

LEGAL EASE

BOILERPLATE

WHAT DOES IT MATTER, ANYWAY?

Boilerplate provisions in contracts are often considered "routine" – but that doesn't mean you can afford to overlook them.

By: Rachel Brochert Roe, Attorney

Businesses routinely enter into many different types of agreements: employment agreements, shareholder agreements, facility leases, construction contracts, vendor contracts, service contracts, and more. Business owners often focus on the key substantive terms, such as cost, product to be delivered, termination and restrictive covenants. They tend to pay little attention to the remainder

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**SMITH HAUGHEY
RICE & ROEGGE**

*Guiding you through
the legal process.*

SPRING 2010

CONTRACTS 101: YOU NEVER NEED IT IN WRITING!*

*unless you want to enforce it

By Greg Kish, Attorney

We hear in the news every day about this law or that law. Some think there are too many laws, while others believe more laws are needed. When a legislative body takes up an issue important to us, we usually find the end result to be less than perfect. If only we could create our own laws!

The fact is that individuals, businesses, and other entities make their own form of custom, private laws every day through agreements with each other in the form of contracts. Contracts provide a way for the parties involved in a particular relationship or transaction to make up their own rules about how each should act, who owes what to whom, and who is allowed or not allowed to do certain things.

If you ask 50 different lawyers to define "contract," you will probably get as many different answers. Generally, a contract involves an agreement between one or more parties that includes a promise or a set of promises, *for breach of which agreement the law provides a remedy, or the performance of which the law recognizes as a duty.*

Enforcement Power

That last part of the definition is what people care about the most. Parties enter into contracts because agreements are only valuable if they are enforceable. They want to be able to have our government, specifically the courts, intervene if the other side does not live up to her, his, or its end of the bargain.

One area of rampant misconception is whether contracts must be memorialized in writing. Again, the real question is: "Does this agreement need to be in writing to be an enforceable contract?"

Michigan law requires that certain kinds of contracts be in writing to be enforceable. Among them are contracts involving:

- Interests in real estate (including mortgages, oil and gas leases, leases longer than one year, and standing timber)
- Contracts for the sale of goods in excess of \$1,000
- Promises by financial institutions
- Contracts that cannot be fully performed within one year

Issues such as what the "writing" must contain and whether a party can enforce a partially performed oral contract are beyond the scope of this article, since the writing requirements vary based on the type of contract involved and the conduct of the parties. Even when writing is not required by law for enforceability, written contracts are usually advisable since they can clarify the responsibilities of each party and help make sure that all sides have a similar understanding of the agreement.

Unspoken Agreements

One final note about contracts: there are often more terms in a contract than the parties know about. For example, say a college student finds a great apartment to rent for the coming school year. He knows the landlord personally, so they didn't bother with a fancy written lease. The student agrees to give the landlord a \$300 security deposit and pay \$500 each month in exchange for the right to live in the apartment. What seems like a simple enough contract is actually much more complex, whether or not the student or the landlord knows it.

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IN MEMORIAM



THOMAS M. WEIBEL

JUNE 10, 1951 - JANUARY 31, 2010

It is with great sadness that Smith Haughey Rice & Roegge announces the death of our partner and friend, Tom Weibel, who passed away on January 31, 2010. Tom was a respected attorney, a kind and generous man, and an integral part of the Smith Haughey family. He began his career as an associate with Smith Haughey in 1975. It is rare for an individual to work with one law firm for his entire career, and we, as a firm, may never truly understand how very lucky we

are that he stood by us all those years.

What we do know is that, in a firm replete with excellent trial lawyers, Tom was one of those considered a true “go-to guy.” When someone was up against the wall, when there were conflicting trials and unbending judges, Tom was one of that very elite group who could be handed a case with little notice and little time to prepare. Because he was such a quick study and so incredibly good at thinking on his feet, all of us knew that he would try that case as well

as, and probably better than, anybody else.

Colleagues over the years have described Tom as one of the best trial attorneys in Michigan. He tried case after case with astounding success. Many a trial attorney in our firm, and others around the state, learned a great deal from watching him in action. He was extremely bright, articulate, and had a real gift connecting with a jury.

Maybe, though, his presence as a mentor will be missed by our firm most of all. His door was always open to advise and consult, and he gave freely of his time to coach an argument, revise a jury submission, or fine-tune litigation strategy. He was indeed a role model to countless young attorneys, not only for his skill, but also for his civility to opposing counsel and judges.

Tom truly and without exception lived an attitude of gratitude. If you knew him, you would have known that he never left a favor unreturned or even the smallest kindness unacknowledged.

With all of the great things that have been and will be said about Tom Weibel, true though they may be, it is absolutely certain that his three remarkable children are by far his greatest source of pride and his greatest legacy.

The attorneys and staff at Smith Haughey are proud to have had the opportunity to know and work with Tom. His wisdom, kindness, generosity, gratitude, and fairness will be greatly missed.



ENFORCING NON-COMPETES

Tips for protecting the interests of a business when an employee leaves a company.

By Rachel Brochert Roe, Attorney

The current economic downturn has been especially felt by companies heavily invested in Michigan. These days, every lost opportunity can be truly devastating. Many firms have experienced the painful situation of hiring a new employee, mentoring them, training them, introducing them to business contacts, and helping them to achieve their full potential... only to have that employee leave and go work for a competitor.

One way for businesses to protect their prospects is to make sure that their employees sign a non-competition agreement (also known as a covenant against competition). The purpose of a non-compete is to protect the reasonable business interests of a company when an employee leaves its employment. Contrary to popular belief, non-competes are enforceable in Michigan. However, in the current state of the economy, judges (rightfully so) are scrutinizing them to ensure that they are not unfairly prohibiting the former employee from earning a living. So how does one draft a non-compete that a judge will enforce? Here are some tips.

Reasonableness. Michigan's statute on non-competes requires that they be reasonable as to duration, geographic scope, and line of business. The key to drafting an enforceable non-compete is to make sure that it is not overreaching in any of these areas. To determine this, it is necessary to take a critical look at the nature of the company's business. For instance, if 98% of a company's customers are located in the Lower Peninsula

of Michigan, is there any real business reason to restrict the employee from working in the Upper Peninsula? If a company's specialty is exclusively computer hardware, does restricting a former sales employee from selling anything related to the computer industry, such as computer software, truly protect the company's interest?

Consider who is signing the non-compete. Not all employees have access to confidential information, client contacts, or long-range business strategies. An employer can demonstrate that its goal was to protect its competitive business interests, not to restrict competition in general, by requiring only select employees to sign a non-compete. Think sales associates, executive level employees, and those with a special skill that the employer paid to develop – such as designers and engineers.

Enforce consistently. Some businesses require that all employees, from rank-and-file employees to executive vice-presidents, sign non-competes. When a non-critical player leaves employment and goes to work for a competitor, the company usually does not want to waste the time and effort to enforce the non-compete. When a high-level employee leaves, that employee can point to the inconsistent enforcement and assert that the non-compete really doesn't protect a legitimate business interest because the company is not consistently enforcing its terms, and should not be enforced.

Practice what you preach.

Businesses should consider their hiring practices: do they routinely “poach” employees who are subject to restrictive covenants from other companies? If so, that can come back to haunt them when they are on the other side and attempting to prevent a former employee from working for a competitor. Knowingly poaching such an employee can also lead to a lawsuit against the new employer for tortious interference with contractual relations.

Re-evaluate upon business re-organization.

Many companies in Michigan utilize employee leasing arrangements, have recently merged with other companies, or have restructured and/or reassigned staff to subsidiary companies. Whether a non-compete is assignable when an employee's employer has changed is an open question in Michigan. Businesses should make certain that their non-competes expressly provide that they are assignable – and if not, that the employees who have been shuffled from one employer to another re-sign their non-compete.

Review non-competes for ambiguity.

