

# THE TAX ADVANTAGE TO FRACTIONAL INTERESTS

***A lower federal exemption and pending legislation on family limited partnerships require new estate tax planning strategies.***



*By: George Bearup, Attorney*

As we begin to close calendar year 2010, the federal estate tax exemption is scheduled to fall to \$1 million. A taxpayer's federal estate tax exemption slowly marched upward to a high of \$3.5 million during the past decade, so this new limit will require revised planning strategies to minimize tax liabilities. At the same time, there is pending legislation in Congress to effectively deny

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# LEGAL EASE



## Slicing the Marital Pie in a Divorce

### Who Holds the Knife?



*By Mary Pigorsch, Attorney*

In contemplation of divorce, many individuals have concerns regarding the division of property. They question what gets divided and who makes the decisions. Ultimately, the court wields the knife if the spouses are unable to reach an agreement as to how or even which property is to be divided. Thus, it is important to identify what is in the pie – the “ingredients” are made up of both assets and liabilities – before cutting.

#### Where To Start?

Although the assets and liabilities associated with each marriage are unique, the courts tend to handle certain issues with some consistency when determining what comprises the marital pie. It is therefore important early on to identify all assets and liabilities owned by the spouses together and/or individually, as each may be a possible ingredient. When looking into potential ingredients, do not put them back in the cupboard or assume they did not get mixed into the pie simply based on how they are titled (e.g., a vehicle titled in the wife's name alone) or when they were obtained/expended (e.g., down payment on a home made before the marriage).

Once all possible ingredients have been identified, the task of determining when and how they were acquired can commence. (Keep in mind that just because you have talked about and identified an asset/liability does not mean it will be divided.) Specifically, it is necessary to identify the ingredients that existed

in full or in part prior to the marriage. The former might be a down payment made by one spouse to purchase the marital home prior to the marriage; the latter might be the wife's pension based on 20 years of service, the last seven of which occurred during the marriage.

#### Yours, Mine, or Ours?

The presumption with respect to ingredients that existed prior to the marriage and did not get rolled into other assets and/or have only passively grown (with no action by that spouse) is that they did not get mixed into the marital pie. Instead, they stayed outside of the mixing bowl during the marriage. For example: A husband worked for ABC Company for 20 years prior to this marriage and obtained a different job just before the wedding. During the time he worked for ABC Company, he contributed to a 401(k) plan and earned a pension. If asked, the court would typically find that the pension and 401(k) monies were the husband's separate non-marital ingredients, and that they did not get mixed into the marital pie.

On the other side, once the mixing has commenced – beginning the day that the couple says “I do” – the presumption is that the assets and liabilities acquired or incurred during the marriage become marital property. That's regardless of how they are titled. For example, a wife purchases a car and has it titled in her own name after the couple weds. During the marriage, she has

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valuation discounts associated with a family limited partnership. If these bills become law, even fewer opportunities will exist for a taxpayer to reduce the value of property for estate-tax calculation purposes. Fractionalizing the ownership of assets may remain as one of the last opportunities to create valuation discounts.

A valuation discount is associated with a fractional interest-holder because the owner's rights in the property are limited. Being trapped in a real estate investment often means that an owner cannot respond to changing market conditions to sell or to borrow without the consent of any other owner.

The valuation discount arises from the following questions: What would a prospective purchaser pay to knowingly enter into an investment where his or her exit strategy could easily be the costs and the delays of a future partition lawsuit? A smaller value is the result if an interest is 50% or less, as it is neither a controlling nor a readily marketable interest.

### Putting a Value to the Discount

Over the years, attorneys have discussed what is an acceptable valuation discount for a 50% tenant-in-common interest in real property. Some commentators have suggested a valuation discount of at least 20%.

That was the conventional wisdom of the past. Unfortunately, a recent Tax Court decision seems to narrow the opportunity for valuation discounts.

The facts in that case were simple: Mr. and Mrs. Ludwick built a large Hawaiian vacation home in 2003. They created two qualified personal residence trusts (QPRTs), which are irrevocable trusts owned and controlled by each of them, where they retained the exclusive use of the real property held in the trusts for a specified period of time. The Ludwicks then transferred a 50% tenant in common interest in the real estate to each QPRT. At the time of these transfers, the fair market value of the Ludwick's home was \$7,250,000. When the couple transferred the two 50% interests into the two trusts, the value of each tenant-in-common interest was discounted by 30%

[\$7,250,000 ÷ 2 = 3,625,000 x 70% - \$2,507,500] for federal gift tax purposes.

Ignoring valuation principles asserted by both the IRS and by the Ludwicks, the Tax Court focused on Hawaiian law that enables tenant-in-common owners of real estate to go to court and partition the real property. This has the effect of effectively forcing the sale of the real property and an equal division of the net sales proceeds. The judge thought that partition was an effective remedy for any dispute between the two equal co-owners, reasoning that a prospective buyer would use the "exit costs" posed by a partition legal action and its likelihood as the ceiling for the valuation discount.

