

# GTLA association

## NEWSLETTER

### 2009 Update from the President

*Jennifer R. Berry, President, GTLA Bar Association*



Happy New Year from the GTLA Bar Association to you and yours!

2008 was a great year for the GTLA Bar Association. The golf outing was a success, with great weather and good company at King's Challenge in Leelanau County. We had a great fall dinner at Boone's Long Lake Inn, where Steve Chambers received the Madeleine Thomas Award for his commitment to our community. We helped area groups like the League of Women Voters, Traverse City Central High School's debate team and GTLAP (Grand Traverse Area Legal Professional) with funding for scholarships and educational programs in our community.

Unfortunately, we also lost one of the good guys. John Sharp was a great attorney and family man. He will be missed greatly and forever remain in our hearts. There is a scholarship set up in his name through GTLAP. The scholarship will be presented in April 2009 to an individual in a law-related program of advanced learning, including legal secretarial, paralegal/legal

assistant and law school. Donations can be sent to the: "GTALP Scholarship Fund" c/o Dorothy Grant, PP, Smith Haughey Rice & Roegge, PO Box 848, Traverse City, Michigan 49685-0848. Please note "John W. Sharp" in the memo line.

Also this year, we hired a new Executive Director who also just happens to be a Law Librarian. Jill Porter has been working very hard to get our law library back in shape while keeping our bar association out of the red, all the while assisting the public in their research. The current goal is to improve our collection and hopefully reduce the cost at the same time. Jill, with her experience as a law librarian, has been advocating the use of resources available through the internet to start replacing some of the federal law resources recently cut by the county. She is also working hard to get our members more technologically connected by offering more online services in 2009, including renewal of dues and possibly even research from your own office through the Bar's website. Jill created and continues to maintain our e-bulletin reminding the membership of the bar's events in between newsletters.

We have had many CLE lunches aimed at bettering our profession from all

### Winter 2009



#### INSIDE THIS ISSUE:

OIL AND GAS INDUSTRY BY JAMES M. LIEBENGUTH	4
GTLA BAR ASSOCIATION CALENDAR	7
HEARD IN THE HALLS	8
UNEMPLOYMENT COMPEN- SATION AND NONCONTEST PRO- VISIONS BY LEE HORNBER- GER	9
PERSONAL PROPERTY TAX BY KARRIE A. ZEITS	11
GTLA BOARD MINUTES	13

**Have an idea to improve your Newsletter? Questions, comments, complaints?  
Please email the Editor, Aaron K. Bowron at [legaloil@aol.com](mailto:legaloil@aol.com)**

### GTLA Bar Association

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<http://www.gtlaba.org>

**GTLA Mission Statement:** *The Grand Traverse-Leelanau-Antrim Bar Association is a Michigan not-for-profit corporation whose members are attorneys principally practicing in Grand Traverse, Leelanau and Antrim counties. Its mission is to maintain the highest professional standards and competence among attorneys, to promote collegiality and camaraderie among attorneys, to improve the administration of justice, and to provide law-related service and education to its members and the public.*

#### 2008-2009

The GTLA Bar Association officers for 2008-2009 were elected at the May 1, 2008, annual meeting, with a vacancy and some renewal appointments being made at June 18, 2008, Board of Governors meeting.

President	Jennifer Berry	231-929-3113
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	Shelley Kester	6/30/10 231-922-6800
	Michael Richey	6/30/10 231-929-0500
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	Robert Witkop	231-946-4300
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Mike Borden	231-947-0400
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Shelley Kester	231-922-6800
Aaron Bowron	231-946-8630
Jennifer Berry	231-929-3113
Jo Bullis	231-941-1210

#### Bar Association Newsletter

Editor & Committee Chair: Aaron Bowron

Assistant Editor & Committee Chair: Deborah L. Rysso

Published Quarterly. Kindly mail articles and information to GTLA Bar Association by Monday, March 23, 2009 for publication in the Spring issue.

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## Reciprocal Retirement Act Amendment Approved by Michigan Legislature

On December 18th, the Michigan Legislature overwhelmingly approved legislation amending the Reciprocal Retirement Act (hereinafter the "Act") to increase the amount of time allowed between public employment for purposes of combining service for retirement eligibility. The legislation was introduced to remedy a denial of retirement benefits even though the claimant had earned enough service credits to qualify, said Bishop and Heintz Attorney Matt Classens. Mr. Classens worked with the local representatives to introduce the legislation and ultimately guide the matter through the legislative process.

House Bill 6113, introduced by Representative Howard C. Walker (R-Traverse City), extends the allowable time period from fifteen (15) years to twenty (20) between public employment for obtaining service credits within the different retirement systems participating under the Act. The legislation also clarifies an inconsistency within the Act regarding the buy-back of previous service credits.

The Act allows an employee to combine service credits earned within differing public retirement systems. The client had accumulated the necessary ten (10) years of service within the Michigan Public School Retirement Sys-

tem and the Michigan Employee Retirement System, which would have ordinarily qualified her for retirement benefits upon attaining the age of sixty (60). However, due to receiving inaccurate information from the State, her ten (10) years of service credits were accumulated outside of the fifteen (15) years as previously required under the Act.

The legislation was ultimately necessary to remedy an inequity in the law. "What started out through the State Administrative Contested Case process has now wound its way through the legislative process," said Classens. "This legislation allows those public servants, like our client who dedicated her career to educating children, to get credit they deserve for the services they provided."

The legislation passed the House of Representatives by a margin of 95-5 and the Senate by a vote of 37-1. Classens credits Representative Walker and Senator Jason Allen (R- Traverse City) for their efforts on this issue. "Without all of their hard work, this would not have been possible."

The legislation now goes to Governor Jennifer M. Granholm for her approval.

### Pro Bono Clinic Training

The Women Lawyers Association is sponsoring a four part series entitled "Pro Bono Clinic Trainings." It will take place on January 28, and February 11, and 25, and March 11 from 12-1pm in the Multipurpose Room at the 86th District Court building.

