

Wednesday, November 3, 2021  
3:30 PM - 4:45 PM

Workshop 3

**TOMATO, TOMAHTO, GUARANTY, GUARANTEE:  
LET'S CALL THE WHOLE THING OFF AND SUE THE GUARANTOR**

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**OUTLINE:**

I. **Introduction. Historical background.**

II. **The Golden Rule of Guaranties.**

**The single most important thing to remember about guaranties is that a guaranty is only as good as the party giving the guaranty.**

III. **Guaranty Basics.**

- A. Why are Guaranties Required.
- B. Guaranty Versus Direct Obligation.
- C. Strict Construction Against the Beneficiary.

IV. **Fundamentals of a Guaranty.**

- A. Substance Over Form.
- B. Contract Law.
- C. Types of Guaranty.
  - 1. *Full vs. Partial Guaranty.*
  - 2. *General vs. Specific.*
- D. Essential Provisions.
  - 1. *Consideration.*
  - 2. *Description of Guaranteed Obligations.*
  - 3. *Guaranty of Payment and Performance, Not Collection.*
  - 4. *Absolute, Unconditional and Irrevocable.*

5. *Primary Obligor.*
6. *Waiver of Suretyship Defenses; No Discharge/Impairment.*
7. *Continuing Obligation.*
8. *Survival; Termination.*
9. *Recovered Payments.*
10. *Additional Waivers.*
11. *Representations and Warranties.*
12. *Governing Law.*
13. *Acknowledgment; Apostille.*
14. *Authority; Due Execution and Delivery, and Enforceability.*
15. *Estoppels.*

V. **General Considerations in Enforcing Guarantees.**

- A. Establishing Consideration.
- B. Enforcing Payment vs. Performance.
- C. Establishing "Bad Acts".
- D. One-Action Rule.

VI. **Foreign Guaranties.**

- A. Export Judgment.
- B. Gross Up Provisions: