

Zoom Chat Transcript
IRP-IOT Call #62 – 1 December2020

00:28:01 Kristina Rosette: Excellent summary, Susan.

00:28:14 David McAuley (Verisign): Thank you small group on consolidation for your efforts.

00:28:38 Chris Disspain: ditto

00:29:57 David McAuley (Verisign): I skimmed them all

00:30:15 David McAuley (Verisign): not able to completely read them yet

00:30:34 Chris Disspain: Susan I have nothing to add but I'm happy to answer any questions

00:33:54 Chris Disspain: Susan, it is correct that unless you are harmed you cannot bring an IRP but equally you are not prevented from bringing another type of action...

00:34:48 Chris Disspain: Just because you cannot bring an IRP doesn't mean that you should be able to

00:34:55 Greg Shatan: I think you ARE prevented from bringing another type of action, assuming standing requires harm

00:36:20 Chris Disspain: I agree with Becky...

00:45:10 Sam Eisner: I don't think that the intention was to increase the use, but to make the IRP a more effective and binding tool for accountability when used

00:46:14 David McAuley (Verisign): I agree with Sam on this point about use vs efficacy

00:46:49 Chris Disspain: Greg, it isn't black or white ... It's red or blue...Pill wise ;-)

00:47:04 Bernard Turcotte: time check - 60 minutes left in call

00:52:31 Chris Disspain: Scott, could you put an email together setting all that out when you have time please?

00:53:13 Scott Austin: The analyses of Malcolm and Chris are pretty deep. Neither Malcolm nor Chris could be considered guilty of a shallow analysis. I am just not sure what to add without crafting my own hypothetical to gain deeper understanding. My limited

research thus far has at least gleaned a distinction between statutes of repose being substantive and statutes of limitation being procedural.

00:54:00 Scott Austin: Sure I will be happy to.

00:54:07 Chris Disspain: thanks Scott

00:54:16 Kurt Pritz: Scott - maybe you could start with the transcript (as your comment was really well put) and edit that.

00:55:06 Scott Austin: Kurt Thanks will do.

01:08:04 Greg Shatan: If the Board approves a deadline mechanism to be put into place, it could be challenged through an IRP....

01:08:15 Chris Disspain: HA!

01:17:38 Scott Austin: Correct. The treatises suggest repose is the catch all and statute of limitations is the subset within repose.

01:17:42 Bernard Turcotte: time check - 30 minutes left in call

01:19:00 Scott Austin: Yes and many state statutes of repose have been struck down on a constitutional basis.

01:20:08 Chris Disspain: Exactly Greg

01:20:17 Chris Disspain: There are other harder and softer ways to challenge

01:21:49 Malcolm Hutty: I don't think we should overstate this notion that there is an alternative remedy available even if not the IRP. It's not just that the recourse of an IRP is promised, and the fact there's something else isn't sufficient reason to take it away. It's also that the IRP was designed to be an enforceable remedy, and available at the claim of a claimants (an individual entity). Things like seeking community support through the PDP are neither enforceable nor individual.

01:22:37 David McAuley (Verisign): t could also be a challenge to staff action

01:24:16 Sam Eisner: @Susan, agree that's a purpose, but it can never be a complete replacement for resort to courts

01:24:30 Susan Payne Com Laude: @Sam, for sure

01:25:36 Chris Disspain: really good point Mike

01:26:04 Malcolm Hutty: The idea that access to the IRP should become at the discretion of the board astonishes me.

01:26:47 Mike Silber: otherwise there is potentially no action to challenge Malcolm

01:28:08 David McAuley (Verisign): quiet here too

01:29:14 David McAuley (Verisign): here

01:30:19 Susan Payne Com Laude: apologies, I got thrown out so I think I have missed some of what Malcolm is saying

01:30:30 Brenda Brewer: Apologies, Zoom is misbehaving right now.

01:30:45 Becky Burr: Yeah, I also got kicked out.

01:36:07 Chris Disspain: it is however not a non-starter as far as others are concerned it seems to me

01:36:32 Greg Shatan: It's a nonstarter for me....

01:36:33 Chris Disspain: yup

01:37:24 Greg Shatan: Fox can't be the gatekeeper to the foxes' den,

01:38:12 Mike Silber: if the board does not make a decision - how do you create a ground for review?

01:38:32 Mike Silber: where is the decision

01:39:34 Chris Disspain: Greg..I agree but as mike said, that decision by the board is subject to review and ultimately an IRP whereas a decision by IRPpanel is not

01:41:08 Malcolm Hutty: I don't think it is reviewable by the IRP. The IRP is not capable of substituting its discretion for that of the Board. If this were given to the Board's discretion, on what basis could the IRP ever overturn the Board's decision?

01:42:14 Chris Disspain: well, that would depend on how one wrote the principle by which the board was required to make such a decision...

01:42:25 Mike Silber: Let me think it through

01:42:34 Chris Disspain: that would be good Mike

01:43:06 Chris Disspain: well said Susan

01:43:17 Chris Disspain: Definitely a pin...

01:43:20 Chris Disspain: Plan even

01:43:26 Becky Burr: FWIW, it also does seem to me that Sam and Liz were suggesting that in many cases application of a policy to a particular player would constitute an action that could start the period running. Is it worth exploring what appears to me to be a disconnect on how the time would be measured

01:43:59 David McAuley (Verisign): good idea, Becky

01:44:24 David McAuley (Verisign): Thanks Susan and all
01:44:40 David McAuley (Verisign): to the 25th?
01:44:56 Becky Burr: Very optimistic indeed!
01:45:42 Greg Shatan: I had Malaysian food delivered yesterday. Does that count as international travel?
01:45:57 Bernard Turcotte: Bye all
01:46:03 Mike Silber: good bye
01:46:04 Kristina Rosette: Bye all.
01:46:10 David McAuley (Verisign): I plan to go over to Embassy row - walk past many countries
01:46:11 Sam Eisner: Thanks everyone