

**COVID-19: ASSESSING ISSUES RELATING TO
FUNDING SOURCES, CASH FLOW, CONTRACT
REVIEW, AND EMPLOYMENT/WORKPLACE**

Green Hasson Janks and Nossaman LLP Webinar

Speaking With You Today



MODERATOR:
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Agenda

Intro	Ben Sheppard, Managing Director, Green Hasson Janks
COVID-19: <i>Accessing Emergency Funding Sources</i>	Ron Grace, Partner, Nossaman LLP
Cash Flow Forecasting	David Sutton, Managing Director, Green Hasson Janks
COVID-19: <i>The Importance of Contract Review</i>	Ron Grace, Partner, Nossaman LLP
Employment and Return to Work Issues	Veronica Gray, Partner, Nossaman LLP
Wrap Up	Ben Sheppard, Managing Director, Green Hasson Janks

COVID-19

Accessing Emergency Funding Sources

Accessing Emergency Funding Sources

- Paycheck Protection Program (PPP)
- Economic Injury Disaster Loan (EIDL)
- Main Street Lending Program
- Private Foundation Grants
- Other Private Sources
- U.S. Department of Health and Human Services (HHS)
- Health Resources and Services Administration (HRSA)
- Commercial Insurance/Health Plans

Cash Flow Forecasting

Key Themes

- Data driven exercise and decision process
- No longer managing the P&L
- Balance short-term vs. medium-term decisions
- Cost rationalization
- Balance sheet considerations

Key Themes

- Identify and Manage Cash Crunch
 - **When does the cash minimum appear**
 - **What large inflows/outflows are nearby**
 - **Costs will return before revenues**
 - **Look at specific items:**
 - **Lease payments**
 - **AR collections and AP terms**
 - **Expense policies**
 - **Debt restructuring / capital repayment deferral**
 - **Payroll**