The trainings are being held to provide volunteer attorneys who staff the Women's Resource Center and Third Level free legal aid clinics with information on the substantive areas most often raised by clinic participants, and how to best serve the clinic clientele, even when questions are outside your normal practice area. Presenters will be Jo Bullis, Executive Director of the Women's Resource Center, and Mary Kavanagh Gahn, Staff Attorney for Legal Services of Northern Michigan.

All attorneys are encouraged to attend. Find out how you can fulfill your pro bono requirements, and better serve your community. Mark your calendar now!

The **Young Lawyers** of the GTLA Bar Association would like to announce that a dutch treat "Bar Night" will be held every third Thursday of the month at locations to be announced. All those having questions, please feel free to contact Corey Wiggins, YLA Chairman, at (231) 946-8630 or [coreyjwiggins@aol.com](mailto:coreyjwiggins@aol.com).



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## Oil and Gas Industry Impact in Michigan

*James M. Leibenguth, Leibenguth, Boos & Associates, P.C.*

The oil and gas exploration and production industry is vital to Northern Michigan communities and the State of Michigan. Oil and gas production provides a source of revenue for land owners, the State of Michigan, production companies, and municipalities. The banking, professional and legal communities also benefit from and are involved in the oil and gas industry. Many attorneys in Northern Michigan are familiar with issues relating to the industry, whether reviewing an oil and gas lease, negotiating surface damages, environmental matters, or issues relating to mineral conveyancing and production.

The domestic oil and gas industry is particularly important now in view of the transfer of wealth that has occurred and is occurring in the energy markets, i.e. US dollars paid for foreign crude oil and liquefied natural gas. Oil and natural gas have been produced in Michigan for over 80 years. During that time, over 1.34 billion barrels of oil have been produced and over 5.9 trillion cubic feet of natural gas (548 billion cubic feet from Grand Traverse County alone). Sixty-three of Michigan's eighty-three counties have produced oil and/or gas at some time. Over the last 20 years, one of the major plays in Michigan has been natural gas produced from the Antrim Shale subsurface geologic formation, extending from Antrim County to Alpena County and being one of the largest natural gas producing reservoirs in the lower 48.

The oil and gas industry in Michigan supports over 10,000 industry related jobs and pays millions of dollars to municipalities for personal property tax associated with wells, pipelines and surface facilities. Twenty-five percent of natural gas used in the State of Michigan is produced from wells located in Michigan. The State of Michigan also has the largest underground working storage capacity of any state, where produced natural gas is stored in the summer months and withdrawn for use during in the colder months. There are currently over 12,000 active producing oil and gas wells in Michigan.

Production and leasing revenues realized by the State of Michigan are dedicated to the Michigan Natural Resources Trust Fund which funds projects to provide access to Michigan waterways and improve outdoor recreation. Since the inception of the Trust Fund, over 1200 projects have been funded, totaling \$625,000,000. Over 60 of these projects are in Grand Traverse, Antrim and Leelanau Counties, totaling an expenditure in excess of \$37,000,000. The Trust Fund has purchased 135,000 acres of ecologically significant or recreational land.

No doubt there have been disagreements along the way, but the oil and gas industry has provided significant contributions to Northern Michigan.

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Attention: John Racine

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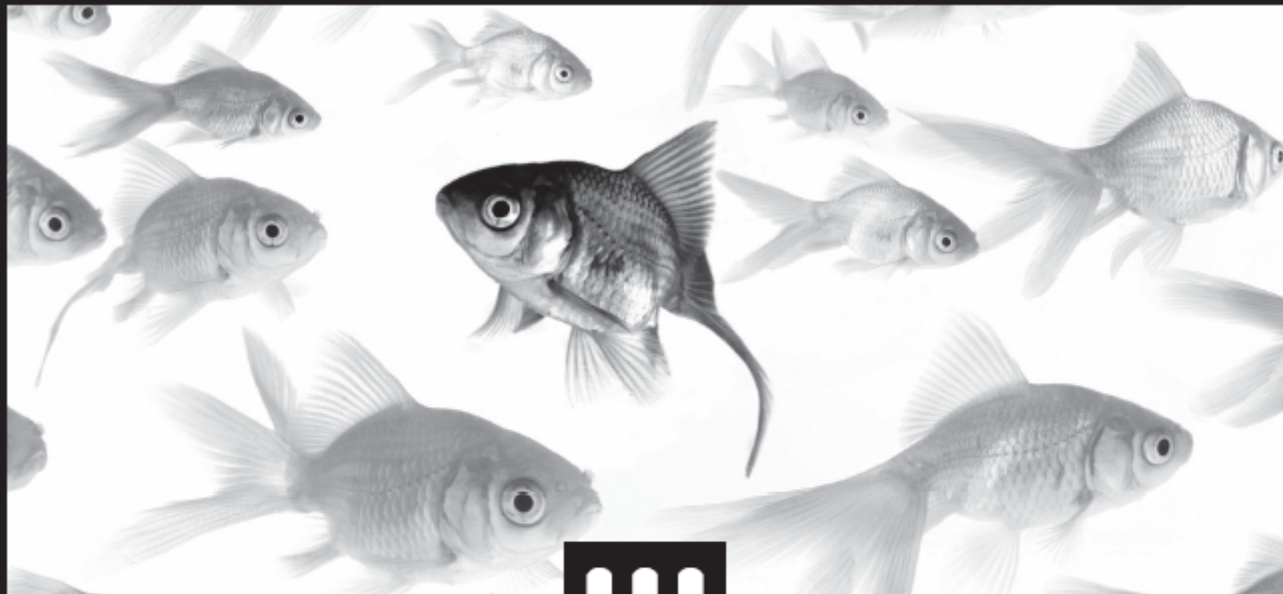
## Supreme Court Decision on Refundability

On December 12, 2008, the Michigan Supreme Court reversed the Attorney Discipline Board's decision in *Grievance Administrator v. Cooper*, SC:135053. The Supreme Court declared that the ADB erred in finding a fee agreement that provided for a nonrefundable retainer was ambiguous based upon a perceived disparity between the "nonrefundability" language and hourly billing language.

The Court concluded that neither the clear and unambiguous nonrefundability language nor the attorney's retention of the "minimum fee" upon termination of the attorney-client relationship violated existing MRPC 1.5(a), 1.15(b), or 1.16(d).

The Supreme Court Order is at:

[http://coa.courts.mi.gov/documents/sct/public/orders/20081212\\_s135053\\_16\\_135053\\_2008-12-12\\_or.pdf](http://coa.courts.mi.gov/documents/sct/public/orders/20081212_s135053_16_135053_2008-12-12_or.pdf)



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*Cont'd from page 1*

angles. Although not mandatory in Michigan, we have a great committee in our multi-county Bar Association that has worked very hard to keep our members up-to-date with the law as well as the ever changing world of client services. Should you wish to be a part of our CLE program series, please contact Larry LaSusa or Aaron Bowron.

The continuing legal education series consists of lunch time seminars on a variety of topics of interest for our members. Robert Start did a presentation and group participation exercise in the Law Library on the use and misuse of polygraphs. Enrico Schaeffer presented new and innovative ways to use technology in the office and in court at the Chamber of Commerce. Jim Olson educated members on the state of Michigan's water law and recent passing of an interstate compact aimed at the prevention of the permanent diversion of water out of the Great Lakes. Ruth Schaub, Dorothy Grant and Gary Klotzbach taught us how to boost productivity and profit by using paralegals and legal assistants. Finally, Lee Hornberger updated our membership on some new mediation tactics as well as reinforcing existing but underutilized tactics for settling cases.

### **THE NEW YEAR:**

In February, the Business Law Section of the State Bar of Michigan is coming to Traverse City to work together with our CLE committee on a joint CLE and State Bar presentation. Also, The Women Lawyers Association is planning a series of four workshops on the Pro Bono Clinics in the area to provide tips on participating in them as well as differentiating between the purposes of the separate clinics. This is scheduled to begin in January 2009.

The No Talent show/cigar gathering is coming up in February. This is an informal gathering of the members at Kilkenny's' Irish Pub. There will be skits depicting the membership's highest and possibly lowest moments of the past year. Musical entertainment will be provided by a few of our members who are multitalented. Cigars will be allowed much like the old cigar dinner in the dome. Appetizer, buffet and one drink ticket will be provided by the bar association, with a cash bar being available thereafter. Come and laugh at/with your colleagues.

Have you noticed, the Ron Jolly show on WTCM's AM talk radio station has stopped broadcasting "Ask the Attorney?" This was because of a lack of participation by our membership. This program is a wonderful way to boost your productivity by advertising while educating. To keep the program, the GTLA Bar Association's Media Committee needs you! If you are willing to participate on topical panels on talk shows such as the "Ron Jolly Show," please advise our executive director of your willingness and area of practice.

You also may have noticed, the bench-to-bar monthly lunches at Minerva's restaurant are a thing of the past. This too was due to a lack of participation by our membership. Should you be interested in rekindling the monthly meetings or suggesting alternatives, please contact the law library.

As we head into 2009, I hope our bar association keeps meeting your expectations. Please feel free to contact me, should you think of ways to better serve the membership. HAPPY NEW YEAR!

### **Circuit Court Referee Calendars Available**

On November 4, 2008, Circuit Court Administration Office distributed its 2009 Civil/Family Division Motion Days and Circuit Court Referee Calendars. Please call 231/922-4701 if you would like a copy e-mailed to you.

### Membership Committee Chair Sought

The GTLA Bar Association Membership Committee is seeking a Chairperson. If interested, please contact Jill Porter at [gtlab@grandtraverse.org](mailto:gtlab@grandtraverse.org) or Jen Berry at [jberry@parsonsringsmuth.com](mailto:jberry@parsonsringsmuth.com).

### New Additions to the Library Collection

Merritt W. "Tim" Green of Parsons, Ringsmuth, Zelenock PLC has generously added his set of American Maritime Cases (1947-present) and Norris' *The Law of Seaman*, 4th edition to the Law Library. Tim will also be updating these sets, keeping them a useful part of our collection. Thank you, Tim!

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Contact me for:

- Resume
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## GTLA Calendar of Events

Jan. 21	GTLA board meeting, Law Library, 4:30 pm
Jan. 28	WLA Pro Bono Clinic Training, District Court Multipurpose Room, noon
Feb. 10	Women Lawyers Association meeting, Law Library, noon
Feb. 11	WLA Pro Bono Clinic Training, District Court Multipurpose Room, noon
Feb. 18	"Closing the Deal: How to Successfully Conclude the M&A Transaction." Presented by the State Bar of Michigan's Business Law Section. Grand Traverse County Governmental Center - Multipurpose Room on the Lower Level, noon
Feb. 18	GTLA board meeting, Law Library, 4:30
Feb. 19	Young Lawyers Bar Night, location tbd
Feb. 25	WLA Pro Bono Clinic Training, District Court Multipurpose Room, noon
Mar. 10	Women Lawyers Association meeting, Law Library, noon
Mar. 11	WLA Pro Bono Clinic Training, District Court Multipurpose Room, noon
Mar. 18	GTLA board meeting, Law Library, noon
Mar. 19	Young Lawyers Bar Night, location tbd
Mar. 20	ADR Committee meeting, Law Library, noon

## Heard in the Halls

**Mardi Black**, of Mardi L. Black PLC, will be leading a program for the Michigan Land Use Institute's "Get Farming!" series surveying legal issues surrounding farming. Her session will be held February 10<sup>th</sup> at 6:30 at the Michigan Works office on Garfield.

**Peter J. Boyles** and **Robert W. Parker** of the Traverse City office of Smith Haughey Rice and Roegge have recently been named to the firm's board of directors.

