NOTE & QUERY: A Short History of Boilerplate

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Author: Carol Bast, Orlando, Florida

LexisNexis Summary

… But as steam-engine design improved and the steam pressure in the boiler increased, copper had to be replaced with iron (which was itself later replaced by steel and steel alloy). … At first, the syndicates sent out only printed sheets; ″ l ater, these sheets were supplemented by making casts of printed matter in a central office and shipping the plates, commonly known as 'boiler plate,' to newspapers throughout the country.″ … (Later still, the syndicates, instead of sending out duplicate metal plates, began to distribute molded paper mats that could be used for casting plates in the newspapers' own plants.) But why were the newspaper plates called boiler plate? … The newspaper plates must have been smaller than the plates used for steam boilers. … Apparently, the process of duplicating news articles was associated with the process of duplicating the plates for boilers. … Chicago printers dubbed the noisy American Press offices as a boilerplate factory. … Justice Black characterized this provision as ″boilerplate″ and criticized the majority for enforcing it:

> In this very case the Court holds that by this company's carefully prepared contractual clause the Szukhents must, to avoid a judgment rendered without a fair and full hearing, travel hundreds of miles across the continent, probably crippling their defense and certainly depleting what savings they may have, to try to defend themselves in a court sitting in New York City.

Text

[*155] I first heard the word boilerplate from the attorney I clerked for between my first and second years of law school. When I asked him what the term meant, he said it referred to standard contract clauses. Last year, as we were discussing contracts in my legal-writing class, I happened to use the term. One of my students questioned me: ″Boilerplate? What's boilerplate?″ I found myself giving the same (boilerplate) explanation I'd heard from my attorney-employer years earlier. ″But,″ the student continued, ″why are they called boilerplate?″

Well, it all began with . . .

Steamships and Steam Locomotives

Toward the end of the 18th century, the invention of the modern-day steam engine -- by James Watt and others -- gave rise to the steamship and the steam locomotive. [1] The first steam boilers were made of copper, which was easy to work with. But as steam-engine design improved and the steam pressure in the boiler increased, copper had to be replaced with iron (which was itself later replaced by steel and steel alloy). [2] In England and then in America, the technology developed for producing **[*156]** the iron plates for the boiler -- the boiler plates. [3]

And that's how we get -- etymologically -- to . . .

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[1] CEDRIC RIDGELY-NEVITT, AMERICAN STEAMSHIPS ON THE ATLANTIC 13-14 (1981); C. HAMILTON ELLIS, THE LORE OF THE TRAIN 18, 24 (1987).

[2] RIDGELY-NEVITT, *supra* note 1, at 90.

[3] *Id.* at 90, 281.

Newspapers

After the Civil War, many small-town newspapers began to supplement their local news with articles prepared by news syndicates. At first, the syndicates sent out only printed sheets; ″[l]ater, these sheets were supplemented by making casts of printed matter in a central office and shipping the plates, commonly known as 'boiler plate,' to newspapers throughout the country.″ [4] (Later still, the syndicates, instead of sending out duplicate metal plates, began to distribute molded paper mats that could be used for casting plates in the newspapers' own plants. [5])

But why were the newspaper plates called boiler plate? The newspaper plates must have been smaller than the plates used for steam boilers. Apparently, the process of duplicating news articles was associated with the process of duplicating the plates for boilers. [6] This association may even have had a geographical element:

> Many newspaper syndicates started in Chicago, including the American Press Associates, which was founded in 1882 in the same building as a sheet-iron factory. Chicago printers dubbed the noisy American Press offices as a boilerplate factory. The term boilerplate was used derogatorily to describe the mechanical stereotype plates generally provided as single columns by syndicates . . . . [7]

At any rate, the term migrated from one industry to another. And then it was a short step from the literal to the figurative meaning, from ″the metal plates used to duplicate a news article″ to the article itself. Hence this definition among the current definitions of boilerplate: ″syndicated material supplied esp. to weekly newspapers in matrix or plate form.″ [8]

Opinions of the United States Supreme Court

The opinions of the Supreme Court have mirrored this shift from literal to figurative meaning. In three decisions before 1900, the Court used the words boiler plate to refer to the kind of iron or steel plate used in making boilers. [9]

Nearly 70 years passed before the Court used boilerplate again. In *National Equipment Rental, Ltd. v. Szukhent,*[10] Justice Black, dissenting, described the contract in question as follows:

> Steve and Robert Szukhent, father and son farming in Michigan, leased from National two incubators for their farm, signing in Michigan a lease contract which was the standard printed form obviously prepared by **[*157]** the New York company's lawyers. Included in the 18 paragraphs of fine print was the following provision: ″. . . the Lessee hereby designates Florence Weinberg [wife of one of the officers of the New York company] . . . as agent for the purpose of accepting service of any process within the State of New York.″ [11]

Justice Black characterized this provision as ″boilerplate″ [12] and criticized the majority for enforcing it:

> In this very case the Court holds that by this company's carefully prepared contractual clause the Szukhents must, to avoid a judgment rendered without a fair and full hearing, travel hundreds of miles across the continent,

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4 ALBERT A. SUTTON, DESIGN AND MAKEUP OF THE NEWSPAPER 246-47 (1948).

5 *Id.* at 247.

6 *See* THE OXFORD COMPANION TO THE ENGLISH LANGUAGE 138 (Thomas McArthur ed., 1992) (offering several definitions of boilerplate ″by analogy with the production of steel plates for boilers″).

7 RICHARD WEINER, WEBSTER'S NEW WORLD DICTIONARY OF MEDIA AND COMMUNICATIONS 55 (1990).

8 MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 129 (10th ed. 1993).

9 Philadelphia, W. & B. R.R. v. Dubois, 79 U.S. (12 Wall.) 47, 62, 63 (1871); Schlesinger v. Beard, 120 U.S. 264, 267 (1887); Lehigh Valley R.R. v. Kearney, 158 U.S. 461, 465 (1895).

10 375 U.S. 311 (1964).

11 Id. at 319.

12 Id. at 328.

> probably crippling their defense and certainly depleting what savings they may have, to try to defend themselves in a court sitting in New York City. [13]

And there you have the current legal meaning and flavor of boiler-plate: a standard contract provision, one that is at least formulaic, probably legalistic, and possibly unfair.

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[13] Id. at 329