If a business hasn't reviewed its non-compete lately, it should be reviewed to make sure that it is not ambiguous. Under the current economic climate, judges are less willing to enforce non-competes than they were two or three years ago. If there is any ambiguity in the non-compete, it may give a judge reason not to enforce the agreement.

For example, does the non-compete provide that it will apply regardless of the reason the employee is no longer working for the company, or only if the employee voluntarily resigns? Does the non-compete specifically define the type of business that the employee can't engage in, or does it just prohibit any “competing activity”? If the non-compete prohibits competition within 100 miles, does it specify how this measurement is to be made (e.g., 100 miles from the company headquarters? 100 miles from the Grand Rapids city limits?)

Non-competes can be a critical component in today's highly competitive marketplace. However, a non-enforceable non-compete it isn't worth the paper it's printed on. Businesses should be sure to follow these tips if they want their non-competes to withstand scrutiny.

Rachel can be reached directly at 231.486.4503 or rroe@shrr.com.

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:



Cheryl Chandler successfully defended doctors in two recent trials in Monroe and Wayne Counties. In the first trial, she represented an emergency department doctor

in a case related to treatment of a facial wound/alleged human bite. In the second trial, she represented a psychiatrist in a suicide case.



Mark Gilchrist successfully represented his client, a family law attorney, who was sued regarding her activities at the underlying divorce trial. Due to Mark's efforts, the case was

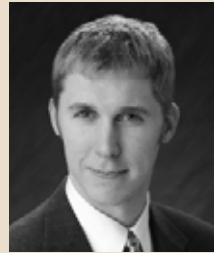
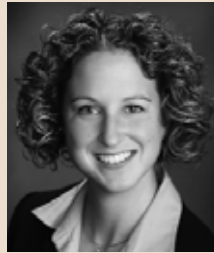
dismissed in its entirety via motion due to a lack of proximate cause between the alleged misconduct and the alleged injuries.



Robert Parker, Jon Vanderploeg, and Scott Harvey successfully represented their client in *Taylor v City of Traverse City*, in which the Michigan Court of

Appeals held that the death of a joint-tenant owner of real property was not a "transfer" subjecting the property to property-tax "uncapping." In this case, the father owned a lakeshore residence that he deeded to himself and his daughter in joint tenancy. This conveyance was within the joint tenancy exception to the uncapping statute. But when the father died, leaving his daughter as sole owner, the city took the position that the father's death was a transfer

to her, subjecting the property to uncapping. The city then sought to collect taxes at the much higher uncapped rate. The daughter opposed and contended that her father's death was not a transfer subject to uncapping. The Court of Appeals has now agreed with the daughter, and the taxes must be collected at the lower, capped rate.



Kristen Ray and Shawn Worden were recently successful in convincing a local prosecutor to dismiss an involuntary manslaughter charge – at 4:30 p.m. on the day before a trial was set to begin. Using the same data the police had, our defense expert, working with math major Kristen Ray, calculated our client's speed at the point of impact at 54 mph. On the eve of trial, the prosecutor was particularly persuaded to dismiss the case based on the fact that a very recent analysis of the damaged "black box" from our client's vehicle corroborated our expert's opinion of how the accident occurred – and led to a 17 mph difference in the calculation of the prosecutor's expert.

In addition, **Kristen Ray** recently successfully represented a township client, convincing a local Circuit Court to remove a national outdoor advertiser's recently erected electronic billboard. The billboard was on the site of a pre-existing static billboard and, hence, a pre-existing non-conforming use. However, at trial, Kristen successfully argued that the substantial "modernization" of the billboard exempted the billboard from the typical pre-existing non-conforming use protections and successfully deflected the advertiser's claims that its First Amendment rights were violated by the township's regulation.



Jeff Wonacott assisted northern Michigan families on several recent occasions in preserving family farms and facilitating the transfer of farm operations and

property to the next generation of family farmers.

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of the document, figuring the possibility of actually needing to call upon any of these provisions is remote. However, important terms lurk in the remainder of the document, many of which are contained in the so-called "boilerplate" language.