**Lee Hornberger**, Arbitration and Mediation Office of Lee Hornberger, has been approved as a Financial Industry Regulatory Authority (FINRA) mediator. FINRA is the largest non-governmental regulator for all securities firms doing business in the United States. All told, FINRA oversees nearly 5,000 brokerage firms, about 174,000 branch offices and approximately 676,000 registered securities representatives. Lee can be contacted at 231-941-0746 and leehornberger@leehornberger.com.

Effective January 1, **Kirsten Keilitz** and **Ronald Schuknecht** accepted positions as shareholders and **Mike Lewis** accepted a position of counsel to Smith Haughey Rice & Roegge.

Attorney and Mediator **Edward W. Rich** recently opened Edward W. Rich, P.C. at 830 East Front Street, Suite 203, Traverse City, MI 49686. Mr. Rich is a MIT and Stanford Law School graduate and received mediation training from Harvard Law School. He is a member of the Michigan, New York, and Massachusetts state bars. A former fortune 500 management executive, Mr. Rich has extensive experience in breast implant, asbestos, and mass tort litigation, bankruptcy, mediation, contract and insurance law. Contact him at (231) 932-1500 or at ewrich@ewrichpc.com.

**Deborah Rysso** gave birth to Sophia Lucille Vincent on November 17th. Sophia weighed 8 pounds, 7 ounces and was 21 inches long. Deborah, Mike, Sophia and older brother Jack are all doing well. Picture of Sophia are posted at <http://personalpicturebook.blogspot.com>.

**Corey J. Wiggins**, an associate with the firm of Zirnhelt & Bowron, P.L.C., has recently been reappointed to the Wexford County Planning Commission, the Charter Township of Haring Planning Commission and the Charter Township of Haring Board of Review.

Congratulations to **Charles B. Judson** and **Rachel Brochert Roe** of Smith Haughey Rice & Roegge; **Michael H. Dettmer**, of Counsel to Olson, Bzdok & Howard, P.C.; **William Calcutt**, of Calcutt, Rogers & Boynton, PLLC; **Kirsten L. Keilitz** of Lewis, Schuknecht & Keilitz, PC; **Dean Robb** of Dean Robb Law Firm; who were featured in *Traverse Magazine's* January 2009 "Best Lawyers" article. Also mentioned were GTLA Bar Association Members: **George F. Bearup**, **Mark P. Bickel**, **Frederick R. Bimber**, **Douglas S. Bishop**, **John R. Blakeslee**, **James W. Boyd**, **Mark A. Burnheimer**, **Stephen C. Chambers**, **Jerome A. Colligan**, **Mark R. Dancer**, **W. Peter Doren**, **Richard J. Figura**, **Joseph C. Fisher**, **Rex O. Graff**, **Bryan E. Graham**, **Patrick E. Heintz**, **Lee Hornberger**, **James M. Hunt**, **John A. MacNeal**, **Joseph E. Quandt**, **John P. Racine, Jr.**, **John A. Scott**, **John W. Sharp** (1953-2008), **Geoff G. Smith**, **Timothy P. Smith**, **Louis A. Smith**, **Ronald W. Sondee**, **George R. Thompson**, **Robert P. Tremp**, **L. Kent Walton**, **Thomas B. Wells**, and **Patrick J. Wilson, Jr.**

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## Unemployment Compensation Noncontest Provisions in Settlement Agreements

*Lee Hornberger, Arbitrator and Mediator*



This article discusses whether a provision in an employment settlement agreement providing that the employer will not contest the employee's unemployment compensation claim violates the Michigan Employment Security Act, MCL 421.1 *et seq.*

Employment settlement agreements frequently provide, in effect, that the "Employer will not do anything to dispute or contest any unemployment compensation claims that the employee might file."

It has been indicated that:

"The settlement agreement should address issues of unemployment compensation. Unemployment benefits are controlled by a state agency; however, management can agree ... not to contest unemployment benefits. It is rare that the Michigan Unemployment Insurance Agency will deny the plaintiff benefits if there is no objection by the employer." *Employment Litigation in Michigan* (ed Calzone, Bogas, and Kopka), Section 13.19.

Furthermore, it has been suggested that a severance agreement should "[i]nclude a provision that states that the employer will not object/oppose the employee's claim for unemployment benefits." Eisenberg, *Negotiating Executive Severance Packages* (ICLE 2004).

An employer is sometimes willing to agree to such a provision for a number of reasons. The employer's decision to oppose the employee's unemployment compensation claim can be largely subjective. "Agreeing not to contest unemployment compensation can be a bargaining tool with [a] difficult termination." hr2u.com. It can depend on a number of factors such as:

- 1) the employer's approach to unemployment compensation claims in the absence of gross misconduct,
- 2) the attitude towards the employee and the employer's subjective desire that the employee not get benefits,
- 3) whether contesting the unemployment compensation claim might motivate the employee into contacting an

attorney where the separation might be problematic,

- 4) whether the employer wants to spend the time and resources to contest the claim,
- 5) whether the employer wants to let sleeping dogs lie,
- 6) whether the employer was going to contest the claim in the first place with the settlement agreement merely being the *status quo ante*, and
- 7) whether the wrongful discharge case being settled was, in whole or in part, a motivating reason for the employer having opposed the unemployment compensation claim in the first place.

In addition, even where the employer decides to actively oppose the claim, the results of the administrative and litigation process can, at best, be unpredictable. It has been known for the Administrative Law Judge to rule one way, the Michigan Employment Security Board of Review to reverse the Administrative Law Judge, the Circuit Court to reverse the Board of Review, and the Court of Appeals or the Supreme Court to reverse the Circuit Court. In short, there might not be any predictable answer to the "just cause" issue.