### Different Facts = Different Discounts

In other words, the Tax Court judge thought that either co-tenant would bid up the price in the forced sale arising from the partition action until that exit strategy would make the seller whole. In the end, the judge found there to be a 17% valuation discount attached to each 50% tenant-in-common interest due to the expected costs and delays incurred in the legal partition action – factors that a prospective buyer would consider when making an offer to purchase a 50% tenant-in-common interest.

While *Ludwick* attached a 17% valuation discount to a 50% fractional interest, other Tax Court decisions have applied discounts as high as 25% -30% to the same interest. Each case is dependent upon its unique set of facts and circumstances. This is the important takeaway: If the goal is to minimize the value of an estate to keep estate or gift taxes to a minimum, there is a clear tax advantage to the simple fractionalizing of the title to the real estate.

*This article is not intended to offer legal or tax advice. For more information, or details regarding a particular matter, consult your attorney or tax advisor. To the extent that this written communication may address federal tax issues, federal regulations issued by the U.S. Treasury require that the recipient be informed that this written communication is not intended and cannot be used to (i) avoid any potential tax penalties that may be imposed under the U.S. Internal Revenue Code or (ii) promote, market, or recommend to another party any transaction or matter addressed in this communication.*

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# S M O O T H M O V E S

*When opportunity knocks, it's best to answer. Smith Haughey did just that when developers in Traverse City and Grand Rapids presented the firm with two opportunities to custom-design new, more efficient, LEED-certified office spaces.*

## Traverse City

On November 8, Smith Haughey's Traverse City operations moved into a new building at 101 North Park. Situated at the intersection of East Front and Park Streets in the highly visible business and shopping district of the city, this new location reinforces the firm's prominence in Northern Michigan.

Smith Haughey will enjoy an additional 3,100 square feet in its new space. Additionally, the firm has designed the space to better facilitate client meetings and meet the need for increased efficiency and collaboration in the practice of law.

Clients will meet with their attorney in the first-floor "conference center" that includes nine conference rooms located immediately adjacent to the reception area. The conference rooms have been configured to maximize confidentiality.

Smith Haughey has operated a Traverse City office since 1990. The office initially had seven attorneys on the roster. Since then, the office has more than quadrupled in size to

include 29 lawyers and four paralegals as well as a 16-person professional staff.

"Smith Haughey's decision to move was principally based on our need for more space and greater efficiency," says real estate attorney and Traverse City office managing partner Robert W. Parker. "We've had steady growth for 20 years in Traverse City. As client demand grew, we have added new practice specialties and attorneys to meet those needs. We don't see that trend abating in the future."

The new five-story brick building is owned by Darga Works and was designed for energy efficiency by the LEED-accredited design team of Nudell Architects and Michael Fitzhugh, Architect, PLC.

## Grand Rapids

In the summer of 2011, Smith Haughey will move its Grand Rapids operations into the historic Flat Iron Building at the intersection of Ottawa Avenue and Monroe Center in downtown Grand Rapids. The firm will occupy a portion of the first, and

all of the second, third, and fourth floors. This move will revitalize a vacant building in the heart of Grand Rapids and, because the new office space will be LEED-certified, underscore Smith Haughey's commitment to environmental responsibility.

Smith Haughey's ultimate decision to move to the Flat Iron Building was based largely on the unique opportunity provided by the current real estate market. Conditions were right to support occupancy of an iconic building that will become strongly associated with the firm, and to realize tangible economic benefits in the process.

"We are thrilled to be moving to the hub of the commercial district, where we can build a green space designed to meet the demands of today's law firm environment and also accommodate our anticipated growth," says Bill Scarbrough, Chief Operating Officer at Smith Haughey.

Clients and guests who visit the firm's new space will be greeted by a welcoming, open loft environment. Glass walls will be

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# raisingthebar:

## Recent SHRR Achievements

Space does not allow publication of every success we achieve on behalf of our clients – but in each issue, we'll spotlight some of our more noteworthy accomplishments:



**Chip Behler and Brian Pearson** successfully obtained the dismissal of

licensing complaints against their architect and builder clients.



**Rachel Brochert Roe** successfully represented her client, a retail flooring company, in a case involving employee classification. The Unemployment Insurance

Agency had previously audited her client and deemed that the company's installers were "misclassified" as contractors and should be classified as employees, a change which would have cost Rachel's client a significant amount in back unemployment taxes, penalties, and late fees. Rachel, however, convinced an administrative law judge that her clients were properly classified as independent contractors rather than employees.



**Chip Behler and Cindy Boer, assisted by Jack Oostema,** successfully defended their client, a large Michigan law firm, against charges of malicious prosecution. After more than five weeks of trial, Smith

Haughey's client was dismissed by the judge on a motion for directed verdict.



**Carol Carlson and Cindy Boer** obtained dismissal of a medical

malpractice wrongful death case in which their client, a family practice physician, was alleged to have failed to diagnose a rare

uterine sarcoma. After a two-day evidentiary hearing, the court exercised its role as "gatekeeper" and ruled that the opinion of the plaintiff's expert was not reliable and contained analytical gaps. The court excluded the expert from testifying at trial, which resulted in summary disposition in favor of the defense.



**Carol Carlson and Brian Molde** obtained summary disposition

for their client, an obstetrician/gynecologist, in a case alleging that their client caused the wrongful death of a five-week-old viable fetus after performing a D&C. Carol and Brian challenged the viability opinion of the plaintiff's expert and the court agreed, precluding that expert from offering any opinion on viability at trial. Since that was plaintiff's sole remaining expert on causation and damages, the case was summarily dismissed before trial.



**Chuck Judson and Jon Siebers** assisted the Grand Traverse

Emergency Services Authority in coordinating the conditions to bid for a new fire station, which will be constructed this year thanks to a \$2.8 million federal stimulus grant recently awarded under the direction of the Federal Emergency Management Authority. Chuck and Jon assisted in drafting documents that will meet the stringent federal requirements for issuance of the grant, and will also coordinate the drafting of all construction documents.



**Adam Lett and Todd Millar** collaborated on the litigation and

eventual settlement of a business dispute under the Michigan Franchise Investment Law. Their client was led into a business deal with a purported franchisor who ultimately overcharged and underperformed so

dramatically that the client was not able to profit from the business relationship. Using the Franchise Law to full advantage, the client was able to escape the relationship and recover his investment in the business as well as a significant portion of his legal fees. The opposing party was required to take back the defective business, and the client was relieved of any further liabilities, in addition to receiving a substantial monetary award.



**Jack O'Loughlin** successfully defended his client, a cardiologist, in a three-week medical malpractice trial where the plaintiff claimed that Jack's client had failed to perform a cardiac catheterization.



**Jon Siebers** has closed real estate transactions totalling over \$20 million since May 1, 2010. The transactions include a mix of traditional bank-financed acquisitions and seller-financed acquisitions.



Additionally, **Jon Siebers** and **Robert Parker** recently represented a group of landowners in negotiating a form wind lease to be used in a 56-turbine wind project in the northern Lower Peninsula.



**Steve Stawski** successfully represented a real estate appraiser in a licensing action. Also, he obtained secured property on behalf of a bank client to recover on the majority of the outstanding indebtednesses. Finally, Steve successfully secured a re-conveyance of property post tax foreclosure for a special servicer to benefit owners who are deployed in the military.

**Smith Haughey's Personal Litigation Group** has secured millions of dollars for its injured clients this year.



continued to make the payments associated with the vehicle and to drive the car. Nonetheless, at the time the marital pie is being identified for division, this car would be considered joint marital property.

Again, the courts do not consider how the asset is titled or how items are held. Rather, the focus is on when and how the asset was obtained. As with all general rules, of course, there are some exceptions – gifts and inheritances, for example.

This same presumption of joint liabilities is typically true for debts incurred after the wedding vows. Let's say a husband has a Visa credit card and he is the only authorized signator on that card – but that he used this card during the marriage to purchase gifts for his wife and pay for family vacations, groceries, and other miscellaneous expenses. Despite the wife's non-use of the card, the entire unpaid balance relating to this credit card obligation would most likely be considered a marital liability to be shared by the parties at the time of divorce.

What happens when a pre-marital asset gets rolled into an asset purchased during the marriage? Is it scrambled into the other asset? By way of example, say that the

husband owned a home prior to the marriage. The husband then sold his home and the monies were utilized to buy the newlyweds' first home together. If there is equity in the home at the time of the divorce action, the court may very well order that the husband be "repaid" his equity first before any remaining amounts are divided between the couple.

In this way, the court may try to "unscramble" the asset. However, the likelihood that the court would unscramble the asset is dependent on several other factors, including the length of the marriage – unscrambling decreases with each year of marriage – and/or how the other spouse's pre-marital assets were or were not used. Given today's economy, many homeowners are finding that they do not have sufficient equity in the home to repay themselves for their down payments. When there is no equity or insufficient equity, the court will most likely handle the situation as one in which the asset has been scrambled and cannot or will not be unscrambled.

### **Equitable, Not Equal**

It is important to note that the courts do not pull out sharp knives and start dividing assets/liabilities down the middle. Instead,

the courts will look at the whole pie and determine how to best divide the parties' assets and liabilities equitably. Two key things to remember: "Equitably" is not the same as "equally," and the court only raises the knife to begin cutting if the spouses cannot agree themselves as to how best to slice the marital pie.

Another critical point: Property settlements do become final and enforceable. In general, neither the husband or wife get a "do over" in the event he/she changes his/her mind or decides he/she no longer wants to be bound by an agreement. Thus, it is important for the spouses to work closely with their attorneys so that the attorneys may assist them at each step of the process.

Finally, as with most things, there are exceptions to each rule. Accordingly, it is extremely important to identify each and every asset/liability in the marital estate and discuss with an attorney how they were obtained and held during the marriage. This lays the groundwork for an equitable division of the marital assets and liabilities that preserves as much as possible any pre-marital/non-marital assets.

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# Have You Heard The News?



**George Bearup** serves as the chairperson of the Affiliations Committee and Treasurer for Munson Medical Center. He recently completed the Michigan Hospital Association's "Excellence in Governance Fellowship." George also spoke at the Northern Michigan Legal Institute about the new Michigan Trust Code and Roth IRA conversions.



**Cheryl Chandler** received the American Physicians' "2010 Outstanding Defense Attorney Award." In 2009, Cheryl won all five of the trials that she handled for the organization's insured doctors.



**David DeGraw** was elected Chair of the State Bar of Michigan's Workers' Compensation Section.



**Joe Engel** delivered two presentations to the senior surgical and emergency medicine residents at Spectrum Health in June. These included interactive discussions of specific practice concerns, risk management, and an overview of the medical claim and lawsuit process.



**Chris Genter** gave a presentation to Metro Health OB residents, interns, and medical students on "Obstetrical Issues in the Litigation Context."



**Kate Harms, Jill Quillen, and Penny Turner** volunteered at Congress Elementary School in Grand Rapids as part of the Association of Legal Administrators 2010 Community Challenge project.



**Chuck Judson** was appointed by the Michigan Supreme Court, State Court Administrative Office to the Alternative Dispute Resolution and Mediation Workgroup that will assist in the review of mediation practices in the Friend of the Court system. Chuck was also asked to write the introductory article for the State Bar Journal's issue on ADR published in June.



**Greg Kish** joined the Board of Trustees of the Great Lakes Children's Museum.



**Véronique Liem** spoke on the topic of collaborative divorce at a seminar for mental health professionals from Washtenaw, Wayne, and Oakland counties concerning the legal routes and processes of divorce.



**Tony Quarto** recently gave a presentation titled, "Wind Energy: Legal Considerations," to the Current Topics in Planning & Zoning class at Grand Valley State University.



**Kristen Ray** was elected to the Board of Directors of the Friends of Grand Rapids Parks.



**Jason Sebolt** was elected to the Board of Directors of the Michigan Society of Healthcare Risk Managers.



**Jon Siebers and Steve Stawski** recently delivered multiple presentations on troubled assets and lender liability to commercial real estate firms.



**Steve Stawski** was elected president of the American Inns of Courts, Gerald R. Ford Chapter. In addition, he attended the Michigan Land Title Association Spring Meeting and the summer conference for of the Real Property Section of the State Bar of Michigan.



Three staff members from Smith Haughey's Traverse City office – **Kathy Harrigan, Deb Schweitzer, and Marsha Tousignant** – all trained together and competed in the annual Cherry Festival 5k.



**Smith Haughey** was a sponsor of the special event held for Kids' Food Basket founder Mary Kay Hoodhood, who was recently honored by President Obama with the 2010 Citizens Medal for her courage and determination to feed hungry children in Grand Rapids.

**Smith Haughey** held a webinar on the recent Michigan Supreme Court ruling in *McCormick v. Carrier* regarding the serious impairment threshold, which may have a significant effect on auto negligence claims in the state. A *Legal Alert* on this topic can be found on the publications page of the firm's web site at [www.shrr.com](http://www.shrr.com).

**Smith Haughey** partnered with MorningStar Health to hold a seminar in Traverse City on the interplay of ADA, FMLA, and workers' compensation.

**Smith Haughey's real estate and construction attorneys** recently held a legal seminar in Traverse City for developers, contractors, and design professionals.

**Smith Haughey** served as a venue for ArtPrize in Grand Rapids. The firm hosted artist Stone Marshall and his artwork entitled, "Puzzled."



## Best Law Firms

Smith Haughey has been ranked among the top law firms in the United States in the inaugural

publication of "Best Law Firms," published by *U.S. News & World Report* and *Best Lawyers*. The publication's tiered list ranked law firms based on both practice areas and metropolitan areas. Smith Haughey received first-tier ratings in the following areas:

### Ann Arbor

- Medical Malpractice Law - Defendants
- Personal Injury Litigation - Defendants

### Grand Rapids

- Alternative Dispute Resolution
- General Commercial Litigation
- Legal Malpractice Law - Defendants
- Medical Malpractice Law - Defendants
- Personal Injury Litigation - Defendants

In addition to these first-tier rankings, Smith Haughey also received the following second-tier rankings:

### Grand Rapids

- Construction Law
- Insurance Law
- Trusts & Estates Law

*U.S. News* and *Best Lawyers* created this list of top law firms described as "the most powerful law firm rankings in the profession." Law firms were evaluated using surveys submitted by attorneys, clients, marketing officers, and recruitment officers. The surveys gathered data pertaining to expertise, responsiveness, understanding of a business and its needs, cost-effectiveness, civility, integrity, client profiles, diversity, pro-bono commitment, and more.