Entire Agreement

A provision that is often overlooked in the boilerplate language at the end of an agreement is the "entire agreement" provision. An example of such language is as follows: "This Agreement constitutes the entire agreement between the parties and supercedes any prior or contemporaneous agreements related to its subject matter."

This provision encapsulates a basic provision of contract law, which states that any discussions of the parties prior to the written document are merged into the written document. As such, when one party to an agreement promises to the other that it will comply with a certain term or condition, that term or condition must be contained in the agreement. Otherwise, there is no legal obligation on the part of the party to comply with the oral promise.

Modification of Agreement

Similar to the "entire agreement" provision, many contracts provide that an agreement may not be modified except in a writing signed by both parties. Thus, if a change in the agreed upon obligations occurs – for example, a substitution of goods to be manufactured or supplied – the modification must be documented in a manner required by the contract.

Notice

Notice provisions generally set forth the manner in which one party must provide notices to the other. In many instances, notices must be made in writing a certain number of days before the effective date and delivered by a specified method (overnight mail, certified mail, personal delivery, first class mail, etc.). These provisions are designed to insure that the parties to a contract actually receive notice that is provided by one party to another under the agreement, and that the notice provides the other party with adequate time to respond, if appropriate or required.

It is very important to send formal written notices in the manner required by the written agreement. For example, if a company were to give notice of the termination of a vendor contract without complying with the

terms of an agreement that requires serving notice by overnight delivery, the vendor could argue that notice was not given properly. If no delivery receipt can be produced, the company could be responsible for obligations that it intended or attempted to avoid.

Waiver

Waiver provisions are also common in contracts. An example of such a provision is as follows: “The failure or any delay on the part of any party to exercise any right, remedy, power or privilege under this agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right preclude any other or further exercise of the same or of any other right, nor shall any waiver of any right with respect to any occurrence be construed as a waiver of such right with respect to any other occurrence.”

Essentially, a “waiver” clause provides that the waiver of a breach of an agreement by one party to the agreement in one instance is not a further or continuing waiver of such a breach in a later instance.

Assignability

Many contracts contain boilerplate provisions related to the “assignment” of an agreement, often prohibiting the assignment of the agreement by either party to a third party without the consent of the other party to the agreement. Limiting the ability of one party to assign the agreement to another party may be important because the parties may not want to contract with anyone other than the party that signed the agreement.

Choice of Law

Many contracts define the law of the state that will govern the terms of the agreement. These provisions are often known as “controlling law” provisions. This is generally not an issue in a contract between local providers, but it could be an issue, for instance, for a Michigan company that enters into an agreement with a company that is located in Florida. The Florida company could use a form agreement that

contains a provision stating that the law of Florida controls.

In addition to provisions in which the controlling law is selected, boilerplate provision may select the venue in which any legal action is to be brought – for example, any legal proceeding must be brought in the courts of Dade County, Florida. Such a provision would create additional expense, the loss of a “hometown advantage,” and the potential loss of law favorable to the Michigan company.



Statutes of Limitation

In Michigan, a party to a contract that has been breached by the other party has up to six years after the breach to file suit to obtain damages caused by the breach. Because this time period is relatively long, a shortened statute of limitations is often buried in the boilerplate of a contract. (See “How Long Must I Wait To Be Sued” on page 6.)

Limitation of Damages

Many contracts for services or products may limit the amount of damages that can be paid to a non-breaching party in the event of a breach of the contract. This may leave the non-breaching party with grossly inadequate remedies in the event of the failure of the other party to perform its contractual obligations. Lost business opportunities, lost profits, and lost goodwill are examples of the types of damages that may be exempted from the remedies allowed by such a contractual provision.

Conversely, contractual provisions may increase or adversely modify the damages potentially collectible against a breaching party. For example, a contract may provide

for the collection of liquidated damages. Liquidated damages are assessed without any evidence of or direct relationship to the damages actually sustained by the non-breaching party. For example, a contract may provide for liquidated damages in the amount of \$1,000 per day of delay in performance.