In *Miller v FW Woolworth Co*, 359 Mich 342; 102 NW2d 728 (1960), the Administrative Law Judge found for the employer, the Board of Review for the employer, the Circuit Court for the employee, and the Supreme Court for the employer. In *Renown Stove Co v Unemployment Compensation Comm'n*, 328 Mich 436; 44 NW2d 1 (1950), a vacation pay issue case, the Administrative Law Judge found for the employee, the Board of Review for the employee, the Circuit Court for the employee, and the Supreme Court rendered a split decision. In *Johnides v St Lawrence Hosp*, 184 Mich App 172; 457 NW2d 123 (1990), the Administrative Law Judge found for the employer, the Board of Review for the employer, the Circuit Court for the employee, and the Court of Appeals for the employee. In *Salenius v Employment Sec Comm*, 33 Mich App 228; 189 NW2d 764 (1971), a lock-out issue case, the Administrative Law Judge found for the employer, the Board of Review for the employer, the Circuit Court for the employer, and the Court of Appeals reversed in favor of the employees.

This is a situation where all the decision-makers act in good faith and reach inconsistent results on the "just cause" or other unemployment compensation issues. So, if

the government decision-makers cannot be consistent in their decisions on whether there was “just cause,” how can the employer determine whether it is obligated to argue there was just cause for the separation?

It is sometimes the viewpoint that:

“It may be smarter not to contest unemployment if you think that there is going to be a more serious charge in the future. The unemployment hearing happens so quickly that most employers have probably not even talked to their attorneys, and they may say something that will set the stage for future legal difficulties, or they may simply say something that angers the ex-employee to the point of suing.” “Should You Contest Unemployment Compensation?,” *HR Manager’s Legal Reporter*, p 5 (July 2002).

When an employee files a claim for benefits, the Commission will request of the employer whether it agrees with the wage and separation information given by the employee. MCL 421.32(a); R 421.205; *Employment Law in Michigan: An Employer’s Guide*, Section 16.15 (ed Seryak, Ellmann, and Kopka). The Commission rules provide that employer “shall respond ... **if it questions** the individual’s eligibility or qualification.” R 421.205 (2). Emphasis added. Any employer or any other person failing to submit required employment reports lawfully prescribed and required by the Commission is subject to penalties. MCL 421.54(c)(1). The rules further provide that, if the employer fails to respond, then the Commission shall determine benefits rights based upon available information. R 421.205 (5).

Based upon a literal textual reading of R 421.205 (2), it would appear that the employer only has to provide information contesting the claim “if [the employer] questions” the claim. If the rule required the employer to provide potentially adverse information to the claim, the rule would not contain the language “if it questions.” Accord *Wayne Co v Hathcock*, 471 Mich 445, 468-69; 684 NW2d 765 (2004); and *Bureau of Unempl Comp v Detroit Medical Ctr*, 267 Mich App 500; 705 NW2d 524 (2005). An individual cannot waive or release rights to benefits under the Act. MCL 421.31. There is no provision that an employer cannot waive its rights.

A person who willfully violates or intentionally fails to comply with any of the provisions of the Act or a regulation promulgated under the Act is subject to criminal penalties. MCL 421.54(a).

Any employer, employee or other person who makes a false statement or knowingly and willfully with intent to defraud, fails to disclose a material fact to obtain, increase, prevent or reduce the payment of unemployment compensation benefits is subject to criminal sanctions. MCL 421.54(b). Section 54 is directed at the making of a false statement with an intent to defraud to obtain or increase a benefit by a person charged with violating the Act. Section 54 (b) is discussed in other contexts at *Jones v Unemployment Compensation Comm*, 332 Mich 691; 52 NW2d 555 (1952); and *People v Robinson*, 97 Mich App 542, 547; 296 NW2d 99 (1980). In conclusion, based on the Commission’s rules, an employer only has to oppose an unemployment compensation claim “if it questions” the claim. R 421.205 (2). There is no requirement that the employer question a claim. Even where the employer exercises its option to question the claim, one cannot predict whether the claim will be granted or not. On the other hand, the employer is not free to submit false information to the Commission. MCL 421.54(b). This means that, in order to comply with a settlement agreement provision concerning not contesting a claim, the employer, consistent with R 421.205 (2), would simply exercise its option of not “question[ing]” the claim.

*Lee Hornberger, Arbitration and Mediation Office of Lee Hornberger, www.leehornberger.com, is Immediate Past President of the Grand Traverse-Leelanau-Antrim Bar Association, and an American Arbitration Association, Financial Industry Regulatory Authority, and National Arbitration Association arbitrator and mediator. He can be reached at 231-941-0746 or leehornberger@leehornberger.com.*

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## Personal Property Tax - The Other Tax

Karrie A. Zeits

“There are only two things guaranteed in life: death and taxes.” While income, real property, and sales taxes receive a lot of attention, a tax that is often overlooked is the personal property tax. This is a mistake that could hurt your clients.

Personal property taxes are assessed against personal property used by for-profit businesses.<sup>1</sup> Personal property generically includes goods, chattels, effects, trade fixtures, and buildings and improvements on leased real property. The taxable status of personal property for a tax year is determined as of December 31st of the year immediately preceding the tax year.<sup>2</sup> This means that if your client has personal property in the taxing jurisdiction on December 31, it will be assessed for its value for the following tax year by that jurisdiction even if it is removed from the jurisdiction during the tax year.

Businesses subject to the personal property tax are required to file a personal property tax statement by February 20 in each jurisdiction it had personal property in on December 31 of the year before.<sup>3</sup> Although the assessor may utilize the value indicated by the taxpayer to assess the tax due, the assessor is not required to and may assess a different value.<sup>4</sup>

An assessment may be appealed to the local board of review or the Michigan Tax Tribunal.<sup>5</sup> The deadline for filing an appeal with the Michigan Tax Tribunal is May 31.<sup>6</sup> Check with your local assessor to determine the deadline for filing an appeal with the board of review. Once the board of review has certified the tax roll and the time limit for appealing an assessment has passed, the taxing authority has no ability to negotiate a different tax bill.