## Best Lawyers

Smith Haughey has been selected as #1 in 13 categories listed in the 2011 edition of *The Best Lawyers in America*. For each of these categories, Smith Haughey has more attorneys listed in *Best Lawyers* than any other law firm:

- **Top-listed in Legal Malpractice Law** (Michigan and Grand Rapids)

- **Top-listed in Medical Malpractice Law** (Michigan, Grand Rapids, and Ann Arbor)
- **Top-listed in Personal Injury Litigation** (Grand Rapids and Traverse City)
- **Top-listed in Traverse City**
- **Top-listed in Bankruptcy and Creditor-Debtor Rights Law** (Traverse City)
- **Top-listed in Bet-the-Company Litigation** (Traverse City)
- **Top-listed in Commercial Litigation** (Traverse City)
- **Top-listed in Insurance Law** (Traverse City)
- **Top-listed in Trusts and Estates** (Traverse City)

In addition, 14 attorneys from all three offices have been selected for inclusion in the 2011 edition of *The Best Lawyers in America*. They are listed below along with their listing categories.

- **George Bearup** - Trusts and Estates
- **Chip Behler** - Bet-the-Company Litigation; Commercial Litigation; Construction Law
- **Mark Bickel** - Bet-the-Company Litigation; Commercial Litigation; Personal Injury Litigation
- **Joe Engel** - Medical Malpractice Law
- **Dale Hebert** - Medical Malpractice Law
- **Bill Jack** - Alternative Dispute Resolution; Legal Malpractice Law; Medical Malpractice Law; Personal Injury Litigation
- **John Kruis** - Medical Malpractice Law
- **Tom McCarthy** - Commercial Litigation; Personal Injury Litigation
- **Todd Millar** - Insurance Law
- **Craig Neckers** - Commercial Litigation
- **Jack O'Loughlin** - Medical Malpractice Law
- **Jack Oostema** - Legal Malpractice Law
- **Bud Roegge** - Bet-the-Company Litigation; Commercial Litigation; Legal Malpractice; Medical Malpractice Law; Personal Injury Litigation
- **Ron Schuknecht** - Bankruptcy and Creditor-Debtor Rights Law
- **Ed Stein** - Medical Malpractice Law; Personal Injury Litigation

*Best Lawyers* is regarded as the definitive guide of legal excellence and inclusion is based on peer-review surveys.

## Super Lawyers

The following 17 Smith Haughey attorneys have been selected for inclusion in the 2010 Michigan Super Lawyers listing under the these categories:

- **George Bearup** - Estate Planning & Probate
- **Chip Behler** - Construction Litigation
- **Tom Blackwell** - Business Litigation
- **Pat Geary** - Business Litigation
- **Dale Hebert** - Personal Injury Defense: Medical Malpractice
- **Bill Jack** - Alternative Dispute Resolution
- **Tom McCarthy** - Personal Injury Plaintiff: General
- **Craig Neckers** - Business Litigation
- **Craig Noland** - General Litigation
- **Jack O'Loughlin** - Personal Injury Defense: Medical Malpractice
- **Jack Oostema** - Insurance Coverage
- **Bud Roegge** - Business Litigation
- **Ed Stein** - Personal Injury Defense: Medical Malpractice
- **Tom Tasker** - Workers' Compensation

In addition, three Smith Haughey attorneys have been selected to be included in the "Rising Stars" category of Michigan Super Lawyers:

- **Adil Audi** - Health Care
- **Scott Harvey** - Business/Corporate
- **Steve Stawski** - Construction Litigation

*Michigan Super Lawyers* lists outstanding attorneys who have attained a high degree of peer recognition and professional development. Selections are made using a combination of peer reviews and third-party research.

## Chambers & Partners

Smith Haughey has been listed in the 2010 issue of *Chambers & Partners*, an international publication that researches and ranks the world's top law firms. The firm was ranked in the *Chambers* category of General Commercial Litigation in the state of Michigan.

*Chambers & Partners* is based in the United Kingdom and the publication is considered to be one of the most prestigious and highly respected reviews of law firms in the world. Their rankings are determined solely by reputation based on interviews with attorneys and clients.

# Transferring Trademarks

*Trademarks transferred to new business owners must be recorded with the U.S. Patent and*



*By Joe Belsito, Attorney*

Buying the assets of a company usually involves

acquiring intellectual property. If the company's business included the sale of goods with a unique brand name or logo, the buyer typically purchases the selling company's trademark rights in that unique brand name or logo. Unless the buyer records the appropriate assignment of trademark rights with the United States Patent and Trademark Office, however, the federal trademark registration may lapse – and the trademark may lose the protection that comes with such registration.

A trademark is a word, phrase, symbol, or design – or a combination of these elements – that identifies and distinguishes the source of goods. A trademark differs from a trade name, which generally only identifies the company selling, manufacturing, or distributing those goods. Think of a trademark as the link between the goods and the company producing the goods. For example, the trademark “Coke” links the carbonated beverage loved throughout the world (unless, of course, one prefers Pepsi) with the trade name



for the source of the soda, The Coca-Cola Company. Trademarks also differ from copyrights, which protect an original artistic or literary work, and patents, which protect inventions.

## WHAT A TRADEMARK DOES

Persons and companies establish rights in a trademark based upon their use of the trademark in commerce, and may use the “TM” (trademark) designation to alert the public to their claim. Federal registration of a trademark does not establish rights

to the trademark but it does provide the following:

- Constructive notice to the general public of the registrant's claim of ownership of the trademark;
- A legal presumption of the registrant's ownership of the trademark and exclusive right to use the trademark nationwide for the goods identified in the registration;
- The ability to bring a lawsuit concerning the trademark in federal court;
- A basis to obtain registration of the trademark in foreign countries; and
- The ability to file the trademark registration with U.S. Customs Service to prevent the importation of counterfeit goods.