Attorney Fees

The general rule in the United States is that each party to a dispute pays its own attorney fees, subject to narrow exceptions. However, a contract can require the losing party in a dispute to pay attorney fees. It is also common to see a contract that contains a requirement that the purchaser pay all costs associated with costs incurred attempting to collect on overdue balances owed under the contract.

Alternative Dispute Resolution

Many contracts today require that a dispute be resolved without going to court, or require that some preliminary procedural “hoops” be jumped through before going to court. Some of the more common alternative

dispute resolution processes found in contracts include negotiation, mediation, and arbitration. Sometimes, one or all of these forms of ADR are non-binding, but mandatory. Sometimes, boilerplate requires arbitration instead of litigation of a dispute, which may or may not be advantageous depending on the circumstances. Be sure to explore the hows, whens, and whys of each of these processes to ensure that the result will be fair and economical.

In conclusion, the language at the end of an agreement, which often consists of contractual boilerplate, should not be ignored. While seemingly benign, these provisions can serve to trap the unwary when they are not recognized and complied with. In some instances, understanding the meanings of “boilerplate” provisions is as important as certain of the substantive provisions contained in the agreement.

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How Long Must You Wait to be Sued?

Six years is the legal default – but negotiating shortened limitation periods can ease uncertainty and enhance peace of mind.

By Andy Blodgett, Attorney

Many people are surprised to learn that Michigan law allows a party to bring a lawsuit for a breach of contract up to six years after the breach. Six years is a long time. Six years ago we still thought that Iraq had weapons of mass destruction. Presidents Ronald Reagan and Gerald Ford were alive, as was Senator John Kerry's bid for the White House. YouTube and Twitter didn't exist.

Maybe your circumstances have changed significantly in the past six years, too. It's important to remember just how much can change in a short period of time as you draft and review contracts. With proper planning, a contract can provide assurance to the parties by limiting the time period in which a lawsuit can be brought.

What is a statute of limitation?

Simply, a statute of limitation is a deadline by which a plaintiff must bring a lawsuit. If a suit is filed after the statute has "run," it will be dismissed. Courts do not hesitate to enforce the statutory periods of limitation. These time frames give peace of mind to a potential defendant because the defendant can be certain that, once a period expires, extensive defense of a new lawsuit will be unnecessary.

What is the statute of limitation for a breach of contract action?

Generally, the deadline for a breach of contract lawsuit is six years. Note that the six-year time period begins to run not from the date the contract is signed but from the date when the contract is allegedly breached – which could be much later. Consequently, a party must wait six years after the end of the performance of the contract before the party can be sure that it could not be sued under the contract.

However, certain types of contracts have different periods of limitations. For instance,



an action for the breach of a contract for the sale of a "good" under Michigan's Uniform Commercial Code has a four-year statute of limitation period. By agreement in the original contract, the parties can reduce the period of limitation to as low as one year; however, the four-year period may not be extended. For installment contracts, the claims "accrue" – meaning the period of limitations begins as each installment falls due.

Can the limitation period be shortened?

Fortunately, Michigan law allows parties to "contract around" the statute of limitations and to specify a shorter period of time for bringing suit. The only requirement is that the abbreviated period of time be reasonable. A court will assess reasonableness based on three factors:

1. The limitations period in the contract must give the claimant sufficient opportunity to investigate and file the lawsuit.
2. The time period cannot be so short that, in practice, it takes away the right to sue.
3. The period cannot be short enough that it expires before the loss or damage can be ascertained.

In other words, a shortened period of limitation in the contract would be

unreasonable if it does not give the claimant an opportunity to investigate whether there is liability, ascertain whether he or she has been damaged, and allow for time to bring a lawsuit.

Michigan courts have upheld contractual limits on bringing a lawsuit as short as six months. Obviously, given the "reasonableness" test which must be applied, the minimum time frame is dependent upon the facts of each contract.

What if the contractual time frame is unreasonable?