Personal property taxes are a “prior, superior, and paramount lien” on the personal property until paid.<sup>7</sup> This means that they take priority over all other liens, including consensual liens perfected prior to the assessment of the tax.<sup>8</sup> The security interest the taxing jurisdiction acquires by operation of law gives it secured status in any bankruptcy proceeding, and it must be treated as a secured creditor by the trustee. The lien follows the property unless transferred to a bona fide purchaser.<sup>9</sup>

A taxing authority has two statutory options for collecting unpaid personal property taxes. The taxing authority may seize and sell the personal property or sue the person, firm, or corporation to whom the tax was assessed.<sup>10</sup> Other options for collecting the taxes are to collect from the officers of a corporate entity if they dispose of

the corporation’s personal property knowing that a lien existed<sup>11</sup> or a lien holder that received and retained the proceeds from the sale of the personal property without paying off the superior personal property tax lien.<sup>12</sup> A taxing jurisdiction has a statutory duty to pursue all methods available to it for the collection of taxes.<sup>13</sup>

In conclusion, while personal property taxes do not receive much attention, they should not be ignored. They are virtually indestructible and taxing jurisdictions are required by law to collect them. This combination makes it almost guaranteed that they will be paid. So, whether you represent a taxpayer, bankruptcy trustee, or a lien holder, do not make the mistake of overlooking the Other Tax.

<sup>1</sup>MCL 211.8 and MCL 211.9.

<sup>2</sup>MCL 211.2(2).

<sup>3</sup>MCL 211.19.

<sup>4</sup>Ford Motor Co v Woodhaven, 475 Mich 425 (2006).

<sup>5</sup>MCL 205.735a(4)(a).

<sup>6</sup>MCL 205.735a(6).

<sup>7</sup>MCL 211.40.

<sup>8</sup>In re Reef Petroleum Corp, 92 BR 741 (1988).

<sup>9</sup>MCL 211.40.

<sup>10</sup>MCL 211.47.

<sup>11</sup>City of Muskegon v Amec, Inc, 62 Mich App 644 (1975).

<sup>12</sup>In re Reef Petroleum Corp, supra; and City of Traverse City v Empire National Bank, unpublished opinion of the Grand Traverse County Circuit Court, issued June 4, 1993 (Docket No. 92-10658).

<sup>13</sup>MCL 211.56a.

*Ms. Zeits is currently the City Attorney for the City of Traverse City. She was an officer of the GTLA Bar Association and was secretary from 2003-2005. She was also the president of the Women Lawyers Association from 2003-2004.*



**CLOSING THE DEAL:  
HOW TO SUCCESSFULLY  
CONCLUDE THE M&A TRANSACTION**

**What:** The Business Law Section of the State Bar of Michigan, in conjunction with the Grand Traverse-Leelanau-Antrim Bar Association, will present a panel discussion regarding successful strategies for closing M&A transactions. This event is open to all members of the Business Law Section and the Grand Traverse-Leelanau-Antrim Bar Association.

**Speakers:** *Edwin J. Lukas of Bodman LLP*  
[http://www.bodmanllp.com/attorneys/edwin\\_j\\_lukas\\_partner.html](http://www.bodmanllp.com/attorneys/edwin_j_lukas_partner.html)  
*Phillip D. Torrence of Honigman Miller Schwartz and Cohn LLP*  
<http://www.honigman.com/professionals/xprProfessionalDetailsHon.a.spx?xpST=ProfessionalDetail&professional=729>  
*Mark H. Zietlow of Clark Hill PLC*  
[http://www.clarkhill.com/template2Col.aspx?pageID=75&lawyer=Zietlow\\_Mark\\_H&lawyerid=221&type=1](http://www.clarkhill.com/template2Col.aspx?pageID=75&lawyer=Zietlow_Mark_H&lawyerid=221&type=1)

The panel will discuss the art of achieving a successful closing in connection with an acquisition. Topics will include:

- Getting from signing to closing
- Pacing the deal and negotiation roadblocks
- Coping with the troubled deal
- Closing the deal
- Problems of execution
- Handling post-closing matters

**When:** Wednesday, February 18, 2009  
 12:00 p.m. – 12:30 p.m. – Lunch and networking (Pizza and soft drinks provided)  
 12:30 p.m. – 1:30 p.m. – Presentation

**Where:** District Court (Multipurpose Room)  
 280 Washington Street  
 Traverse City, Michigan

**Cost:** There is no charge to members of the Business Law Section or Grand Traverse-Leelanau-Antrim Bar Association to attend to this event.

**Registration:** Please register in advance by calling or emailing the Business Law Section Administrator at 248-953-9022 or [businesslaw@mi.rr.com](mailto:businesslaw@mi.rr.com).

DETROIT.3467470.1

### **Print or Electronic?**

The Newsletter Committee is offering GTLA Bar Members the opportunity to "opt out" of receiving a paper version of the Newsletter in lieu of an emailed version. This will reduce duplicative Newsletter mailings and save the GTLA Bar Association postage. If your preference is to continue receiving the paper version on the Newsletter, you need not do anything further; if you do not wish to receive the paper Newsletter, please "opt out" by sending an email to [gtlab@grandtraverse.org](mailto:gtlab@grandtraverse.org) with "opt-out" in the subject line.

## Board of Governors Meeting Minutes

Wednesday, September 17, 2008

**Present:** Jennifer Berry, Joe Van Horn, Mardi Black, Aaron Bowron, Kristen Campbell, Larry LaSusa, Mike Richey, Shawn Worden, Deborah Rysso, Corey Wiggins, Robert Witkop, Jill Porter, Linda Wasielewski

**Absent:** Jo Bullis, Lee Hornberger, Shelley Kester, John Blakeslee

The meeting was called to order at approximately 4:35 p.m. with a quorum.

**Secretary's Report:** Deborah Rysso moved to approve the August 20, 2008 minutes and Aaron Bowron seconded. Motion passed with Mike Richey abstaining as he was absent for that meeting.

**Treasurer's Report:** Mardi Black provided a report. The August 2008 profit/loss and balance sheets were provided and accepted.

