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CALFEE MOURNS THE LOSS OF
Charles R. Emrick, Jr.

Our law firm has lost a dear and cherished friend, and one of our all-time great partners, Charles R. “Chuck” Emrick, Jr. Chuck was a senior partner at Calfee where he served our clients for 35 years before retiring. Many notable entrepreneurial executives came to rely on him for his superior counsel. Our hearts go out to his wife, children and grandchildren.

Save the Date!
2016 Golf Outing
June 27th
Westwood Country Club

When it’s your client’s turn in the Court of Public Opinion.
We make the story better, shorter or go away.

Bruce Hennes
Nora Jacobs
Howard Fencl
Thom Fladung
Not My Father’s (or Mother’s) Law Firm

One of the proud traditions of the law, as we have seen throughout our professional history and even back to our British legal forebears, is the family firm. Tewkes, Tewkes, Tewkes and Forberry, or whatever the name might be, tells us that this firm is made up not only of lawyers, but of lawyers who grew up in the law, were surrounded by it since birth, and therefore (presumably) have an innate feel for the profession.

I am not one of these.

My family business was medicine. My grandfather was a family practitioner, graduating from the Tulane University medical school around 1930. My father was a pediatrician and professor, graduating from the Tulane University medical school in 1956. My two older brothers are a pediatrician and a trauma surgeon, respectively, and they graduated from the Tulane University medical school in 1986. Based on their expressed interests, it is distinctly possible that one or both of my daughters will be going to medical school, perhaps graduating from the Tulane University medical school in 2024.

See a pattern?

Nonetheless, I knew from an early age that I was not going into the family business. Notwithstanding the vivid conversations around our dinner table and the deep respect I have for the science and art of healing, I knew that it was not for me. I could barely tolerate dissecting an embalmed frog in ninth-grade science, let alone consider dissecting a human cadaver. Plainly, I was not entering the family business. So what were my options?

I cast about for a while, taking time off from college to work full-time, until I had a sense of purpose in returning to school. I wanted to affect my world and be part of changing it for the better. Indeed, when I graduated with a bachelor’s degree in English Language and Literature, it seemed the die was cast: I was going to law school.

I knew no lawyers. I had never had a conversation with a lawyer. I had never been to court, never served on a jury, never (to my knowledge) been in the same room with a lawyer or judge. My conceptions and assumptions about the law were almost entirely uninformed. What I found in the law, then, was both a surprise and a homecoming.

When I went to law school, knowing nobody in the entire city of Nashville, let alone my class, I was dazed and warmed: upon meeting my classmates, I realized I had found my people: people who were interested in the same issues I was, inquiring in the same way I was, and invested in the same goals I was. I felt at home. And nothing in my experience of the law and lawyers has ever changed that feeling.

That said, there have been rough patches in my relationship with the law. Following law school and a state Supreme Court clerkship, I moved to a new town where, again, I knew no one. It took me a solid year of relentless hard work to identify a legal employer and get started in the Cleveland legal community. I developed relationships, followed up with new friends and colleagues, and since then have spent the past 25 years in practice in state and federal courts in Ohio and far beyond.
Not a Law Baby, Either?
Like the dodo bird or the carrier pigeon, the multi-generational family law firm seems to be a creature of the past, rather than the present or future. All of us who care about and are interested in the law can see that a sea change is afoot. The practice of law is changing in ways that 25, 50 or 100 years ago we could not even have imagined. The environment into which new lawyers are being decanted is more unsettled than ever before. So, in the absence of a family business, what is the new lawyer to do?

First and foremost, connect. No career in the law exists in a vacuum. Law is about people, created by people, applied to people and altered through the actions of people. Obviously, I will tell you to connect with your local, state and national bar associations. But also consider either your area of concentration as an undergraduate or the industry to which your chosen area of the law applies. Join industry groups, identify where people in these industries congregate and go there. A lawyer who also speaks chemical engineering, for example, and actually talks with chemical engineers, is more likely to find a viable career path than a lawyer who only talks with lawyers.

Second, volunteer. I know that when you’re debating between the name-brand and the store-brand can of soup, the idea of giving away your skills for free is counterintuitive. But volunteering at a legal clinic or putting your name on a list to take on a Legal Aid case for free puts you in exactly the same conference rooms and courtrooms you would be in if you were getting paid. In these spaces, you will again meet people, which allows you to connect with your peers and potential mentors in your area of interest. The bonus is that these people can start with a positive impression of you, because you are starting your career by giving back to your community.

Finally (and I say “finally” although there are many other tips, ideas and NOUNS that could be helpful), have faith. The most poignant visual of what I mean occurs near the end of “Indiana Jones and the Last Crusade,” when Harrison Ford as Indiana Jones must cross a seemingly bottomless chasm between two rock walls, to get the chalice and save his father. Jones stands tall, places his hand on his heart and takes a giant step forward. In that moment, he makes a leap of faith. He finds a path to his goal, but first he has to take that step, with no idea whether he will survive.

You must step off the marked path, armed with your law license and your faith in yourself. This is true whether you are entering a world-wide law firm, going to work in-house at a corporation, clerking for a state or federal judge, or handing up a shingle on your own or with a former classmate. Help abounds, from the Pillars Program and others at the CMBA to the Solo and Small Firm Incubator at Cleveland|Marshall College of Law to the Legal Aid Society of Cleveland and the affinity bars such as the Norman S. Minor Bar Association. Irrespective of whether you are joining an established business entity, though, ultimately you are going it alone and you must have faith in yourself. Nobody has the same incentive you do to make your career a success. Trust yourself and take the step.

Anne Owings Ford has over 25 years’ experience in the world of litigation, from her first judicial clerkship to, most recently, her partner status at a national law firm. She has been a CMBA member since 1991. Anne currently is a litigation consultant, and she can be reached at aoford@roadrunner.com.
**Tom Haren**  
Firm: Seeley, Savidge, Ebert & Gourash Co., LPA  
Title: Associate Attorney  
College: John Carroll University  
Law School: Cleveland-Marshall College of Law

**IF YOU WERE NOT PRACTICING LAW, WHAT WOULD YOUR PROFESSION BE?**  
I probably would have joined the family business by becoming an electrician or a plumber.

**CAN YOU PLAY AN INSTRUMENT?**  
I sing and play below-average rhythm guitar with a few other lawyers in our band, “Out of Order.”

**WHY DID YOU JOIN THE CMBA?**  
I didn’t grow up in Cleveland and don’t come from a family of lawyers, so it was a great way to network and become active in the local legal community.

**IF YOU COULD GO TO DINNER WITH A FAMOUS PERSON, LIVING OR DEAD, WHO WOULD IT BE?**  
John Lennon, without question. He’s the greatest songwriter of all time, and I would love to pick his brain about his inspirations and songwriting method.

**WHAT WOULD REALLY SURPRISE PEOPLE ABOUT YOU?**  
I hunt bear and deer with family near our cabin in Pennsylvania, which basically means I enjoy taking naps in the woods while disguised in full camouflage.

---

**Kristen Boamah Cavin**  
Company: Forest City Enterprises  
Title: Corporate Counsel  
College: University of Massachusetts-Amherst  
Law School: Cleveland-Marshall College of Law

**WHAT DO YOU LOVE ABOUT YOUR JOB?**  
Since Forest City has a national presence in the residential business, I get to interact with people from all across the country each day. Some of my calls with tenants, attorneys, state agencies, can be interesting to say the least.

I love the people I work with day-to-day. I have a great team and enjoy cultivating and teaching interns/externs the life of an in-house counsel for a real estate developer. I think this is especially true because I started out as a law school intern with Forest City back in 2005.

**MOST MEMORABLE CMBA MOMENT?**  
My first day doing the 3Rs program. I was nervous, but the kids were great and the nerves went away instantaneously.

**FAVORITE CLEVELAND HOT SPOT**  
For entertainment, one spot I like to hit up is the Cleveland Improv in the Flats — I love to laugh and enjoy comedy. With the current day and age that we live in now, it’s good to just unwind and laugh.

**WHO HAS INFLUENCED YOU THE MOST IN LIFE?**  
By far my grandparents. They are really a living example of compassion, loyalty, and a true teacher by their actions not just words alone.

---

**Carmen Dortch**  
Company: CMBA  
Title: Membership Coordinator

**WHAT DO YOU LOVE ABOUT YOUR JOB?**  
The fact that no two days are the same. I interact with different people, my tasks are different every day. It keeps things interesting. There’s never a dull moment.

**MOST MEMORABLE CMBA MOMENT?**  
My birthday two years ago. I came into the office that morning, and my whole area was gift wrapped (computer, telephone, cabinet doors, and chairs). I was truly surprised. My co-workers really made me feel special, but actually they always do.

**TELL US ABOUT YOUR FAMILY.**  
I’m from a large family; I’m the oldest of seven children. I have three children, six grandchildren. I share a home with my daughter Tammy, her husband Gerome, and our English Bulldog Valentine.

**WHAT DO YOU DO FUN?**  
I’m an avid sports fan. Watching a game on TV or attending a sports event is big fun for me. I enjoy being with friends, going to dinner, seeing musical performances, or just hanging around playing cards and listening to music.

**DESCRIBE AN IDEAL SUNDAY**  
Going to church, eating a good Sunday dinner, watching a football game (or two) on the couch in PJs.

**ONE FUN FACT ABOUT YOU?**  
I love trivia games. My favorite is Jeopardy.
Golf Outing Committee
Chair
Phyllis A. Ulrich, Carlisle, McNellie, Rini, Kramer & Ulrich Co., LPA
pulrich@carlisle-law.com

Regular Meeting
The group meets by phone (typically) to plan the details of the annual golf outing usually starting in January each year and continuing until after the outing with a concluding wrap-up call. The calls may be monthly at first but the closer to the outing, the more frequent the planning calls.

What is your goal?
To have another sell-out event and raise the same, if not more, funds for the CMBA.

What can members expect?
Any member interested in working with the committee is welcome to join the committee. Our sole responsibility is to plan the golf outing for the CMBA each year. You do not have to know how to golf to join — we need members who are willing to help obtain sponsors and/or raffle or give-away gifts. Joining the committee helps to expand a member’s network of contacts in the legal community.

Previous Event
The 2015 golf outing was held at Westwood Country Club in Rocky River, which is a spectacular course. The past Chair, Deb Wilcox, did an incredible job guiding the planning of that outing. The event was sold out well before the day of the event. The weather held despite a gloomy forecast and everyone who golfed had a great time.

Upcoming Event
The 2016 CMBA Annual Golf Outing is set for June 27, 2016 at Westwood Country Club. Mark your calendars and remember to register early so as not to get shut out!

Green Initiative Committee (GIC)
Chair
Michelle Cook, Cady Reporting Services, Inc.
mcook@cadyreporting.com

Staff Liaison
Rita Klein
rklein@clemetrobar.org

Regular Meeting
Meets as needed. The upcoming 2016 dates are: January 19, March 21, May 16

What is your goal?
Our mission is to promote efficient energy use and other environmentally responsible practices in the legal profession.

What can members expect?
The committee’s work continues to positively impact the environment, help law offices reduce costs, and add value and depth to client services they provide. Be a part of the tightly knit group that has worked hard to position the CMBA as a “green leader” among bar associations.

Committee members help with the gathering and sharing of information, recruit and support Green Certified firms/offices, and plan related events.

Previous Events
Although our focus is on sustainability, the GIC hosted its first Green Family Fun Day last June in the CMBA auditorium. This FREE event, including complimentary movie showing of The Lorax, pizza, popcorn, games and prizes. It was great to welcome families and friends to a fun event and share resources for greening your family’s lifestyle. This fall we hosted Greener Way to Work Week and our annual luncheon, which welcomed special guest presenter Colby Sattler of the Western Reserve Land Conservancy, and also formally recognized the firms/offices that are CMBA Green and Green+ Certified for 2015 – 2017. These firms are listed on CleMetroBar.org/Green.

Upcoming Events
The committee will focus its spring efforts on planning its 2016 events and sharing a collection of resources to support green firms.
Bob Rosewater Award

The Real Estate Law Section presented the Bob Rosewater Award for Meritorious Service to Irene M. MacDougall, Partner, Tucker Ellis LLP. Irene is a past co-chair of the Real Estate Law Institute and serves on the Institute planning committee, where she leads the popular Current Developments panel. Please join the Section in congratulating Irene as the 2015 Rosewater Award recipient.

TMA Happy Hour

The CMBA’s Bankruptcy & Commercial Law Section joined with the Turnaround Management Association – Ohio Chapter for a festive holiday party at the beautiful new Westin Hotel on December 9. In addition to the holiday party, the Section sponsors an annual fall CLE and happy hour with TMA. Thanks to the planning committee of Sally Barton, Suzana Koch, Mark Kutylowski, Mark Kozel, Beth Ann Schenz and Nancy Valentine.
Volunteers Needed Now!

The CMBA will host the 33rd Annual Ohio Mock Trial Cuyahoga District and Regional Competitions for teams from Northeast Ohio and we would be pleased to include you in this special law-related education event. This year’s District Competition will be held January 29, 2016 with the Regional Competition for advancing teams to be held on February 19, 2016.

This is Ohio’s largest academic competition and Cuyahoga County high school participation is the highest of all regions statewide. In 2016 we will need your help more than ever — the CMBA is committed to hosting all Cuyahoga teams at the first stage of the competition, nearly doubling the number of students we will welcome in January. Experienced and first-time volunteers are needed to serve as judicial panelists as students seek to hone their communication, analytical, and courtroom skills. At this done-in-a-day volunteer opportunity, volunteers have the chance to observe the region’s finest budding legal minds in an exciting afternoon of competition.

The CMBA will hold a training and orientation for judicial panelists on January 20, 2016 at noon at the Bar offices, where volunteers will be provided with training, support, and case materials. The fictional case in 2016 involves a police officer’s defense of the use of deadly force as well as an exploration of Fourth Amendment protection against unreasonable searches and seizures as it applies to the use of force by an officer.

For more information please contact Jessica Paine at jpaine@clemetrobar.org or (216) 696-3525 x4462.

Financial support for the Ohio Mock Trial Cuyahoga District and Regional Competitions is provided by the Cleveland Metropolitan Bar Foundation. The Ohio Mock Trial Competition is organized under the auspices of the Ohio Center for Law-Related Education.

SIGN ME UP!

☐ YES, I will serve as a judicial panelist for the Ohio Mock Trial Cuyahoga District Competition on Friday, January 29, 2016, from 11:30 a.m. to 5:00 p.m.

☐ YES, I will serve as a judicial panelist for the Ohio Mock Trial Cuyahoga Regional Competition on Friday, February 19, 2016, from 11:30 a.m. to 5:00 p.m.

☐ I will attend the volunteer orientation at noon on January 20, 2016.

☐ I have previous mock trial judging experience. My previous role (scoring and/or presiding)__________________________

Name ________________________________

Firm/Organization (if any) ______________________________

Phone __________________ Fax _______________________

Email __________________________________________

Please return this sheet by email or fax. Reminders will be sent before the competition, but please save the date on your calendar.

For more information, contact Jessica Paine at (216) 696-3525 x4462 or jpaine@clemetrobar.org.

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Daily Fantasy Sports
How Fun Entertainment Presents Headaches to Compliance Professionals at Financial Institutions

BY SAMANTHA MUCHA

Daily Fantasy Sports (DFS) present legal challenges to state and federal governments, leaving banks to ensure that their compliance programs effectively identify illegal funds, including gambling proceeds. The legal landscape surrounding the two main DFS websites, FanDuel and DraftKings, presents banks with a number of compliance risks. The increased scrutiny from state governments and ongoing legal battles started by individuals, as well as federal government investigations, requires banks to proceed with caution to ensure their risk management programs are appropriate while the legislature and courts resolve the legal issues.

Before looking at how banks can respond to the evolving world of DFS, a brief overview of the latest legal developments is necessary. The overall question is whether the websites involve games of skill or chance. The general rule is that games of skill are legal, while games of chance may run afoul of gambling laws. In reality, the application of this rule is much more complex.

The legal challenges highlight the tension between state and federal laws, and represent a crossroads between Internet gambling regulations and sports betting prohibitions. The Unlawful Internet Gambling Enforcement Act (UIGEA) states that financial institutions may not knowingly accept credits, electronic fund transfers, monetary instruments, or the proceeds of such transactions in connection with unlawful Internet gambling. FanDuel and DraftKings use the UIGEA to argue that their websites may continue operating because it defers to other federal and state laws. This argument rests on the UIGEA definition of a bet or wager: “the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome.” 31 U.S.C. §5362(1). The Wire Act prohibits wire communications to place bets on sporting events or to receive winnings resulting from sports-related bets. 18 U.S.C. §1084.