If the limitation period in the contract is found to be unreasonable, the court will simply apply the statute of limitation rather than work to find a shorter time period that might fit the parties' expectations. For instance, if a court finds that a six-month period of limitation in a contract is unreasonable, it will apply the six-year limitation period from the statute, instead of trying to apply a shorter time period.

What if I later amend or extend a contract?

Parties who later modify or extend a contract should be careful to explicitly address whether the limitations period in the original contract is being extended. If the limitations period on a claim for a breach of a certain contract has run, the limitation period can be revived by the acknowledgement or promise of the party. The acknowledgement or promise must be in writing and signed by the party against whom the claim could be brought.

In conclusion, it is often beneficial for contracting parties to shorten the time frame in which one may bring a lawsuit – six years after the performance of the contract is a long time of uncertainty for a party to wait to be sued. Therefore, in every contract it is prudent for the drafters to assess the particular aspects of the performance of the contract and the possible damages, and to agree upon a shortened limitations period that should be explicitly drafted into the contract.

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GIVING BACK TO OUR COMMUNITIES



Last year, as the nation experienced record job losses, businesses were strapped for funding, and charities suffered



Attorneys and staff including Lisa Young, Bill Jack, Bill Scarborough, Nesi Richardson, Kristi Gaskin, and Lisa Olmetti volunteered their time to help build a home for Habitat for Humanity.

significant declines in giving,

Smith Haughey Rice & Roegge

reassessed how we could better allocate our resources to help those truly in need.

With this renewed sense of commitment, the firm and its staff measurably stepped up its community engagement. The firm increased direct donations of goods by holding a food drive for Mel Trotter Ministries, a school supply drive for St. John's Home, and a holiday gift collection for the Salvation Army Angel Tree, just to name a few.

The firm selected charities such as food pantries, job assistance programs, and shelters, to receive additional funding.



Every month attorneys and staff including Bill Jack, Bill Scarborough, Julie Hudgins, and Jill Quillen volunteer at Kids Food Basket to help prepare sack suppers for local children.

firm-sponsored blood drives. Finally, memberships with business associations, industry groups, professional organizations, and other community boards approximately doubled.



Nesi Richardson, Kate Harms, and Jill Quillen display some of the more than 5000 juice boxes that attorneys and staff donated during the firm's Second Annual Juice Box Drive to benefit Kids Food Basket.

Volunteer teams gave time to organizations like Habitat for Humanity and Kids Food Basket. Each quarter, dozens of Smith Haughey staff and attorneys donated blood at work during

"Hardly a week goes by that there isn't some way our staff and attorneys are giving back to the community," says Smith Haughey CEO Bill Hondorp. "For instance, on the final Friday of each month, we all pay a minimum of \$5 to wear jeans to work and then donate the money collected to charity. It's just a simple demonstration of the social responsibility each member of our firm feels to our community."

Smith Haughey Rice & Roegge takes pride in delivering superior legal services, and equally as much pride in the work we do to better our communities.

Have You Heard The News?



Chip Behler has been elected to the Board of Directors of the Legal Assistance Center in Grand Rapids.



Andy Blodgett has been selected by the Michigan Defense Trial Counsel to receive the annual "Golden Gavel Award" for young lawyers.



Andy Blodgett along with **Ellen Fred** spoke at a class on the topic of legal and accounting considerations. The course was part of a Taste the Local Difference series

titled "Get Farming! Keep Farming!" sponsored by the Michigan Land Use Institute. In addition, **Ellen** recently presented on the topic of women in agriculture at another Taste the Local Difference event.



Kristen Campbell accepted an invitation to join the Board of Directors of the Professional Tennis Registry Foundation. The Professional Tennis Registry is "the largest global organization of tennis teachers and coaches" with members in 122 countries. The Foundation's primary focus is to bring tennis instruction and equipment to inner cities and rural areas where the opportunity may not otherwise be available to them.



Scott Harvey has been appointed to the Board of Directors of the Involved Citizens Enterprise.