A federal registration must exist in order to use the federal registration symbol, “®.” The federal registration symbol may only accompany the goods identified in the federal trademark registration.

## WHAT A TRADEMARK OWNER MUST DO

The United States Patent and Trademark Office (USPTO) reviews all trademark applications for federal registration. The USPTO also makes final determinations

# Introductions Are in Order

## *Trademark Office to ensure continued legal protection.*

regarding whether an applicant meets the requirements for federal registration. Once the USPTO registers a trademark, though, the owner of the trademark must monitor and enforce its rights in the trademark.

Initial federal registration of a trademark expires 10 years after the date of registration. However, the owner of the federally registered trademark can extend the lifespan of the federal registration indefinitely provided that (1) the owner continues to use the trademark in connection with the goods identified in the registration; and (2) the owner files the necessary paperwork with the USPTO on or before designated time periods.

The USPTO provides notices of the relevant time periods and renewal dates, but only to the trademark owner identified in the USPTO's registration files. The USPTO does not keep track of mergers and acquisitions, buy-outs, consolidations, and other events that typically result in the transfer of trademarks and trademark rights.

Therefore, buyers who, for example, acquire trademarks and trademark rights

as part of a larger purchase of assets must ensure that they record an assignment of the trademark registration with the USPTO. Failure to do so doesn't invalidate the transfer itself, but it may ultimately result in a lapse of the trademark registration – because the USPTO will continue to send renewal notices only to the original owner. Recording an assignment with the USPTO not only notifies the USPTO of the assignment, it also changes the owner of record so that the USPTO communicates renewal notices to the appropriate person.

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616-458-2490.**



**Scott Gordon** is a litigation attorney who represents individuals and businesses including large corporations, small businesses, insurance companies, contractors, and retailers. His practice includes commercial litigation, construction litigation, premises liability, first-party and third-party automobile liability, insurance coverage disputes, and personal injury defense.

Scott is a member of the State Bar of Michigan, Grand Traverse-Leelanau-Antrim Bar Association, and the Traverse City Young Professionals. He holds a bachelor's in music degree, *magna cum laude*, from Cornerstone University and a Juris Doctor, *summa cum laude*, from Michigan State University College of Law. His previous experience includes working as an extern in both the U.S. Court of Appeals for the Sixth Circuit and the research division of the Michigan Court of Appeals.

In his spare time, Scott enjoys biking, cooking, cheering for Michigan State University football and basketball, and music. He is a member of a rock band called The New Midwest for which he plays guitar and saxophone. Scott and his wife live in Traverse City.

**Scott works in the firm's Traverse City office and can be reached directly at 231-486-4543 or [sgordon@shrr.com](mailto:sgordon@shrr.com).**

# Introductions Are in Order



As an attorney, **Megan Hard** counsels and defends health care providers including hospitals, physician groups, doctors, nurses, and other licensed professionals in Michigan and throughout the midwest. For these clients she handles general health law matters such as HIPAA, Stark, health care reform bill issues, and regulatory compliance matters.

In addition to the health law aspect of Megan's practice, she also defends health care providers against claims of medical malpractice. In this role, she is called upon to analyze complicated medical causation issues, address the admissibility of expert evidence, prepare motions for summary disposition, and prepare cases for trial or effective settlement negotiations.

Megan is a member of the State Bar of Michigan, Grand Rapids Bar Association, American Health Lawyers Association, and the American Inns of Court. She holds a bachelor's degree, with honors, in political theory and constitutional democracy from the James Madison College of Public Affairs at Michigan State University and a Juris Doctor, *summa cum laude*, from Michigan State University College of Law. Her previous experience includes working as an intern, campaign manager, and legislative assistant for Michigan State Representative Dave Hildenbrand.

In her spare time, Megan enjoys traveling, reading, playing racquetball, attending college football and basketball games, and spending time with her family.

**Megan works in the firm's Grand Rapids office and can be reached directly at 616-458-2362 or [mhard@shrr.com](mailto:mhard@shrr.com).**

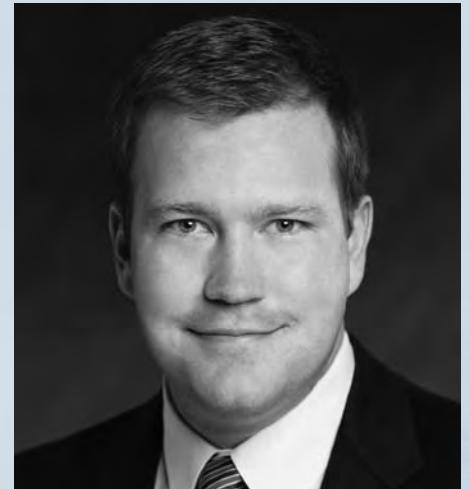


**Véronique Liem** is a well-regarded attorney and trial lawyer with 20 years of experience representing individuals, professionals, families, and businesses in Ann Arbor. Her practice includes family law and divorce, business and employment litigation, alternative dispute resolution, and appeals. She has successfully litigated, tried, or settled dozens of cases in the Detroit tri-county area, and Washtenaw County, as well as in Federal Court.