Many states, however, passed laws to specifically address gambling. One such example was New York, which prohibits “any other kind of gambling, except lotteries operated by the state and the sale of lottery tickets in connection therewith as may be authorized and prescribed by the legislature.” N.Y. Const. Art. I, §9. This provision takes an extremely restrictive view on gambling. On the other hand, Kansas passed a law allowing DFS to operate if it meets certain guidelines. K.S.A. 21-6403(d). The differing state laws make compliance efforts even more complicated.

Even though DFS presents new legal issues, the situation is similar to issues associated with offshore betting sites. As Internet technology develops, residents of states prohibiting DFS may circumvent controls designed to prevent them from accessing such sites. An article in the New York Times recently examined the world of offshore sports betting through websites such as Pinnacle Sports. The NY Times investigators identified at least 1,700 American accounts on the website in violation of the website’s terms of use. Pinnacle Sports require users to verify that the user is located where
such bets are lawful and that the user does not reside in a country where online gambling is prohibited. The users of such sites in the United States are seemingly in violation of federal laws that prohibit online sports gambling.

As a result, the money from offshore gambling sites and DFS sites could easily enter our financial institutions as illegal gambling proceeds in violation of state or federal laws. With inconsistent state laws and potentially conflicting federal laws, financial institutions have little guidance to ensure their compliance programs address these risks.

There are three main areas of risk associated with DFS. The first risk, as discussed above, involves the legality of the operations. Compliance departments must take steps to keep current information about legal developments. Banks should ensure their compliance departments understand the laws and latest legal trends surrounding gambling activities. Since the cases and complaints are quickly evolving, banks must find ways to monitor the situation. For example, banks may consider implementing measures to receive relevant news updates.

The second main area of risk associated with DFS involves the bank’s ability to identify the proceeds from DFS sites. If the courts find DFS sites are illegal in certain states, then it may become difficult to monitor whether the customer’s funds received from such sites are, in fact, illegal gambling proceeds. This is the same risk banks face with proceeds from offshore gambling sites. The websites may transfer winnings in small amounts to accounts through third-party payment processors such as PayPal. This method of transferring funds leads to what is essentially a blind spot, in which transaction monitoring fails to identify the true source of the proceeds. However, standard transaction monitoring efforts would be sufficient for large winnings because the DFS sites use wire transfers to transfer the funds.

Banks may be able to use existing Bank Secrecy Act/Anti-Money Laundering software programs to detect transactions from FanDuel and DraftKings. In the event a customer received proceeds from DFS sites, the transactions would trigger the rule which would warrant further investigation. Subsequently, the customer’s account activity could be reviewed to determine whether the activity is appropriate based on the customer’s state of residence.

The third area of risk associated with DFS is the possibility of individuals misrepresenting their state of residence or providing other misleading information to gain access to the DFS sites to place bets. The New York Times article provided evidence that people already do this for gambling websites hosted in other countries. For example, an individual who lives in New York, where the websites have stopped accepting bets from residents, lists her address as a different state, thereby being allowed to place the bet anyway. If the individual wins a contest, and receives the funds in the New York resident’s bank account, there are tainted funds within the financial institution. The bank would have no way to verify the information the individual provided to the DFS sites when she registered.

In this scenario, the best option is to use due diligence. Banks already have significant amounts of information available about

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Welcome
New Members
Get Involved at CleMetroBar.org.

Rebecca M. Advent
Kathleen M. Amerkhanian
Eighth District Court of Appeals
Ellen L. Ashwill
Arianna Atkins
Eighth District Court of Appeals
Henry A. Bailey
Francesca Baxi
Matthew B. Barbara
Reminger Co., LPA.
Hon. Patricia A. Blackmon
Eighth District Court of Appeals
Michael Raymond Bona
Hon. Mary Jane Boyle
Eighth District Court of Appeals
Crystal Lynn Bryant
Christopher F. Brzozowski
Hon. Frank D. Celebrezze, Jr.
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Amy E. Cheatham
Romie M. Christensen
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Janie V. Clark
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Hillary Victoria Conidi
The J.M. Smucker Company
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Calfee, Halter & Griswold LLP
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Toni Querry Farkas
Eighth District Court of Appeals
Anna B. Ferguson
Eighth District Court of Appeals
Matthew T. Fitzsimmons, IV
Eighth District Court of Appeals
Brandon French
Eighth District Court of Appeals
Rebecca B. Gabriel
Hon. Eileen A. Gallagher
Eighth District Court of Appeals
their customers which enables the financial institution to detect potentially suspicious or unusual activity. When opening an account, customers may have to provide information about the source of funds and expected activity in the account. The customer must also include an address. This information is invaluable when the customer conducts transactions that are out of pattern with the expected activity. If the customer’s account was alerted through the normal transaction monitoring processes, the relevant investigation should include inquiries into the source of funds and due diligence to confirm the individual’s address. If the bank personnel verify the individual resides in New York, and received funds from one of the DFS sites, bank personnel could reasonably infer that the transaction involved illegal funds, which would trigger the normal reporting requirements and bank policies for handling such transactions.

In light of the risks DFS present to financial institutions, banks should return to the basic principles of their compliance programs: to identify risk, to evaluate the risk, and to create processes and controls to reduce those risks. One key component of the process is to evaluate the bank’s risk tolerance level. Each financial institution has a different risk tolerance level. Oftentimes, the financial institution’s risk tolerance is based on factors such as prior government examination results, organizational culture, customer demographics, and geographic location. For example, a bank with a history of violations and FinCEN enforcement actions may have a different risk tolerance than a bank located in a rural area with less frequent high-risk transactions and customers.

Once the bank has identified these risks and any other risks associated with DFS, the compliance department needs to ensure proper procedures and policies are in effect. For example, a review of due diligence and know your customer efforts may be necessary. Banks should consider whether they are asking sufficient questions about expected activity when a customer chooses to open an account.

In some cases, where illegal gambling proceeds regularly fund the account, the bank may need to consider closing the customer’s account and terminating the relationship.

In times of uncertainty and complexity, returning to the basics of a strong compliance program will provide a certain measure of confidence to banks. Financial institutions should continue taking steps to identify the proceeds from such operations and ensure compliance with the relevant laws and regulations related to these activities.

Samantha Mucha joined Gabriel Partners as an Associate after passing the Ohio bar exam. In her free time, she enjoys spending time with her family and friends. She joined the CMBA in 2014. She can be reached at (216) 658-5086 or smucha@gabrielpartners.com.
In order for a Chapter 13 debtor to present a confirmable plan to a bankruptcy court, the debtor must satisfy several criteria, many of which are described in Section 1322 of the Bankruptcy Code. One of these criteria is section (b)(2) (otherwise known as the "anti-modification statute"), which states:

(b) Subject to subsections (a) and (c) of this section, the plan may —
(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor’s principal residence, or holders of unsecured claims, or leave unaffected the rights of holders of any class of claims....

In layman’s terms, this means that a debtor must pay the total secured claim of a mortgaged property that the debtor uses as their primary residence.

However, Courts realized early on that this provision conflicted with Section 506’s language. In In re Nobleman, 508 U.S. 324, 113 S. Ct. 2106 (1993) when it held that despite section 506’s language, courts impermissibly modified a secured mortgage holder’s rights under section 1322(b)(2) when they bifurcated a claim to both secured and unsecured portions based on the value of the collateral. In a concurring opinion, Justice Stevens noted that the legislative history of section 1322 demonstrated Congress’s intent to provide “favorable treatment [to] residential mortgagees [in order to] to encourage the flow of capital into the lending market.” Id. at 332.

Since Nobleman, Courts have had to decide cases based on nuances in the statute. For example, if a Chapter 13 debtor owns and resides in a duplex, but rents out the other unit, does the secured claim secure only real property that is the debtor’s principal residence? Another line of cases, and this article, examines whether a mortgage that grants a security interest in escrowed funds, as additional collateral, removes a property from the protections of Section 1322(b)(2).

COURT OF APPEALS/DISTRICT COURT RULINGS

Appellate Decisions
To date, only one United States Circuit Court has ruled specifically on this issue. In 1st 2nd Mortgage Co. of NJ., Inc. v. Ferandos (In re Ferandos), 402 F.3d 147 (3rd Cir. 2005), the Third Circuit Court of Appeals reversed a ruling by both the U.S. District Court of New Jersey and a bankruptcy court ruling allowing a debtor to cram-down a mortgage lien on the debtor’s primary residence because the mortgage also took a security interest in rents and escrow funds. The Court looked to New Jersey state law to determine that (i) rents constituted “real property,” and (ii) because a debtor has no rights to escrow funds, “any grant of a security interest [in the mortgage] was meaningless and conveyed essentially no interest at all.” Id. at 156. Escrow payments are intended to benefit the mortgagee by timely paying both property taxes and realty insurance. Because the mortgagor does not retain any interest in them, and ceases to have any control over them, the escrow funds therefore do not constitute additional collateral.