Jane Hofmeyer has been elected chairperson of the Workers' Compensation Section of the Grand Rapids Bar Association.



Chuck Judson has been elected chair of the Alternative Dispute Resolution Section of the State Bar of Michigan. In addition, he recently published an article in *Michigan Lawyer's*

Weekly titled, "Mediation as a Pre-Foreclosure Procedure Gains Awareness Among State Legal Community." Also, Chuck served as a speaker at the Advanced Negotiation and Dispute Resolution Institute, and as

moderator of the Negotiation track of programs, for this event sponsored by the Institute of Continuing Legal Education.



Dan Morley authored an article titled, "*In Re Patel: Synthesizing Corporate Officer Liability and Non-Dischargeability Under the Michigan Builders Trust Fund Act.*" It was recently published by *Michigan Real Property Review*.



Craig Noland spoke on the topic of "Current Issues in Zoning" at the annual meeting of the Michigan Township Association – Legal Institute for Michigan Township Attorneys Construction Law Seminar.



Jack O'Loughlin has been elected to membership of the American Board of Trial Advocates. The American Board of Trial Advocates is dedicated to the preservation of the civil jury trial. Membership is by invitation only and the organization seeks attorneys who display skill, civility and integrity, to help younger attorneys achieve a higher level of trial advocacy and to educate the public about the vital importance of the Seventh Amendment.



Jack Oostema has been selected as a 2010 "Leader in the Law" by Michigan Lawyers Weekly. This program recognizes 25 outstanding attorneys in Michigan's legal community which includes over 40,000 attorneys.



Al Quick gave a presentation titled "The Rights and Responsibilities of Students, Teachers and Administrators: Handling Free Speech and School Searches" at a seminar hosted by the ACLU of Michigan Northwestern Branch and co-sponsored by the Traverse City Human Rights Commission. In addition, Al will serve as a visiting professor of law teaching constitutional law at Barry University College of Law this fall.



Mike Roberts lead a roundtable discussion titled, "Design Professional Liability and Insurance Coverage" at a program sponsored by the Real Property Law Section and the Insurance & Indemnity Law Section of the

State Bar of Michigan. The program focused on Sustainable Development & Other Emerging Issues in Construction Risk Management.



Jon Siebers has been appointed chair of the firm's Construction, Real Estate, and Governmental Law practice group. In addition, Jon served as a panelist at the "Troubled Assets Workshop," sponsored by the Michigan Chapter of the Commercial Alliance of Realtors. Also Jon and **Tony Quarto** recently held a seminar for local landowners in Rothbury, Michigan on the topic of leasing land for wind farm development.



Steve Stawski was elected co-chair of the Construction Law Committee in the State Bar of Michigan's Real Property Section. In addition, he authored an article for the Michigan Real Property Review titled, "The Rules of Construction: Legal Relationships in the Design-Build and Integrated Project Delivery Era." Finally, he served as a program host for "Sustainable Development and Other Emerging Issues in Construction Risk Management," and hosted a roundtable on Integrated Project Delivery with a special emphasis on the new families of AIA Integrated Project Delivery contracts.



Rob Tubbs gave a presentation titled "Legal Issues Involving the Care of the Diabetic Patient" to the Munson Family Practice Residency Program. In addition, Rob has been elected vice president of the Board of Directors for Child and Family Services of Northwest Michigan.



Randall L. Velzen has been elected chairperson of the Family Law Section of the Grand Rapids Bar Association.



Matt Wikander served as a panel speaker to law students at the American Bar Association's 6th Circuit spring meeting at Thomas M. Cooley Law School.



Jeff Wonacott is a member of the American Agricultural Law Association, the only national professional organization focusing on the legal needs of the agricultural community.

Smith Haughey is pleased to announce the following elections:



Bill Hondorp has been elected Chief Executive Officer. Bill replaces outgoing CEO,

Pat Geary, who will return full-time to his corporate litigation practice with the firm. Pat will also serve as President of the firm.