Véronique is a trained, court-approved mediator for business, employment, and family law disputes, an arbitrator for the Financial Industry Regulation Authority (FINRA), and a certified collaborative divorce attorney. Notably, she was cited by the Ann Arbor Observer as a "respected local divorce lawyer." Véronique is very active in the legal community and has served in leadership positions for numerous industry and non-profit organizations in Washtenaw County and the state of Michigan, including a stint as president of the board of the Washtenaw County Bar Association.

Véronique, born in Dunkerque, France, became a U.S. resident in 1974 and later a U.S. citizen. She earned both an MBA and a Juris Doctor at the University of Michigan. Véronique speaks English and French. She is married and has two children.

**Véronique works in the firm's Ann Arbor office and can be reached directly at 734-913-5517 or [vliem@shrr.com](mailto:vliem@shrr.com).**



As an attorney, **Jeremy Nastoff** combines his previous background in accounting with his legal experience to effectively represent creditors, trustees, banks, and corporations in finance-related matters such as bankruptcy law and creditors' rights, banking law, and real estate law.

Jeremy's bankruptcy clients rely on him to represent them in matters related to debt collection, preference claims, UCC claims, the recovery of collateral, and enforcement of security interests. He also drafts and negotiates commercial loans, mortgage foreclosures, receiverships, and loan workouts for banks and other lenders. In addition, Jeremy works with businesses and individual clients to prepare lease documents and offer counsel on related issues.

Jeremy is a member of the State Bar of Michigan and the Traverse City Young Professionals. He holds a bachelor's degree, *cum laude*, in accounting and business administration from Lake Superior State University and a Juris Doctor, *cum laude*, from Thomas M. Cooley Law School. His previous experience includes working as an extern for judges in both the U.S. Bankruptcy Court for the Western District of Michigan and the U.S. District Court for the Western District of Michigan.

In his spare time Jeremy enjoys golf, fishing, and spending time with family. An Escanaba native, he now lives in Traverse City with his wife, a nurse at Munson Home Health, and their young daughter.

**Jeremy works in the firm's Traverse City office and can be reached directly at 231-486-4533 or [jnastoff@shrr.com](mailto:jnastoff@shrr.com).**



**Megan Smith** is a litigator who represents health care providers, insurance companies, law firms, corporations, small businesses, and individuals. For these clients, she provides counsel in the areas of commercial litigation, insurance defense, legal malpractice defense, medical malpractice defense, products liability, landlord/tenant conflicts, and family law. Additionally, Megan is trained to advise clients in the specialized area of e-discovery.

Megan is a member of the State Bar of Michigan and the American Inns of Court. She holds a bachelor's degree with honors in social science from the University of Michigan and a Juris Doctor, *magna cum laude*, from Michigan State University College of Law.

A Grand Rapids native, Megan is very active in the community and involved as either a member or a volunteer in numerous local organizations including The Geek Group, Frederick Meijer Gardens, Girl Scouts of America, National Public Radio, Comprehensive Therapy Center, Habitat for Humanity, Roanoke Ranch for Kids, and the "We the People" team at East Grand Rapids High School. In her spare time she enjoys a wide variety of outdoor activities including horseback riding, biking, kayaking, playing polo and golf, gardening, and camping.

**Megan works in the firm's Grand Rapids office and can be reached directly at 616-458-5454 or [msmith@shrr.com](mailto:msmith@shrr.com).**

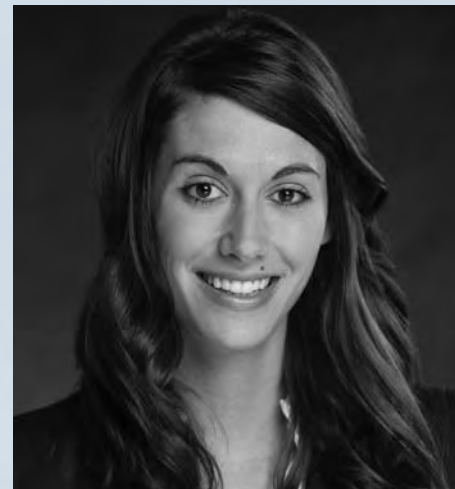


**Robert Suarez** counsels individuals and businesses in an array of legal issues. Rob is fluent in multiple languages including Spanish, Russian, and French, and is conversational in Arabic. He often uses his language skills when counseling clients on issues relating to immigration law, business and employment law, estate planning, criminal defense, and personal injury. Rob also enjoys representing veterans in proceedings before the Board of Veterans Appeals in matters involving veterans' benefits claims.