District Court Decisions
District Courts have similarly ruled that even when a mortgage grants a security interest in escrow funds, the protections of the anti-modification statute still apply. In Birmingham v. PNC Bank, N.A., Inc., 2015
U.S. Dist. LEXIS 87577 (July 7, 2015), the District Court of Maryland looked to the statutory changes of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 to find that granting a security interest in escrow funds would not avoid these protections. This statute added a definition of the “debtor’s principal residence” which included “incidental property,” 11 U.S.C. §101(13A), and then included “escrow funds” into incidental property at 11 U.S.C. §101(27A). The Court stated because of these revisions to the Bankruptcy Code, statutory intent would be frustrated by allowing mortgages to be crammed down in these cases. Also, because this clause has become commonplace in residential mortgages, the Court found that ruling otherwise “would eviscerate the anti-modification provision nationwide.”

**Birmingham** at 19.

**BANKRUPCTC RULINGS**

Bankruptcy Courts are split on this matter. Bankruptcy Courts in North Carolina have commonly ruled that because escrow funds are not real property, a mortgage that grants a security interest in them will not be protected by the anti-modification statute. For example, in *In re Murray*, 2011 Bankr. LEXIS 4640 (E.D.N.C. May 31, 2011), the Eastern District Court of North Carolina found that because none of the escrow provisions purported to convert the funds into something that would be transferred with the property, they did not constitute real property pursuant to state law and the mortgage could be crammed down.

Closer to home, Judge Woods in the Youngstown Bankruptcy Court followed these cases in a recent ruling in *Stevens v. Suntrust Mortgage, Inc.*, Adv. No. 14-4059 (February 5, 2015) holding that because escrow funds are personal property under Ohio law, a debtor removes the property from the anti-modification protection when he or she gives a security interest in escrow funds. Judge Woods based her decision on the Sixth Circuit Court of Appeals’ ruling in *Reinhardt v. Vanderbilt Mort. & Fin., Inc. (In re Reinhardt)*, 563 F.3d 558, 562 (6th Cir. 2009). There, the Sixth Circuit held that if a secured claim “does not pertain to ‘real property,’ it does not matter whether the claim is on a ‘debtor's principal residence’.”

However, other courts have followed the rationale of *Birmingham* above to find that statutory intent requires allowing the anti-modification provision to control even if escrow funds are granted as additional collateral. The Bankruptcy Court for the Southern District of Indiana ruled that “[i]t is unlikely that Congress would have intended for the protections of §1322(b)(2) to be forfeited by adhering to a practice that was so commonplace in the industry.” *In re Inglis*, 481 B.R. 480, 485 (Bankr. S.D. Ind. 2012).

**CONCLUSION**

While some higher courts have ruled on the issue, lower courts are split on the issue whether a mortgage that grants a security interest in escrow funds removes the property from the protection of the anti-modification statute. In fact, this matter is currently before Judge Harris in the Cleveland Bankruptcy Court in case number 15-11057.

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The Impact of Ohio Legacy Trusts on Commercial, Bankruptcy, and Restructuring Law

BY THOMAS WEARSCH & JOSEPH ESMONT

In 2013, Ohio joined a growing minority of states that authorize asset protection trusts, known in Ohio as “legacy trusts.” Further, Ohio created a new recording system that can require creditors to actively monitor filings in county recorders offices or risk losing their right to challenge transfers of property into legacy trusts. See O.R.C. § 5816.01 et. seq; O.R.C. § 317.08(D). As the statute of limitations to challenge the first transfers into these trusts is starting to run out, it is a good time to reflect upon the impact these trusts can have on commercial, bankruptcy, restructuring and collections practices for both debtors and creditors. While the rules regarding legacy trusts have not yet been heavily litigated, it is clear that under the right circumstances, a party that transfers assets into a legacy trust can shield its assets from creditors while enjoying many of the benefits of those assets. Creditors must be proactive to protect themselves.

What Is a Legacy Trust, Anyway?

Legacy trusts are irrevocable spendthrift trusts that allow debtors to set aside funds that cannot easily be reached by creditors. As a spendthrift trust, (i) the trust cannot be revoked, (ii) the trust’s beneficiaries cannot voluntarily or involuntarily alienate the trust’s assets (with some exceptions), and (iii) a trustee, rather than a beneficiary, makes the decisions about the use of the trust’s assets. These trusts were originally developed to ensure an improvident heir would be provided for without allowing him to waste the family legacy (hence the name “spendthrift” trusts). Since the trustee of the trusts owns and controls the trust’s assets, it is difficult for creditors of settlors or beneficiaries to access funds in an irrevocable spendthrift trust.

Legacy trusts differ from traditional spendthrift trusts in several ways. First, legacy trusts may be self-settled. At common law, a spendthrift trust was not effective against the transferor’s own creditors if the transferor was also a beneficiary of a spendthrift trust. Those courts were concerned that debtors would use the ability to put their own assets beyond the reach of creditors to defraud creditors. See Restatement (Second) Trusts § 156(2) and Restatement (Third) Trusts § 58(2). Second, traditional spendthrift trusts are not protected from creditors if the debtor has the power to revoke or transfer an interest in the trust. The Ohio Legacy Trust Act allows transferees to retain many rights without formally having the power to revoke or transfer an interest in the trust, including the rights to (i) use and enjoy the trust’s property, (ii) receive trust income, (iii) appropriate up to 5% of the trust’s principal per year without the trustee’s consent, (iv) remove and replace the trustee, and (v) veto distributions from the trust, thus keeping title to the trust’s assets out of the transferee’s collectible hands. See O.R.C. § 5816.05. Third, the Ohio Legacy Trust Act limits most Ohio state-law fraudulent conveyance actions, providing that “no creditor may bring an action of any kind ... against or involving any property that is the subject of” a disposition to a legacy trust, except on the grounds that the disposition violated the terms of an agreement or that it was made “with specific intent to defraud the specific creditor bringing the action.” O.R.C. § 5816.07(a). Even if the transfer is avoided, the legacy trust trustee has a “first and paramount lien” against the avoided transfer property to cover his costs of defending the action unless the trustee acted in bad faith. Finally, the transferor to a self-settled legacy trust must aver, among other things, that it will be solvent after the transfers into the legacy trust and that the transfer is not intended to hinder, delay, or defraud creditors. However, the failure to do so “shall not” affect “the validity of any attempted ... disposition” other than to create evidence of actual fraudulent intent. O.R.C. § 5816.06(E).

The New Transaction Recording System.
The limited fraudulent transfer actions available to creditors under the Ohio Legacy Trust Act expire 18 months after the transfer, or six months after the transfer reasonably could have been discovered (often called a “discovery rule”). The same statute that enacted the Legacy Trust Act created an optional county-level personal property recording and constructive notice system for personal property transfers. See O.R.C. § 317.08(D). Depending upon whether the transferor and trustee are natural persons and other circumstances, creditors may be notified of a transfer by recording in the county recorder’s office for the county where (i) the transferor resides, (ii) the transferor has its principal place of business, (iii) the trustee resides, or (iv) the trustee has its principal place of business. Any person contesting the transaction is deemed to have discovered the record on the day it was tendered to the county clerk for filing. O.R.C. § 1301.401(B), (C). This will presumably trigger the discovery rule in the ordinary case.

Creditors who do not routinely monitor these filings run the risk of being surprised to learn that their debtors or guarantors foresaw financial problems and transferred assets into a legacy trust that cannot be touched in a state-law collections action. This could be especially tricky if the relevant county is the principal place of business or residence of a trustee rather than the debtor, and so commercial creditors should consider requesting information on legacy trusts (or other asset protection trusts) and their trustees during up front due diligence with a specific requirement to promptly update that information if it changes.

Bankruptcy practitioners, on the other hand, may want to review these filings for possible transfers to challenge under federal fraudulent transfer laws, as will be discussed below.