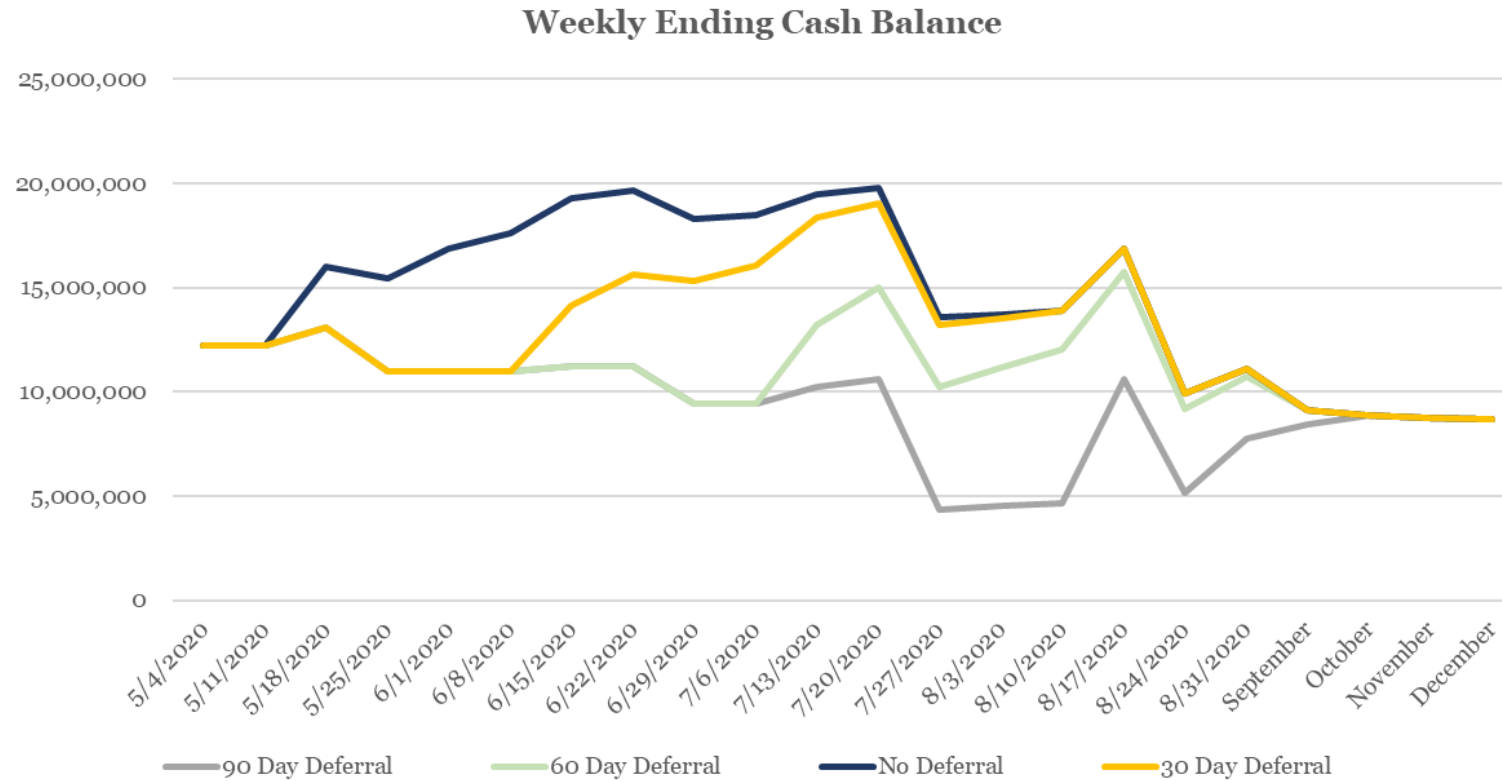
Best Practices

- 13 Weeks
 - Capture quarterly payments – tax, rent, 401K, etc.
 - Weekly is the required level of granularity, not monthly
- Keep Rolling Forward
 - Tracking to prior versions is less relevant
- Be Conservative
 - Estimate the worst case scenario so you can plan ahead

Best Practices

- Model Scenarios
 - Ask yourself “if this, then what?”
 - Different funding and operational strategies
- Avoid Surprises
 - For yourselves and others
 - Be communicative, talk with stakeholders about the exercise
 - Especially lenders, do not like liquidity surprises
 - The motto “ask for forgiveness, not permission,” no longer applies

Example



Example

- Not a traditional cash flow statement
- Inflows and outflows
- Build dash boarding and inputs for easy adjustments
- Toggles for easy recasting
- Compare and contrast

COVID-19

The Importance of Contract Review

Importance of Contract Review – Why?

- Assess rights, remedies and obligations of parties impacted by the Coronavirus
- Position company for merger/acquisition opportunities
- Implement best practices for ongoing operations during pandemic and beyond

What Contracts Should be Reviewed?

- Operations Contracts
- M&A Contracts
- Governing Documents
- Financing/Loan Agreements
- Insurance Contracts



Relevant Contract Provisions to Review

- Force Majeure
- Termination or Cancellation
- Breach
- Governing Law
- Venue
- Arbitration
- Indemnity/Insurance
- Limitation of Liability/Disclaimers of Warranty
- Material Adverse Effect or Material Adverse Change
- Covenants
- Representations and Warranties
- Notice Requirements



Force Majeure Clauses

- What do they say?
 - Usually operates to relieve one or both parties of some or all contractual obligations if an unforeseeable event beyond either party's control prevents or delays performance of the contract
 - Typically includes events such as acts of God, terrorism, war, natural disaster, labor strikes, terrorism
- Important to carefully review categories, limitations and requirements to determine if outbreak of Coronavirus or government/employer efforts to contain it are covered
- Fact intensive inquiry and must be assessed on a case-by-case basis based on specific language and applicable state law
- Other options may include defense of impracticability/impossibility and frustration of purpose

Force Majeure Clauses (cont.)

- Consideration should be given to:
 - Scope of supervening events
 - Criteria for trigger
 - Implication
 - Notice requirements
 - Mitigation



Reviewing Insurance Contracts

- Review Current Insurance Contracts for Losses Caused by Coronavirus Pandemic
 - Business Interruptions Coverage
 - Employment Practices Liability Coverage
 - Specialized insurance coverage (e.g., trade disruptions insurance, force majeure insurance)
 - Important tips:
 - **Note time period for claim submittals**
 - **Get a full copy of your insurance policy and review every word**
- Tips for Renewal of Insurance Contracts
 - Be more proactive - discuss coverage needs with insurance broker sooner rather than later
 - Obtain cyber liability coverage if you don't already have it
 - Premiums likely to increase so budget accordingly

