

A quarterly publication of Wiles, Boyle, Burkholder & Bringardner, Attorneys at Law.



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## Topics this issue:

Economic  
Uncertainty –  
What's the Status of  
Your Business?

As the Dow Plunges,  
Estate Planning  
Opportunities Arise

Commercial  
Litigation Docket  
Should Reduce  
Business  
Litigation Costs

## Economic Uncertainty — What's the Status of Your Business?

The end of the year is fast approaching and given the irrationality with the economy (seriously, was the DOW up or down 300 points today???) now is the time for you to make sure your business is updated from a legal standpoint. Below are some year-end business tips to consider regarding your business:

- **Update Your Corporate Minute Book.** At

year-end your business should adopt director and shareholder minutes that approve the calendar year's activities. For example, the year-end minutes needs to elect and designate the directors and officers of your business if those director and officer positions are year to year. Additionally, your year-end minutes should detail any particular compensation benefits or distributions made to the shareholders.

- **Update Your Business Documentation.** At this

time of the year, you should review your current business records (i.e. Code of Regulations, Close Corporation Agreements, Buy/Sell Agreements, Operating Agreement) and determine if those documents are "current". For example, if your current Buy/Sell Agreements have a specific determination of value for shares to be sold, is that valuation the best for you now. Have external factors outdated your current Buy/Sell Agreements (i.e. shareholders have retired, but the corporate book does not reflect the retirement)?

- **Non-Compete/Non-Solicitation**

**Agreements.** Given the external economic conditions the last problem your business needs is a well-seasoned employee leaving the business, taking your employees and worse, trying to take your customers. Do you have Non-Compete or Non-Solicitation Agreements in place to address this issue? If not, you may want to consider these types of employment agreements.



The above are just a few simple steps you can take to ensure that your business is in "good shape" from a legal standpoint. While the end of 2008 has been tough on business, given that economic uncertainty, you would be wise to consider the aforementioned items to make sure you do not have more uncertainty than you have planned. If you need any further information about year-end business tips, please contact the firm's business group.

By Kerry Boyle

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## Featured Attorney



**Brandon L. Abshier**

Brandon is the newest member of our firm. He joins us as a recent cum laude graduate from Capital University Law School.

Professional affiliations include the Columbus and Ohio State Bar Associations, and his practice areas include estate planning, probate, litigation and debtor-creditor law.

### *The Following Attorneys Have Been Recognized By Their Peers*

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#### **Ohio Rising Stars 2009**

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## As the Dow Plunges, Estate Planning Opportunities Arise

The groan can be heard every month by millions of Americans as we open our retirement account statements to find we are worth significantly less than last month. While the financial markets continue to tumble, these tough economic times present some of the best opportunities in years to transfer wealth to younger generations while avoiding or significantly reducing inheritance tax.

Low interest rates combined with undervalued and beaten-down stocks have recently caused many parents and grandparents to transfer assets that they believe are temporarily depressed to their heirs. Our current financial conditions are giving individuals a unique opportunity to reduce the size of their own estates while giving heirs the chance to cash in on a rebound.

Below is an overview of a few estate planning techniques, which when combined with low interest rates and depressed assets provide a great tax savings opportunity which might not be seen again for some time:

- **Family Loans.** One of the simplest and most effective wealth-transfer strategies is a family loan. The IRS permits relatives to lend money to one another at the Applicable Federal Rate (AFR). Current rates are low, ranging from 2.5% to 4.5% depending upon the loan's maturity. If the borrower invests the money wisely, such as deeply discounted real estate, the borrower will have something left over after repaying the lender due to the low interest rate. Parents could further reduce their estate by using the \$12,000 (\$13,000 in 2009) annual exclusion to pay down some of the principal on a loan given to a child.

- **Grantor Retained Annuity Trusts (GRAT).** GRATs resemble loans in that they mature within a certain number of years. Any money put in will be repaid by the time the trust expires and if all goes well a big chunk of the earnings will go to the grantor's heirs. Again, the AFR is applied to the loan repayments with any appreciation greater than the annual rate remaining in the

trust and eventually going to the grantor's heirs free from estate taxes. It is best to select an asset that is on the verge of rapid appreciation, i.e. an undervalued or beaten-down stock.

- **Charity Lead Annuity Trusts (CLAT).** These trusts are almost identical to GRATs with the exception that a CLAT must pay a guaranteed annuity amount to one or more qualified charities at least annually. CLATs are great for individuals who plan on donating to a charity anyways. The value of the income is determined under IRS rules and in accordance with the AFR. The CLAT has potential for growth because the annuity is fixed at currently low interest rates and the corpus can compound, making it possible to move very substantial assets through to family while reducing use of the gift exemption.

If you have any questions about the above techniques or estate planning questions in general please feel free to contact the firm's estate planning group.

By Brandon Abshier

## Commercial Litigation Docket Should Reduce Business Litigation Costs

Effective January 2, 2009, the Franklin County Court of Common Pleas will participate in a pilot program to establish commercial litigation dockets in a limited number of Ohio common pleas courts. The common pleas courts in Cincinnati, Cleveland and Toledo are also participating in the program. Under the program, cases involving disputes between businesses or internal disputes within business entities can be transferred to the commercial litigation docket. Cases will be assigned to either Judge John P. Bessey or Judge Richard A. Frye.

A main goal of the commercial litigation docket is to expedite the handling of commercial lawsuits. Several provisions of the Temporary Rules of Superintendence for the Courts of Ohio are designed to implement this goal:

- Motions must be ruled upon within 60 days of filing
- Decisions from bench trials must be issued within 90 days
- Cases should be disposed of within 18 months, and if they are not, the judges must explain to the Ohio Supreme Court the cause for the delay

Perhaps the most important aspect of the commercial litigation docket is all cases will be assigned to either Judge Bessey or Judge Frye, which will enable them to develop greater expertise in case management of commercial disputes and greater familiarity with the relevant principles of law. As a result, in addition to expediting commercial lawsuits, the commercial litigation docket should foster skilled, consistent treatment of commercial lawsuits.

By Mark Melko

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