What Steps Should Commercial Creditors Consider Taking To Protect Themselves?
The creditor’s obvious concern with a legacy trust is that a distressed debtor or guarantor will transfer assets into the trust under the creditor’s nose, especially because the debtor will likely know of coming distress before the creditor. This is added incentive for creditors to seek collateral, as valid liens survive a disposition into a trust.
O.R.C. § 5816.10(G). Although unsecured creditors will find their state-law fraudulent transfer actions limited, they can negotiate up-front to limit or prohibit transfers of assets into a legacy trust, as those agreements are enforceable. Id. (“Nothing in this chapter shall be construed to authorize any disposition that is prohibited by the terms of any agreements, notes, guaranties, mortgages, indentures, instruments, undertakings, or other documents.”) Provisions barring transfers to legacy trusts and demanding transparency on prior transfers should be strongly considered for closely-held businesses and guarantors of business debts during a restructuring or workout. The very limited timeframe for avoiding fraudulent transfers does not explicitly apply to an action alleging the transfer was in violation of an agreement.

Unsecured lenders may also consider involuntary bankruptcy filings more seriously when legacy trusts are involved, as federal bankruptcy law offers several avenues for attacking transfers into legacy trusts. The filing of a bankruptcy gives a trustee two years to investigate claims that are still live when the bankruptcy is filed. While fraudulent transfer actions under Ohio law will generally be limited to claims that the transferor specifically intended to defraud the plaintiff, Section 548 of the Bankruptcy Code allows the bankruptcy trustee to avoid a broader array of constructive and actual fraudulent transfers, with at least a two-year statute of limitations. For instance, the bankruptcy trustee can avoid gifts to a trust that left the transferor insolvent or with unreasonably small capital for its business operations. Moreover, Section 548(e) extends the statute of limitations to avoid actual fraudulent transfers into a self-settled trust to ten years. This power may be an especially strong limit on abuse of legacy trusts because federal bankruptcy courts have held that a transfer of assets into a self-settled trust for the purpose of putting those assets beyond the reach of future creditors is an actual fraudulent transfer under federal law, regardless of its treatment under state law. See, e.g., Battley v. Mortensen (In re Mortensen), 2011 WL 50252496 (Bankr. D. Alaska 2011) (trust’s stated purpose “to maximize the protection of the trust estate ... from creditors’ claims ... and to minimize all wealth taxes” evidenced actually intent to hinder, delay, or defraud present and future creditors despite Alaska law to the contrary. See also Safanda v. Castellano (In re Castellano), 514 B.R. 555, 563-565 (Bankr. N.D. Ill. 2014).

Conclusion

This short article can only scratch the surface of the issues raised by legacy trusts. Those trusts create an opportunity for honest debtors to maintain a standard of living in the case of an unexpected future reversal, but also heighten the risk that unethical debtors will “pull the rug out” from beneath unwary creditors. Debtors’ counsel should take time to consider the potential ethical uses of these trusts, while creditors’ counsel should take this as an opportunity to review due diligence procedures and consider adding protective provisions to all credit-related agreements, including consumer credit transactions.

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Filing of Proof of Claims After Crawford

Has the Landscape Really Changed?

BY ALAN C. HOCHHEISER,
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Filing a proof of claim in a Chapter 13 proceeding has long been a routine process for creditors who can substantiate their claims and provide required documentation. The proof of claim process typically applied to all claims a creditor may hold against a debtor's bankruptcy estate, including obligations that may be barred by an expired state statute of limitations. Last year, however, the Eleventh Circuit seemingly changed that process entirely as it pertains to out of statute proofs of claim. In *Crawford v. LVNV Funding, LLC*, 758 F.3d 1254 (11th Cir. 2014), the Court held that filing a proof of claim with respect to debt that is time-barred by a state statute of limitations could violate the Fair Debt Collections Practices Act, 15 U.S.C. §§ 1692, et seq. (the FDCPA).

*Crawford* directly conflicts with prior holdings made by the Second, Seventh, and Ninth Circuits, which each have held that the filing of a proof of claim cannot be the basis for an FDCPA violation. See *Simmons v. Roundup Funding, LLC*, 662 F.3d 93 (2d Cir. 2011); *Buckley v. Bass & Associates*, 249 F.3d 678 (7th Cir. 2001); *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502 (9th Cir. 2002). Notwithstanding, since *Crawford*, a new “cottage industry” has emerged wherein debtor-plaintiffs are alleging violations of the FDCPA for the filing of these out of statute proofs of claim by filing actions at levels previously unseen in both the district and bankruptcy courts with varying outcomes. Moreover, since *Crawford*, FDCPA cases involving out of statute proofs of claim have been appealed to the Third, Fourth, Sixth, and Seventh Circuits.

The broad definition of “claim” permits claims for time-barred debt. The Bankruptcy Code allows persons to obtain a financial “fresh start.” Critical to this goal is the discharge of debt provided under 11 U.S.C. § 1328(a). In chapter 13 cases, the discharge is effective only against debts that receive “treatment” in a debtor’s case, which can be as simple as listing the debt in the debtor’s schedules. Unfortunately, debtors sometimes fail to schedule all of their debts. These unscheduled debts are not discharged, and therefore continue to haunt the debtor and imperil the goal of providing a financial “fresh start.”

The Bankruptcy Code and the rules promulgated thereunder provide a mechanism to capture all claims against the debtor (including any claims that the debtor may have failed to schedule) through a comprehensive claims process. Specifically, § 501(a) permits creditors to assert any “claim” against a debtor by filing a proof of claim. Sections 502(a), 502(b), and 558 define the instances in which claims shall be allowed or disallowed, and Bankruptcy Rules 3001-3007 govern the procedures applicable to filing proofs of claim. Pursuant to § 101(5)(A), the term “claim” is defined broadly to mean a “right to payment” regardless of whether that right is “reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.” Legislative history confirms that a claim is to be defined as broadly as possible: “[b]y this broadest possible definition, the bill contemplates that all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case.” H.R. 95-595, 95th Cong. 1st Sess. 359 (1977) Senate Report 95-989, 95th Cong. 2d Sess. 21 (1978). Therefore, a “claim” must be construed in the broadest possible sense, to include rights to payment of all types, whether or not a lawsuit can be filed to enforce the right. *Pa. Dept’t of Pub. Welfare v. Davenport*, 495 U.S. 552, 558 (1990).

Any benefit of a disallowed claim runs to the other unsecured creditors. In the event a proof of claim is disallowed, except in the rare case when a plan provides for 100% payment to unsecured creditors, the benefit created by the disallowance and subsequent reduction in the total amount of claims does not run to the debtor, but rather to the other unsecured creditors. Pursuant to § 1325, in order for a debtor to confirm a chapter 13 plan and receive a discharge, the debtor must pay all disposable income into a plan despite the number or validity of the claims filed. See 11 U.S.C. § 1325(b). Thus, unless the plan proposes to pay 100% to all creditors, the disallowance of a claim does not provide the holder with a “right to payment.” *Keeler v. PRA Receivables Mgmt., LLC (In re Keeler)*, 440 B.R. 354 (Bankr. E.D.Pa. 2009); see also *In re Remington Rand Corp.*, 836 F.2d 825, 831-32 (3d Cir. 1988).

The “least sophisticated consumer” standard is not optimal in Chapter 13 cases. The *Crawford* court relied heavily on the “least sophisticated consumer” standard, finding that filing an out of statute proof of claim was an abusive, deceptive and unfair debt collection practice to the “least sophisticated consumer.” Arguably, the “least sophisticated consumer” standard should not be utilized in the chapter 13 context. Virtually all chapter 13 cases in which the debtor obtains a discharge are filed by bankruptcy counsel familiar with both state and federal law. Additionally, in every chapter 13 case, a trustee is appointed who has a fiduciary duty to all parties to “examine proofs of claims and object to the allowance of any claim that is improper.” 11 U.S.C. § 704(a) (5), applicable in chapter 13 under § 1302(b)(1).

The alleged violation of the FDCPA occurs when the out of statute proof of claim is filed. In most cases, either the chapter 13 trustee or the debtor’s counsel review claims and determine if they are objectionable. Hence, some courts have employed alternative standards other than the “least sophisticated consumer” when determining whether a violation of the FDCPA has occurred. In *Evory v. RJM Acquisitions Funding L.L.C.*, 505 F.3d 769, 775 (7th Cir. 2007), the court utilized the competent lawyer standard, explaining that “a representation by a debt collector that would be unlikely to deceive a competent lawyer, even if he is not a specialist in consumer debt law, should not be actionable.” Similarly, in *Dikeman v. National Educational Inc.*, 81 F. 3rd 949 (10th Cir. 1996), the court utilized a professional status and representative role standard.
not change the amount that the debtor is going to pay. Accordingly, if any of the claims are disallowed, the percentage recovery of the other unsecured creditors would increase. Absent a 100% plan, any reduction in the total amount of the claims asserted has no effect on the debtor.