Employment and Return to Work Issues

Fundamental Issues

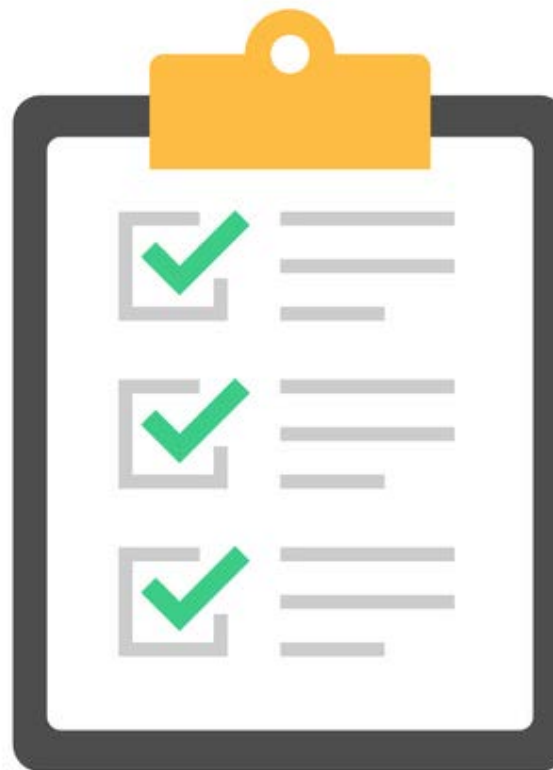
- Reducing workers' risk of exposure
- Reducing employer's risk of litigation
- Protecting your most valuable asset: your employees
- Mitigation and flexibility

Reopening

- When
- What will it look like
- Risk assessment and site-specific protection plan*

*Cal/OSHA has published industry-specific checklists:

<https://noss.law/2LnNo3S>



Ensuring a Safe Workplace

- Physical and social distancing
- Flexible schedules
- Screening
- Hygiene
- PPE



Communicating With Your Employees

- Training and updating policies
- Providing support and reducing stress
- Leave requests / concerns about returning to work



Potential Legal Issues Employers Will Face

- Wage and hour
- Discrimination
- Workers' compensation
- OSHA
- Federal and state leave laws
- Federal and California WARN Act

Helpful Websites

- OSHA, “Guidance on Preparing Workplaces for COVID-19,” <https://noss.law/OSHA>
- EEOC, “What You Should Know About the ADA, the Rehabilitation Act, and the Coronavirus,” <https://noss.law/EEOC>
- Department of Labor, “COVID-19 and the Fair Labor Standards Act Questions and Answers,” <https://noss.law/DoL>
- CDC, “Guidance for Businesses & Employers,” <https://noss.law/CDC>
- CDC, “Cleaning and Disinfection for Community Facilities,” <https://noss.law/2WrggOZ>
- CA Coronavirus Response, “Update on California’s Pandemic Roadmap,” <https://noss.law/2LmDe3A>
- CA Coronavirus Response, “Statewide Industry Guidance to Reduce Risk,” <https://noss.law/2Ls6vtu>
- Nossaman LLP, “Recent Coronavirus-Related Developments Affecting Employers,” <https://noss.law/2SHMP9g>

Speaker Bios

Ben Sheppard, Managing Director



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Ben Sheppard, CPA, is a Managing Director leading the Firm's Expert Witness and Litigation Support Practice and has more than 30 years of experience. He has deep expertise in litigation support and expert witness services, as well as forensic investigations and valuations. Ben works closely with clients to helping them find answers to situations that may pose a threat to their business.

Starting his public accounting career in Houston, Ben previously worked at a Big Four firm before moving to Los Angeles and accepting a job at Disney. Since then he has also worked for big studios such as MGM and Warner Brothers and as a consultant on litigation, forensic investigation and valuation projects.

Ben has offered expert witness opinions in over 35 separate matters, in state courts, federal courts and arbitrations. He has also served as a court appointed neutral expert in a state court matter.

Ben is a Certified Public Accountant and Certified Valuation Analyst. He is also a member of the Beverly Hills Bar Association and American Bar Association and is a frequent speaker for a variety of entertainment conferences and for other organizations. He has been published in *Wiley's Litigation Services Handbook, Sixth Edition* and *ABA's Landslide Magazine*.

Ben has a BBA in Management Info Systems and MBA in Accounting from the University of Houston.

Related Industries and Services

- Entertainment and Media
- Litigation and Forensic Consulting
- Filmed Entertainment
- Forensic Accounting
- Internal Audit and Controls
- Manufacturing and Distribution
- Media and Technology
- Royalty and Licensing Audits

David Sutton, Managing Director



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David Sutton is a Managing Director in GHJ's Consulting Practice with more than 15 years of experience across technology, restructuring and mergers and acquisitions. Originally from the U.K., David's advisory experience includes work across the retail, technology, distribution, manufacturing and real estate sectors. David leads the firm's M&A projects and oversees all of the firm's cyber security engagements.