The following five attorneys have been named new shareholders of the firm:



Scott Harvey, Jason Sebolt, Steve Stawski, Melissa Whitman,

and **Shawn Worden.**



Chip Behler, Peter Boyles, David DeGraw, Bill Henn, Todd Millar, and Craig Neckers will serve as board members in 2010.

Smith Haughey's **construction industry team** recently hosted a seminar for design professionals, contractors, and sub-contractors in Grand Rapids.

Smith Haughey's **agribusiness industry team** will host a seminar for landowners on April 19 in Traverse City. Topics to be covered include the benefits of conservation easements, estate and succession planning, and accounting and tax issues.

Smith Haughey's **employment law and workers' compensation attorneys** will



Stephanie Hoffer practices in the area of medical malpractice defense. She represents a wide range of health care providers in Michigan, including hospitals, medical groups, surgeons, physicians, nurses, and other licensed professionals. Stephanie 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.

Prior to joining Smith Haughey, Stephanie was a law clerk for Judges Buth and Redford in the 17th Circuit Court and Judge Baillargeon in the 48th Circuit Court. While there she reviewed motions, researched legal issues, and drafted legal opinions in both civil and criminal cases.

Stephanie received her B.A., *magna cum laude*, from the University of Rhode Island. She earned her J.D., *cum laude*, from Thomas M. Cooley Law School. There, she was involved in the Moot Court (Semi-finalist - State Bar of Michigan Competition, Quarter-finalist - Intra-school Competition and First Year Competition, Member, Moot Court Board), a member of the Dean's List, and recipient of the Student Leadership Award and Certificates of Merit (Equities & Remedies, Forensic Evidence in Criminal Cases). She is a member of the State Bar of Michigan and the American Bar Association.



Joanna Kloet practices in the areas of commercial litigation, criminal defense, and immigration law.

Before joining Smith Haughey, Joanna was selected as a clerk by the United States Department of Justice through the Attorney General's Honors Program. In that position, she served as the sole judicial law clerk for the six federal immigration judges in the 10th Circuit. Prior to working for the federal government, Joanna spent a year as a research attorney at the Michigan Court of Appeals in Lansing.

Joanna received a B.A. from the University of Michigan and a J.D., *summa cum laude*, from Michigan State University College of Law. At MSU, she served as an associate editor of the *Law Review* and earned the Jurisprudence Achievement Award in Contracts and in Will Drafting. Joanna is admitted to practice in Michigan and Colorado. She is a member of the State Bar of Michigan, the Criminal Defense Attorneys of Michigan, the American Immigration Lawyers Association, and Traverse City Young Professionals.

team with MorningStar Health to host a seminar for human resources professionals on April 20 in Grand Rapids. Topics will include ADA, FMLA, and workers' compensation issues.

Smith Haughey Rice & Roegge was selected as one of "West Michigan's 101 Best and Brightest Companies to Work For."

... Does this agreement need to be in writing to be an enforceable contract? ...

In Michigan, and in most other states, the law automatically inserts terms into the contract between the student and his landlord. For example, even though it was never spoken, the landlord agreed to make the apartment fit for habitation by humans and to be responsible for its compliance with all applicable health and safety codes. The student, though he may not know it, agreed to pay rent on time, keep the property in a safe and sanitary condition, notify the landlord promptly of maintenance problems, and leave the property in the same condition he found it, less a reasonable amount of “wear and tear.” Absent an agreement to the contrary, these terms become part of residential leases in Michigan.

These kinds of “gap-filling” terms pop up in many different kinds of contracts. Understanding all of a contract’s terms before making an agreement is a crucial part

to understanding the deal.

When dealing with contracts, the old adage that an ounce of prevention is worth a pound of cure holds true. A well-drafted written contract that anticipates potential problems can usually limit or eliminate the struggle and expense that comes with trying to clarify the responsibilities of the parties after a deal has already “gone bad.” Unfortunately, not all problems are avoidable. When a deal goes (or is starting to go) bad, sound legal counsel can help pinpoint each party’s rights and obligations, and help determine the best possible resolution.

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