**Executive Director's Report:** Jill Porter provided a report. TARS referrals were down for the month, although library usage was up. Summer Newsletter invoices were now up-to-date and paid, as well as almost all past due invoices. To date, there are 230 membership renewals. Only 40 people had registered for the annual golf outing, which was a decrease from prior years. A new library assistant, Christina Beaudrie, began working in September. Christina is expected to be an asset as she has a paralegal certificate and is adept at using technology.

**President's Report:** Jennifer Berry provided a report. Discussion was held concerning a Circuit Court request for Bar Association funding assistance for a new attorney conference room/case evaluation room. A request for approximately \$2-3,000 was made to assist with the outfitting of this room with a refrigerator, microwave, sink, plumbing, counter, etc. The request was to be forwarded to the Charitable Giving Committee for discussion and budget analysis. That committee would also take up a request by the Women Lawyer's Association for the cost of pizza reimbursement at a speaking event on "How to Deal With Difficult Opposing Counsel".

Minutes from the Alternative Dispute Resolution Committee meeting of July 18, 2008 were provided.

Discussions continue with the County concerning annual budgeted amounts for the Law Library and how that money is being spent.

### Committee Reports:

**CLE:** Larry LaSusa provided a report. Members had recently attended a presentation by Jim Olson on restoring the public trust in water commons. On October 15, 2008, a polygraph presentation would be made by Bob Stark, including a live demonstration of the use of a polygraph. Discussions were being held concerning co-sponsoring other events with the State Bar Business Law Sections. It was also anticipated that Enrico Schaefer would make a presentation in the future on digital dictation.

**Law Day:** Mike Richey provided a report. Suggestions for a speaker are already being considered for next year.

**Newsletter:** Aaron Bowron provided a report. The submission deadline for the next Newsletter is September 26, 2008.

**Special Events:** Jennifer Berry provided a report. The date for the Fall Dinner will be Wednesday, November 12, 2008. The dinner will again be held at Boone's Long Lake Inn. Cocktails will start at 5:30 p.m. and there will again be a presentation of the Madeleine Thomas Award.

**TARS:** Aaron Bowron provided a report. A TARS Committee meeting was held recently in which discussions were held concerning the fact that TARS has been losing money. Discussion was also held about how to shore up the financial status of TARS. The Committee will make a formal recommendation to the Board in the future concerning some of these issues.

**Women Lawyer's Association:** Deborah Rysso provided a report. The WLA is planning a speaking event on October 6 over the lunch hour on the topic of "How to Deal With Difficult Opposing Counsel." This will occur in the Multipurpose Room of the District Court basement.

The Fall Dinner will take place on October 2 at North Country.

It is anticipated that there will be a four-part series in January 2009 concerning the Pro Bono Clinics. This series will occur twice per month.

**Young Lawyer's Association:** Corey Wiggins provided a report. The membership is currently very low for this group, with four or five members. Additional members will be sought through the Newsletter.

**Representative Assembly:** Robert Witkop provided a report. The next Representative Assembly Meeting will be on September 18, 2008. John Blakeslee will be attending and providing a report.

**Old Business:**

**Reimbursement Policy:** Discussion was held concerning the adoption of a Bar Association Expense Reimbursement Policy. Deborah Rysso moved to adopt the State Bar of Michigan Expense Reimbursement Policy verbatim with the exception of paragraph 13 (concerning sales tax application) and to further replace references to the State of Michigan with the GTLA Bar Association. Mike Richey seconded the motion and it was passed without opposition.

**Law Library After Hours Access:** Discussion was held concerning the continuing privilege of after-hour Library access for members of the Bar Association. Aaron Bowron moved to continue to allow after-hours access to members. The motion was seconded by Larry LaSusa, and the motion passed without opposition.

The meeting was adjourned on motion at approximately 5:36 p.m.

**Wednesday, October 15, 2008**

**Present:** Jennifer Berry (via telephone), Jo Bullis, Joe Van Horn, Mardi Black, Lee Hornberger, Aaron Bowron, Shelley Kester, Larry LaSusa, Corey Wiggins, Jill Porter

**Absent:** Kristen Campbell, Mike Richey, Shawn Worden, Deborah Rysso, John Blakeslee, Robert Witkop

The meeting was called to order at approximately 4:40 p.m. with a quorum.

**Secretary's Report:** Shelley Kester moved to approve the September 17, 2008 minutes and Larry LaSusa seconded. After additional discussion, the motion passed with no opposition.

**Treasurer's Report:** Mardi Black was not present for this report. Financial documents for September 2008 were submitted. Shelley Kester moved to accept the budget and Aaron Bowron seconded. Motion carried without opposition.

**Executive Director's Report:** Jill Porter provided a report. Progress was being made on renewing membership by the new library assistant, Christina Beaudrie. The Newsletter was set to go to the printer the following day. There were three new advertisers for the upcoming Newsletter, which increased advertising revenue. Members were also being given the option to receive the Newsletter electronically.

**President's Report:** Jennifer Berry provided a report. Discussions continue with the County concerning the Law Library budget.

**Committee Reports:**

**Charitable Giving:** Jennifer Berry provided a report. The request from the Women's Lawyer's Association for reimbursement expenses during a recent luncheon was turned down. A Circuit Court request for Bar Association funding assistance for a new attorney

conference/case evaluation room was also turned down as it was unclear at this time whether the request was charitable in nature. Discussion was held concerning the need for a clear definition of criteria for deciding charitable versus non-charitable requests.

**CLE:** Aaron Bowron provided a report. A recent presentation by Robert Stark concerning polygraphs went very well. Mr. Stark traveled from Grand Rapids and was engaging and certainly knew his material. It is hoped that attendance at future CLE's could be increased.

**Media:** Larry LaSusa provided a report. Discussion was held concerning the possibility of sending Ron Jolly an email about resurrecting the "Ask the Lawyer" program. It was decided that an email in this regard would be sent.

**Mentor:** Shelley Kester provided a report. Discussion was held that there are more mentors available than individuals seeking a mentor. Hopefully, additional attorneys seeking a mentor will contact the Committee.