**A post-Crawford circuit conflict may be on the horizon.**


Further, the majority of Courts confronting the issue post-Crawford, including lower courts in the Eleventh Circuit, continue to find that the FDCPA does not apply to the filing of an out of statute proof of claim. See, e.g., Broadrick v. LVNV Funding, LLC, et al., 532 B.R. 60, 70 (Bankr. M.D. Tenn. 2015); Gatewood v. CP Medical, LLC, 2015 Bankr. LEXIS 2262 (8th Cir. B.A.P. July 10, 2015); Torres v. Cavalry SPV I, LLC, 530 B.R. 268 (E.D. Pa. 2015); In re Lagrone, 525 B.R. 419 (Bankr. N.D. Ill. 2015); Johnson v. Midland Funding, LLC, 528 B.R. 462 (S.D. Ala. 2015); Robinson v. ECast Settlement Corp., 2015 U.S. Dist. LEXIS 12700 (N.D. Ill. February 3, 2015); Donaldson v. LVNV Funding LLC, 2015 U.S. Dist. LEXIS 45134 (S.D. Ind. April 7, 2015); Dunaway v. LVNV Funding LLC, et al., 14-ap-4132 (Bankr. W.D. Mo. May 19, 2015).

As the FDCPA litigation pertaining to out of statute proofs of claims proliferates, the case law that is being created continues to expand the conflict between the circuit courts. Only time will tell whether the U.S. Supreme Court will bring some semblance to the proof of claim process or whether the bankruptcy process will continue to be bogged down with new litigation that fails to benefit the debtor who was merely seeking a fresh start by filing the bankruptcy in the first place.

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Crossing into the Global Village

BY RENUKA RAMAN & TARA J. ROSE

With almost 200 sovereign nations in the world, conducting transactions in foreign countries is becoming an everyday occurrence for many North American businesses. Cross-border/multijurisdictional/international transactions (CBTs) are transactions that may be in the form of joint ventures, mergers, acquisitions, strategic alliances, business process outsourcing, business sales or any combination thereof between one or more U.S. entities and one or more non-U.S. entities on the other side. CBTs constitute a dynamic realm that requires a solid understanding of the legal framework, negotiating points, and practical aspects at each stage of the transaction. Regardless the transaction structure utilized, there are common goals in carrying out all CBTs:

(i) achieving certainty of execution; (ii) maximizing the economic benefit of the transaction; (iii) reducing the amount of management time absorbed by the process; (iv) shortening the time frame in which the transaction is completed; (v) controlling the associated transaction costs; (vi) properly identifying and addressing the risks associated with the transaction; and (vii) effectively managing exposure to liabilities. Corporations are always reshaping themselves in response to the ever-changing economy. As such, attorney preparedness is the key to meeting client needs. This article focuses on how attorneys can cash in on CBT opportunities by being adequately prepared.

The first step after finalizing the target company is to execute a letter of intent (LOI), or a memorandum of understanding and a Non-Disclosure Agreement (NDA). The LOI and NDA are critical to the success of the transaction because it protects clients from issues relating to a failure of the transaction and disclosure related liabilities. The LOI lays the foundation of the transaction, which describes CBT in brief, the estimated price, the time period for closing the deal, the consequences if the deal does not close on time, liability distribution, cost allocation and attorney’s fees. The NDA offers protection for all parties to ensure that confidentiality is maintained.

Although some clients may rebuke legal due diligence due to increased time and cost, attorneys have a duty to explain why it is necessary and how it protects the client. Due diligence identifies the risks associated with the corporation and this added knowledge increases the success rate of the transaction. Due diligence has the potential to uncover tax liabilities or other situations requiring huge pay outs, the client will have the opportunity to negotiate the transaction price accordingly. If full blown due diligence cannot be conducted, attorneys may recommend having a (i) limited legal due diligence to address specific business related concerns; and (ii) require an indemnity bond that states the conditions for indemnity, enforcement, dispute resolution and jurisdiction clauses.

One may argue that a legal due diligence report can only highlight the possible issues; however, attorneys can provide potential solutions to the identified issues. These remedies may be in the form of conditions precedent or subsequent to closing. Conditions precedent to closing are usually the conditions without which the transaction cannot proceed, for example, obtaining loan to pay for the transaction or obtaining government approval for the deal. Conditions subsequent to closing are those conditions that are important, but not critical to closing.

Negotiating and executing transaction agreements is the core of any CBT. Attorneys have to be prepared for drafting multiple agreements and meeting deadlines. Usually, in complex CBTs, there is one agreement, commonly called ‘master agreement,’ and there could be multiple secondary agreements that form exhibits or schedules. A transactional attorney should have a checklist for every stage of the transaction, including designating the party in-charge of each item to ensure smooth execution. Complying with U.S. laws can be troublesome for foreign entities during both the deal-making process and post-closing integration phase. In private transactions, U.S. laws such as the Foreign Corrupt Practices Act can pose pre-closing due diligence disclosure issues or post-closing compliance obstacles for non-U.S. entities in many regions — particularly outside of the European Union.

Enumerated below are aspects of CBTs that U.S. attorneys should be prepared for in order to ensure a successful, timely, and cost-efficient closing with minimal error.
**Due Diligence**
A detailed checklist with sub-categories explaining each question would guarantee easy understanding for the parties. It should be noted that the information flow will not be smooth because there will likely be a gap in understanding how a non-U.S. corporation functions. Clients should be informed as soon as possible of situations where it will be difficult to obtain information. Attorneys should not assume virtual due diligence will be available in all CBTs.

**Non-U.S. Laws**
Attorneys should make themselves familiar with all non-U.S. laws that may affect a CBT. By doing this, attorneys will have a fair idea of what road blocks to expect. At the LOI stage, to be proactive, attorneys should get upfront approval from clients to retain international lawyers when needed. Local counsel is beneficial because each country obviously has different laws, such as anti-trust laws, regulatory approvals, employment laws, and assessing and paying transfer tax obligations. An attorney has to prepare a detailed list of applicable laws and ensure compliance. In addition, if one or both parties are government organizations, there will be additional compliance requirements and extreme care should be taken on public press releases and responding to media.

**Cultural and Time Differences**
Cultural and time differences between parties in different countries in a CBT is an obvious issue that requires contemplation and attention before beginning negotiations. Some cultures have a philosophy that time is expensive, like in China or Japan, and being late is considered an insult. In terms of negotiating norms, it has been said that Germans are always on time, Latins are usually late, Japanese take their time and negotiate leisurely, and Americans are hasty to seal the deal. Some practitioners may be surprised to learn that the main goal when negotiating with an Asian counterpart is to establish a firm relationship, rather than the actual minutia of the deal, which is secondary. Understanding these differences and being mindful of them will (i) be interpreted as a sign of mutual respect and a surefire way to facilitate credibility and trust; and (ii) serve as a strategic advantage that can help lead an attorney to the appropriate tactics for the negotiation.

**Bridging the Communication Gap**
According to the Ethnologue Languages of the World lists, there are approximately 7,102 languages actively being used in the world. This leads to another obvious pitfall in a CBT: language differences. One of the most important initial steps is to determine what language the contract should be drafted in. If it is necessary to hire an interpreter, which is highly recommended, it is important to speak through him and avoid private conversations in the presence of the other non-English speaking parties. This may be perceived as rude and suspicious behavior. Beyond spoken language, practitioners should be aware of nonverbal communication. Body language can positively or negatively impact trustworthiness, or lead to misunderstandings. It is recommended that the parties meet face to face, or at least utilize video conferencing whenever possible.

**Enforcement Clauses**
Governing law and choice of jurisdiction clauses form part of boiler-plate language and is often overlooked. Attorneys must guarantee that enforcement is possible, no matter which country’s rules apply. Attorneys may need to complete extra groundwork prior to executing the agreement to assess if there may be enforcement issues in the selected jurisdiction. Examples of concerns that require attention are whether specific performance or liquidated damages clauses are recognized and enforceable in the non-U.S. country.

**Privilege and Confidentiality**
Last but not the least, confidentiality and professional ethics adds more dynamic to negotiating a CBT. Every CBT attorney must be aware that not all countries have the same standards of ethics, privileges and confidentiality as the U.S.

