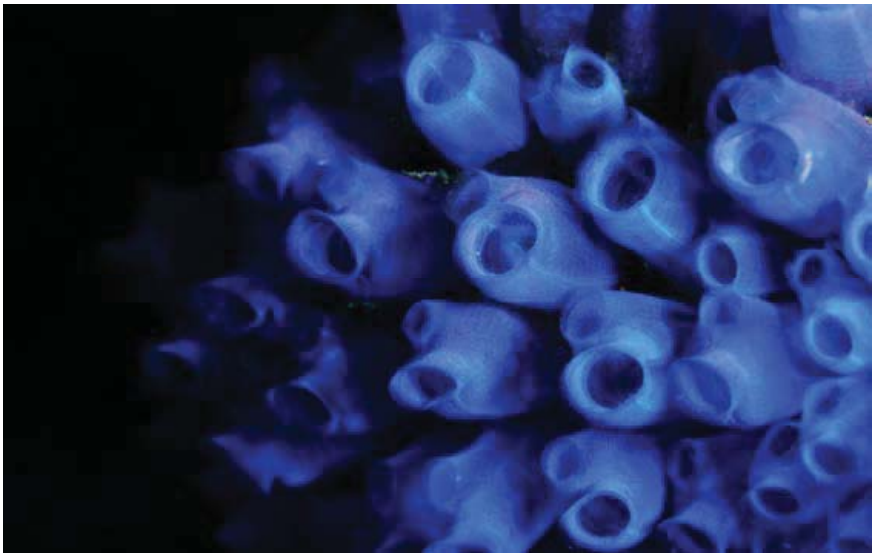
Glenn D. West
Weil Gotshal & Manges LLP

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Have Sea Squirts Invaded Your Contract?



Unexamined Boilerplate or "Market" Terms (Why it Matters)

- Peter Siviglia's 10th Commandment of Contract Drafting*:

  > Never include in a contract a provision which you do not understand.

- Stated differently, know what every provision of your contract means, or (more importantly) what it will mean if interpreted by a court in the event of a dispute—and that includes so-called "boilerplate."

*Peter Siviglia, *Commercial Agreements: A Lawyer's Guide to Drafting and Negotiating* (Thomas Reuters 2015).

Unexamined Boilerplate or "Market" Terms (Why it Matters)

- Just because its "boilerplate" or "market" (or you don't know what it means) does not mean it will not be enforced in accordance with the meaning ascribed to it by the applicable courts.

  > [T]he fact that language has been used before does not make it less binding when used again. Phrases become boilerplate when many parties find that the language serves their ends. That's a reason to enforce the promises, not to disregard them. *Rissman v. Rissman*, 213 F.3d 381, 385 (7th Cir. 2000).

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A Selection of Recurring Contract Issues

- MAC Clauses – They Mean What the Cases Say They Mean
- Effective Choice of Law Clauses (Not)
- Effective Choice of Forum (Not)
- Effective Non-Reliance Clauses (Not) and the Dangers of Undefined Fraud Carveouts
- Waivers of Consequential Damages (What are we thinking?)
- Placeholder Claims – Survival Periods that really aren't
- No Third Party Beneficiary Clauses
- Preliminary Agreements: Written or Oral

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MAC Clauses

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