**Newsletter:** Aaron Bowron provided a report. The Newsletter was going to print the next day. Members were being given the option of opting out of a paper version if they desired. Members would continue to receive a paper version of the Newsletter unless they opted out.

**Women Lawyer's Association:** Deborah Rysso was not present. The WLA was discussing an endowment fund to assist Legal Services of Northern Michigan. The initial goal was to have 100% participation from female attorneys.

**Young Lawyer's Association:** Corey Wiggins provided a report. The membership was to have its first informational meeting the next week in the law library. So far, six members had signed up.

**New Business:**

Larry LaSusa initiated a discussion concerning the possibility of offering a half-price Bar Association membership to public and governmental employees such as prosecutors. After consulting the By-Laws, it appeared that any general membership dues alteration needed to be approved by the members. Additional discussions were held concerning the possibility of extending an honorary membership or amending the By-Laws to allow for a reduced rate to this class of members. This issue was ultimately tabled so that a review and possible revision of the By-Laws could be proposed for later submission to the membership at an annual meeting. Additional issues such as allowing a membership vote by email would also be considered for revision.

The meeting was adjourned on motion at approximately 5:30 p.m.

Respectfully submitted,

Joe Van Horn

GTLA Bar Association  
Profit & Loss Budget Performance

November 2008

11:33 AM  
12/16/08  
Cash Basis

	Nov 08	Jul - Nov 08	Annual Budget
Legal Eagles	0.00	0.00	350.00
Mailings & Postage			
Postage & Mail Handling	28.00	707.64	1,000.00
Printing	0.00	0.00	200.00
Stamped Envelop	0.00	0.00	0.00
Mailing & Postage - Other	0.00	70.00	
<b>Total Mailings &amp; Postage</b>	<b>28.00</b>	<b>777.64</b>	<b>1,200.00</b>
Manager's Budget			
Insurance	0.00	0.00	400.00
MABE Dues	0.00	0.00	0.00
Office Supplies	138.52	581.90	800.00
Past Pres. Plaque	0.00	27.70	100.00
Post Box Rental	0.00	0.00	80.00
Salary & Fringe	0.00	0.00	17,000.00
<b>Total Manager's Budget</b>	<b>138.52</b>	<b>609.60</b>	<b>18,380.00</b>
MI & IRS Fees	0.00	20.00	
Miscellaneous Expense			
Corporate Filing	0.00	0.00	20.00
GTRCF Regional Foundation	0.00	0.00	0.00
Miscellaneous Other	46.95	361.95	100.00
<b>Total Miscellaneous Expense</b>	<b>46.95</b>	<b>361.95</b>	<b>120.00</b>
Newsletter Exp.	687.76	2,106.21	3,400.00
Pro Bono Clinic	0.00	0.00	5,000.00
TARS Expense	40.72	81.03	800.00
Travel Expense			
Bar President Travel	0.00	0.00	420.00
Bar Representative Travel	0.00	0.00	350.00
Manager Travel	0.00	0.00	420.00
<b>Total Travel Expense</b>	<b>0.00</b>	<b>0.00</b>	<b>1,190.00</b>
Uncategorized Expenses	0.00	0.00	
Website Expense	0.00	0.00	600.00
Women Lawyers	1,360.00	1,360.00	1,280.00
<b>Total Expense</b>	<b>7,420.68</b>	<b>16,100.77</b>	<b>55,675.00</b>
<b>Net Ordinary Income</b>	<b>-4,818.14</b>	<b>23,205.15</b>	<b>-7,655.00</b>
<b>Net Income</b>	<b>-4,818.14</b>	<b>23,205.15</b>	<b>-7,655.00</b>

GTLA Bar Association  
Profit & Loss Budget Performance

November 2008

11:33 AM  
12/16/08  
Cash Basis

	Nov 08	Jul - Nov 08	Annual Budget
Ordinary Income/Expense			
Income			
Dues			
Assoc. Dues	1,370.00	29,995.00	31,000.00
Women Lawyers Dues	0.00	1,360.00	1,280.00
<b>Total Dues</b>	<b>1,370.00</b>	<b>31,355.00</b>	<b>32,280.00</b>
Golf Outing	0.00	2,217.00	3,600.00
Int. MM Account	47.79	241.52	1,000.00
Meals - Quarterly Mtgs	150.00	150.00	500.00
Miscellaneous			
Charitable/Donation	0.00	190.00	0.00
Mailing Labels	10.20	34.20	40.00
Miscellaneous Other	0.00	0.00	100.00
<b>Total Miscellaneous</b>	<b>10.20</b>	<b>224.20</b>	<b>140.00</b>
Newsletter	190.00	950.00	2,500.00
Photocopies - Library Copier	684.55	1,293.20	3,000.00
TARS			
TARS Dues	100.00	2,300.00	3,000.00
TARS Referrals	50.00	575.00	2,000.00
<b>Total TARS</b>	<b>150.00</b>	<b>2,875.00</b>	<b>5,000.00</b>
<b>Total Income</b>	<b>2,602.54</b>	<b>39,305.92</b>	<b>46,020.00</b>
Expense			
Accounting Fees	545.00	545.00	600.00
Bank Serv. Chg.	0.00	0.00	100.00
CLE Comm	0.00	0.00	500.00
Copier/Fax	56.01	224.04	600.00
Depreciation Expense	0.00	0.00	655.00
Dinners/Program	3,822.36	3,822.36	7,500.00
Education			
Bar Leadership Forum Tuition	0.00	0.00	400.00
GTALP Student Scholarships	0.00	0.00	100.00
Law Day	0.00	200.00	3,000.00
<b>Total Education</b>	<b>0.00</b>	<b>200.00</b>	<b>3,500.00</b>
Golf Outing Exp	0.00	2,944.86	3,700.00
Law Library			
Computer Equip	72.06	72.06	
Law Books/Supps	419.25	2,000.88	3,500.00
Modem & Phone	224.05	975.34	2,700.00
<b>Total Law Library</b>	<b>715.36</b>	<b>3,048.08</b>	<b>6,200.00</b>

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