Rob is a combat veteran and served in both the United States Marine Corps and Army before being honorably discharged from active duty. He served in Operation Iraqi Freedom where he trained Iraqi police officers, investigated civil and criminal complaints of embezzlement and corruption, arrested suspected insurgents, and conducted internal investigations. Notably, Rob received a letter of reference from General Petraeus, and earned the Combat Action Badge and the Bronze Star. In addition to his military service, Rob has also worked for the North Carolina State Bureau of Investigations and the New York City Department of Health, Bureau of Environmental Investigations.

Rob received his Juris Doctorate from Thomas M. Cooley School of Law, a Bachelor of Science from Long Island University, and became a sworn law enforcement officer after attending the North Carolina SBI Academy. Rob lives in Grand Rapids with his wife and two children.

**Rob works in the firm's Grand Rapids office and can be reached directly at 616-458-4256 or [rsuarez@shrr.com](mailto:rsuarez@shrr.com).**

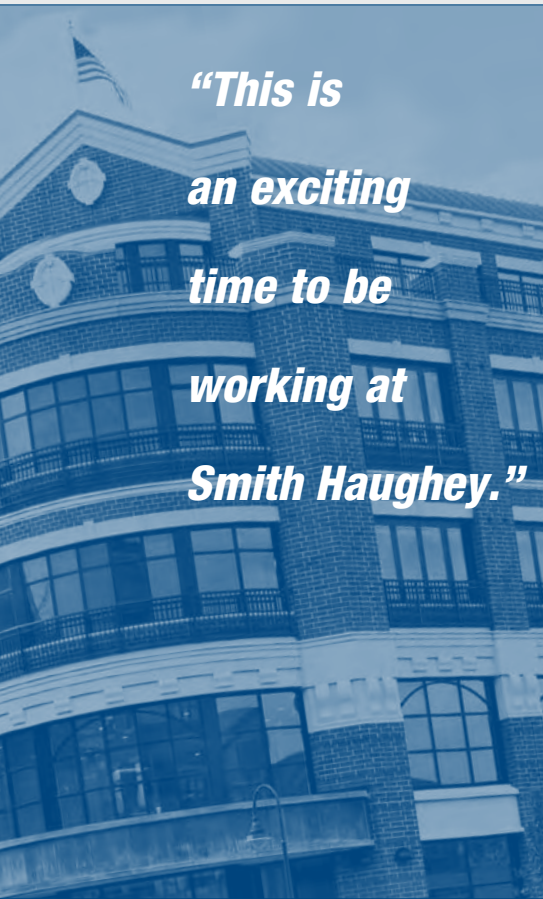


**Lindsay Weber** represents families and individuals in an array of legal issues. Through her family law practice, Lindsay assists her clients with divorces, child custody and support, parenting time, grandparents' rights, spousal support, and prenuptial and postnuptial agreements. Her family law practice also extends to the specialized area of adoption law, for which she has completed training programs focusing on the intricacies of the different issues related to adoption. In addition, Lindsay uses her estate-planning experience to help her clients plan for the future and effectively navigate the probate process. Finally, she also counsels businesses and assists them with real property matters, zoning and land use issues, commercial transactions, and municipal law.

Lindsay is a member of the State Bar of Michigan, American Bar Association, Traverse City Young Professionals, and the Grand Traverse-Leelanau-Antrim Bar Association, where she serves as co-chair of the continuing legal education committee. She is also involved with the Third Level Crisis Center Legal Aid Clinic. Lindsay holds a bachelor's degree, *cum laude*, in political science from Albion College and a Juris Doctor, *cum laude*, from Michigan State University College of Law. Her previous experience includes working as a legislative intern for U.S. Representative Mike Rogers.

In her spare time Lindsay enjoys mountain biking, running, traveling, and cheering for the Michigan State University Spartans.

**Lindsay works in the firm's Traverse City office and can be reached directly at 231-486-4547 or [lweber@shrr.com](mailto:lweber@shrr.com).**



**“This is  
an exciting  
time to be  
working at  
Smith Haughey.”**

used throughout to bring light into the space. The office will also include a rooftop terrace for client entertainment and other social gatherings.

Listed on the National Register of Historic Places, the Ledyard Block Historic District is home to the Flat Iron, Herkner and Groskopf buildings. Originally constructed between 1860 and 1870, the buildings have been nearly vacant for decades, with the exception of limited retail space on the first floors. These four-story buildings will be combined internally into one building while maintaining their unique historic facades as part of a \$4.5 million renovation/rehabilitation project.

The building is being designed for energy efficiency and LEED certification by Design+. Wolverine Construction Management will lead interior construction. Owner and developer Locus Development

has engaged Cornerstone Architects and Orion Construction to complete the core and shell work.

Smith Haughey was founded in Grand Rapids in 1941. The firm moved from the McKay Tower to its current location at the Calder Plaza Building in 1981. At that time, the firm had 20 attorneys on its roster. In the last 30 years, the office has significantly increased personnel to include 52 lawyers and 53 professional staffers.

Scarborough notes that, in addition to the Grand Rapids and Traverse City moves, the firm remodeled its existing Ann Arbor space and added additional offices earlier this year. “This is an exciting time to be working at Smith Haughey,” he enthuses.

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