Prior to joining Green Hasson Janks in 2017, David provided performance improvement, restructuring and turnaround advice to distressed clients and their stakeholders. David previously advised a \$150 million manufacturing group on cross-boarder M&A strategy and led the modeling and accounting advisory engagement for an \$8 billion technology business. David was previously an Aerospace Engineer with the U.K. Ministry of Defense.

David earned his master's in Electronic Engineering from the University of Leeds and studied at the University of California, Los Angeles. He is also a certified Associate Chartered Accountant in the U.K. and a member of the Institute of Engineering and Technology and is currently pursuing his Masters in Computer Science at Georgia Tech.

David is an avid Formula One fan, the Treasurer of the OC Chapter of The American Institute of Aeronautics and Astronautics and holds his private pilot license. David is married with two children and lives in Los Angeles South Bay.

Related Industries and Services

- M&A Advisory and Due Diligence
- Cyber Security
- Entertainment and Media
- Technology
- Retail
- Consumer Products
- Manufacturing and Distribution
- Real Estate

Ron Grace, Partner



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Ron Grace Co-Chair of Nossaman's Corporate Group, represents emerging and established companies as transactional and general corporate counsel with respect to a wide variety of business transactions. His work includes mergers and acquisitions, financings, private placements of debt and equity securities, general contract, securities, and healthcare law.

A significant portion of Ron's clients are involved in the healthcare industry. Ron has a background in general corporate and technology matters, having served as in-house counsel and Vice President of Business Affairs for a start-up Internet company and a software company.

Ron has significant experience in business formations and governance, mergers and acquisitions, business operations, exempt securities financings and healthcare transactions. He is also a know speaker in the field have spoken at numerous events over the years.

Prior to joining Nossaman, Ron was a Judicial Extern to the Hon. A. Andrew Hawk, Senior Judge, U.S. District Court, Central District of California.

He is a member of the American Bar Association, Los Angeles County Bar Association, Los Angeles Venture Association, Ambulatory Surgery Center Association and California Ambulatory Surgery Association.

Ron received his J.D. from Loyola Law School where he was a member of the St. Thomas More Honor Society. Prior to that he graduated with a bachelor's from University of California, Santa Barbara with honors.

Related Industries and Services

- Healthcare
- Corporate Law
- M&A
- Ambulatory Surgery Centers
- Health Law
- Corporate Finance
- Corporate Governance
- Entity Formation, Conversion and Restructuring

Veronica Gray, Partner



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Veronica Gray is a prominent trial attorney in Orange County, California with more than four decades of experience litigating and negotiating employment issues for her clients. She represents employers throughout California, as well as meeting their out-of-state needs. In her years at the firm she has worked to successfully grow the practice and mentor her colleagues. What distinguishes Veronica is her strategic creative approach in addressing her clients' needs and resolutions that are smart and effective. Veronica has a track record of partnering with her clients to embrace their issues to ensure attainment of their goals and objectives. The very nature of her practice has an impact on the business world in that she counsels business executives in addressing their most valuable asset, the talented individuals who work at their companies.

Veronica provides counseling, advice, investigations, training, and litigation services to privately-held companies and public entities in a broad array of employment matters including defending wage and hour class actions and sole plaintiff wrongful terminations, discrimination, and harassment actions. Veronica also prosecutes and defends unfair competition and trade secret matters.

A high-performing, effective trainer and mentor, Veronica regularly presents on employment topics and industry trends impacting employers including prevention of sexual harassment and discrimination, elimination of unconscious bias, and defending/avoiding wage and hour class actions. Veronica has been recognized for her work by *Los Angeles Magazine* as a Southern California "Super Lawyer" in Employment and Labor and included in *OC Metro* magazine's annual list of "Top Attorneys" as one of the region's top-rated Employment lawyers. She is AV Preeminent® Peer Review Rated by Martindale-Hubbell.

Over the span of Veronica's career, she has taken on a leadership role in many professional and philanthropic organizations on a local and international level with a focus on micro-enterprise and children's education. Veronica is also a passionate photographer focusing on street photography and close-up images of indigenous people world-wide (www.veronicagraysphotography.com). Her work has been on display at the Chapman University School of Law, the Peter Blake Gallery, the Bowers Museum, Newport Beach Library and Laguna Beach City Hall in Orange County, in *Orange Coast Magazine*, and at the FotoCare Gallery and the Consulate General of the Republic of Poland in New York.

Related Industries and Services

- Employment
- Litigation
- Privacy, Cybersecurity and Data Protection

Disclaimer

This is a rapidly changing and evolving environment, the contents of this presentation are not intended to constitute tax, accounting, legal or other advice.