In many countries, the rules related to privilege are quite different. Failing to recognize these risks and failing to develop appropriate strategies to protect sensitive information can be catastrophic. In CBTs, this privilege can be inadvertently waived, especially for in-house counsel who may work on a transaction, but not be licensed in various foreign jurisdictions. These pitfalls can be avoided through careful preparation and the implementation of precautions, including taking practical steps to protect communications with non-legal consultants and retaining appropriately licensed local outside counsel.

**CONCLUSION**
As is obvious, this list is not exhaustive of all possible issues as no two CBTs are ever
exactly the same. Similarly, the issue order is not meant to establish any particular priority among these issues as every deal has its own priorities and dynamics. There are many other potential issues and traps for those involved in CBTs.

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Fastcase is a Great Tool for Legal Research That You Have Access to with your CMBA Membership

Law firms and attorneys are always looking for ways to cut the costs of their research while at the same time being able to use top notch research services. As such, many have looked to Fastcase (also written in lower case) for electronic legal research. Some firms use Fastcase alone while others use it in combination with print and/or other electronic research platforms. Fastcase is included in your membership with the Cleveland Metropolitan Bar Association.

Fastcase’s search interface is easy to use and very user friendly. Fastcase is intuitive, having a Google-like simplicity. You can use either Boolean or natural language queries or to look up a case by citation. Users can search across all jurisdictions at once or only those you select. You can set how results will be sorted — by relevance, case name, decision date, court hierarchy or frequency of citation.

Fastcase lets you search through state statutes and case law. You can do a Boolean search like you would with Lexis and Westlaw, or try the natural language search. For searching through statutes and regulations, I prefer the browse method of looking through Fastcase’s table of contents for the statutes. I feel this method is more likely to point me in the right direction because you then know what chapter to look in, rather than blindly searching and manually sifting through many results.

In my own research, I have come across great law reviews that have explained a statute or area of law very thoroughly and thus cut down my research time. Fastcase has recently partnered with HeinOnline. This partnership really shows its benefits to Fastcase users when they need to look for law review articles. Hein’s coverage of law review is superior to Lexis or Westlaw. Similarly, Fastcase users can search newspaper articles via Fastcase’s partner NewsLibrary.com. Some resources on Fastcase such as the Ohio Administrative Code, Constitution and Attorney General Opinions link out to official sites that contain that information.

The results in Fastcase are listed in order of relevance, so that the best results show at the top of the list like Google. Thus, you can find the most important cases right away (at the top), no matter how many search results you get and all without the risk of over focusing your research. Fastcase includes 12 different ways to sort search results (such as relevance score, number of citations, or date decided), so you can customize what’s important to you when sorting results.

Fastcase’s Authority Check feature (citatory) displays a list of hyperlinked citing cases, along with the text in which the citation occurs. Within Authority Check, Bad Law Bot will flag cases that it sees negative treatment for, although this is not a complete citator like Shepard’s. As you view a case, an icon at the top of the screen shows the number of citations. Click on the number to open a pop-up screen that provides an array of information about the cases. It is important to note it is always incumbent on the researcher to make sure the case flagged by your citator is saying what the citator purports to say.

A nice feature in Fastcase is permanent URLs for cases. That means you can send colleagues a case URL and they can open the case (provided they have Fastcase). Fastcase also lets you save cases to favorites folders. Fastcase also gives you a research trail, just like Lexis and Westlaw. You can also save documents to your “library” and access them later.

Users of Fastcase have great customer service options that include telephone and e-mail support, and live chat with a research lawyer on its staff. Help options also include a variety of user guides, FAQs and training videos. Fastcase also has a great app which is great for use in court.

Practitioners who are members of the Cleveland Metro Bar Association should take advantage of their Fastcase access when doing legal research if for no other reason than it won’t cost you anything extra. However, I feel most users will find it adds value to their legal research.

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Bankruptcy courts have faced a dramatic increase over the years in the number of issues at the intersection of bankruptcy law and environmental law. This heightened judicial activity has mirrored the increase in environmental legislation. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Pub. L. No. 96-510, 94 Stat 2767 (codified as amended at 42 U.S.C. §§ 9601-9675), designed to expedite the remediation of environmental contamination and allocate the associated expense, represents the cornerstone of this legislation. Much of the recent judicial effort has focused on reconciling CERCLA’s goals of remediation and cost allocation and the “fresh start” policy underlying the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. One area where the interplay between bankruptcy law and environmental law has proven particularly problematic is the dischargeability of environmental remediation liability. It is now well settled that a debtor may be discharged from liability for CERCLA claims arising from culpable prepetition conduct, discovered prepetition, which results in cleanup costs, incurred prepetition.

Similarly, where the conduct discovery, and cleanup all occur postpetition, the CERCLA claim will either receive administrative expense priority if these three elements occur preconfirmation, or held nondischargeable if they arise postconfirmation. The issue is complicated, however, when the conduct, discovery, and cleanup are spread over the prepetition and the postpetition periods. In particular, courts have struggled with the issue of whether a debtor may be discharged from all future remediation liability arising from prepetition contamination.

This article surveys the divergent views articulated by courts considering the issue of whether a debtor’s future liability for environmental remediation may be discharged in bankruptcy. As demonstrated below, the precise issue is one of statutory interpretation. At its core, though, the dispute centers on the inherent conflict between CERCLA and the Bankruptcy Code, with the result often hinging on the particular court’s view of the critical event giving rise to CERCLA liability.

The Bankruptcy Framework
In general, confirmation under chapter 11 of the Bankruptcy Code discharges a debtor “from any debt that arose before the date of such confirmation.” 11 U.S.C. § 1141(d)(1)(A). Only “creditors” holding “claims” based on “debts” that “arise” prior to confirmation, however, can be affected by the debtor’s discharge. The Bankruptcy Code defines the term “creditor” to mean an “entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor.” 11 U.S.C. § 101(10)(A). The term “claim” is broadly defined to mean “a right to payment,” whether liquidated, fixed, contingent, matured, or disputed. 11 U.S.C. § 101(5). Accordingly, the determinative issue as to the dischargeability of future CERCLA liability is whether such liability constitutes a statutory claim.

Judicial Tests
In one of the most far-reaching decisions in this area, the Second Circuit Court of Appeals in United States v LTV Corp. (In re Chateaugay Corp.), 944 F.2d 997 (2d Cir. 1991), held that environmental remediation costs incurred by the U.S. Environmental Protection Agency (EPA) under CERCLA are dischargeable statutory claims, regardless of when incurred, if such costs arise from a prepetition release or threatened release of hazardous waste.

This holding arose out of the reorganization of LTV Corporation in the late 1980s. The EPA had filed a proof of claim covering only prepetition remediation costs incurred at certain specific sites, but asserted that LTV’s ultimate CERCLA liability would increase as a result of postpetition remediation at those and other then unidentified sites. The EPA sought a declaratory judgment on the dischargeability of these postpetition remediation costs.

The appellate court began its analysis by noting the broad scope of a statutory claim. The court recognized, however, that this scope did not encompass all possible future liability. It then proceeded to examine the boundaries that courts had fashioned in the analogous case of a tort claim for injury manifested postpetition, but resulting from a debtor’s prepetition conduct.

After reviewing the unsettled state of the law with respect to future tort claims, with some courts finding a claim to exist upon exposure and others only upon manifestation of injury, the Second Circuit stated that the instant issue was more manageable. The relationship
between LTV and the EPA was closer than that existing between future tort claimants and a tort-feasor. Here, the EPA was aware of LTV’s conduct. Thus, the ultimate liability was within the fair contemplation of the parties, as in the case of contingency claims arising in contract. It was irrelevant that the EPA was unaware of the full extent of LTV’s ultimate CERCLA liability. The EPA’s claim for future response costs was merely contingent, and, thus, within the precise definition of claim under the Bankruptcy Code.

The court also took note of the policy implications of its decision by stating that, if it were to hold otherwise, the EPA would be at risk of losing even a partial recovery. If unincurred CERCLA response costs are not claims, the court observed, corporations with substantial environmental liability might be unable to reorganize at all and would instead be forced to liquidate.

A conflicting view was announced by the U.S. District Court for Minnesota in United States v. Union Scrap Iron & Metal, 123 B.R. 831 (D. Minn. 1990). The court held, in the circumstances presented, that a CERCLA claim does not arise until the claimant actually incurs cleanup costs.

The Union Scrap debtor filed for Chapter 11 and received a discharge in 1985. In 1987 and 1988, the EPA incurred significant remediation costs at a site once operated by the debtor’s agent. In 1989, the EPA brought suit against a number of parties, including the postconfirmation debtor, to recover these costs.

The debtor contended that because the release took place prepetition, its liability for the remediation costs had been discharged. The EPA responded that the bankruptcy involved only the debtor’s known facilities and that the debtor never acknowledged potential liability at the site in issue. The EPA contended that its lack of knowledge with respect to the site precluded any discharge of future liability.

The district court agreed, holding that the EPA’s claim did not arise until it incurred the remediation costs. Because the remediation costs at issue in the case were incurred postconfirmation, the district court held that the EPA’s claim had not been discharged.

In reaching this result, the district court also focused on the Bankruptcy Code’s definition of “claim.” It noted, however, that nonbankruptcy law determines the existence of the legal obligation which gives rise to a statutory claim.

The position states the U.S. District Court for the Northern District of Texas in the In re National Gypsum Co. reorganization, 139 B.R. 397 (N.D. Tex. 1992), adopted a middle ground. The court specifically refused to adopt as broad a rule as the Chateaugay decision, not did it hold that all postconfirmation remediation costs are nondischargeable. Instead, it held that “all future response and natural resource damages costs based on prepetition conduct that can be fairly contemplated by the parties at the time of the debtor’s bankruptcy are claims under the Bankruptcy Code.” Id. at 409.

Conclusion
As these decisions illustrate, there is a striking lack of uniformity in the approaches adopted by the courts to the issue of whether a debtor may be discharged from future CERCLA liability. The fundamental tension between the goals of CERCLA and the Bankruptcy Code may well preclude resolution without congressional intervention. As the courts, nonetheless, struggle toward an answer, the foregoing decisions are likely to guide their reasoning.

Jeffrey Levinson of Levinson LLP has practiced creditors’ rights law for 25 years and regularly represents entities both in and out of bankruptcy that face environmental issues. He has been a CMBA member since 1990. He can be reached at (216) 514-4935 or jml@jml-legal.com.
Each month, these pages will be dedicated to highlighting just some of the activities and programs of your Cleveland Metro Bar.

EMAIL SILENCE?

We share our most important and timely news via email. If you are not receiving any emails, you may have mistakenly unsubscribed, leaving you out of nearly all member news and information. If you did unsubscribe, we will need your permission to email you once again. It’s easy to sign up for our mailing lists. Simply text “CMBAemail” to 22828 to get started.

Not a texter?
Our membership department would be happy to help. Please contact us at (216) 696-3525 or membership@clemetrobar.org

NEW WEBSITE COMING SOON

A newly revised CMBA website will go live next month. We will share more about the site in next month’s Bar Journal, so stay tuned. The new site will provide a more user-friendly, interactive experience for finding information, registration and more.

SPRING 2016 INSTITUTE DATES

<table>
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<th>Date</th>
<th>Event</th>
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<td>March 11 &amp; 12</td>
<td>Event Medical/Legal Summit</td>
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<tr>
<td>April 20 &amp; 21</td>
<td>Northern Ohio Labor &amp; Employment Law Conference</td>
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<tr>
<td>June 1 &amp; 2</td>
<td>William J. O’Neill Great Lakes Regional Bankruptcy Institute</td>
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GOLF OUTING SAVE THE DATE

Save the date for this year’s golf outing on June 27th! Join us as the outing returns to Westwood Country Club! Watch for more details to follow. If you are interested in helping to plan the outing, please contact the Membership Department at (216) 696-3525 or membership@clemetrobar.org
NEW MEMBER BENEFIT ADDED

PracBuilder provides web-based software to help lawyers, especially solo and small firm practitioners, grow their practice. Acting as a virtual marketing director, PracBuilder informs lawyers of how and when to engage clients to strengthen client relationships, stay top-of-mind, and increase referrals.

CMBA members can enjoy a free 30-day trial and 20% savings on the PracBuilder software application for the first 12 months of service. Please visit PracBuilder’s web page at PracBuilder.com/CleMetroBar; Use promotion code CLEMETROBAR. PracBuilder will also provide training and support to CMBA members.

View all benefits at CleMetroBar.org/Membership/Benefits.

MEMBERSHIP IS ON SALE

Happy New Year from all of us at the CMBA! Now is the perfect time to invite your friends or colleagues to join because new and former* members will save 50% off membership and receive all the benefits through June.

Recruitment Bonus for current members: Ask those you recruit to list you as the referral on their application and earn a $25 credit on your account for each new member* you recruit.

*Some exclusions apply. Contact the CMBA membership department with questions.

HALF PRICE LEGAL DIRECTORY

Whether you seek the printed or electronic version, our annual Legal Directory is still available for purchase. As a quick reminder; the Legal Directory includes court contact information, law firm mailing addresses, attorney phone numbers and email addresses. Additionally, we supplement the Directory with local, state and federal agency contacts, professional responsibility materials and attorney resources. Order your copy for a discounted member price of $17.50 (print) or $9.95 (electronic).
As this issue goes to press, we are seeing unprecedented breadth and depth of support for the Cleveland Metropolitan Bar Foundation’s signature special event, Rock the Foundation 11. Be sure to calendar Saturday, February 13 for this ultimate “Rocktail” Party to be held at the Music Box Supper Club in the renergized Flats.

Since the programs funded by the CMBF do so much for our larger community, it has long been our goal to expand support for the CMBF beyond all you generous “usual suspects,” to include the larger corporate community. The Boston Bar Foundation’s John and Abigail Adams Benefit is one of the biggest events of the year in Boston, far beyond just a “lawyers event,” and presents us with a worthy model to strive towards.

This year’s progress in widening support from beyond just the legal community is building on the great success of last year’s Rock the Foundation 10. No doubt we are aided in expanding community awareness of our mission by Sherwin-Williams’ Chris Connor agreeing to receive the first Richard W. Pogue Award for Excellence in Community Leadership and Engagement. Chris and Dick have rocked our community for the better and embody the highest ideal of “Giving Back” that the CMBF-funded programs are all about.

All proceeds from Rock the Foundation 11 will benefit the many Lawyers Giving Back programs funded by the CMBF, including The 3Rs – Rights, Responsibilities, Realities, which is celebrating its tenth anniversary this school year. Cleveland’s lawyers certainly are a force for good in our community. Last year, nearly 1,000 lawyer volunteers contributed 24,195 hours of service to the CMBA’s pro bono and public service programs. They served 4,511 people with service valued at over $3,736,000. So be sure to join the party on February 13 and celebrate this great cause of which we can all be proud.

We thank the following companies and firms that have already stepped up to sponsor Rock the Foundation 11 (current as of date of publication):

**Signature Level**
FirstMerit Bank

**Platinum Level**
Jones Day
The Sherwin-Williams Company

**Gold Level**
BakerHostetler LLP
KeyBank National Association
Ulmer & Berne LLP

**Silver Level**
Calfee, Halter & Griswold LLP
First National Bank
Medical Mutual of Ohio
Ohio Savings Bank, a Division of New York Community Bank
Porter Wright Morris & Arthur LLP
Reminger Co., LPA
RPM International, Inc.
Siegel Jennings Co., LPA
Squire Patton Boggs LLP
Thompson Hine LLP
Tucker Ellis LLP
Veritext Legal Solutions
Vorys, Sater, Seymour & Pease LLP

**Bronze Level**
Ancora Inverness
Benesch, Friedlander, Coplan & Aronoff LLP

Case Western Reserve University, School of Law
Cliffs Natural Resources
Climaco, Wilcox, Peca, Tarantino & Garofoli Co., LPA
Eaton Corporation
First Federal Lakewood
Frantz Ward LLP
Grant Thornton LLP
Hahn Loeser & Parks LLP
Hawkins Parnell Thackston & Young LLP
McDonald Hopkins LLC
Northern Trust
Nurenberg, Paris, Heller & Mccarthy Co., LPA
PNC Bank
PwC LLP
Taft Stettinius & Hollister LLP
University Hospitals
Walter | Haverfield LLP

**Contributing Level**
Ag Real Estate Group, Inc.
Avalon Document Services
Caryn Groedel & Associates Co., LPA
The Cleveland Foundation
Dickie, McCamey & Chilcote
Greater Cleveland Partnership
Ice Miller LLP
Maloney & Novotny LLC
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
The Rock and Roll Hall of Fame and Museum
SS&G Wealth Management

Meanwhile, enjoy some photos of past Rock the Foundation events to help get you psyched!

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CMBF President Hugh McKay grew up in East Cleveland, attended Brown University and the University of Pennsylvania. He is the former President of the CMBA, founder of The 3Rs program, and is Partner-in-Charge of the Cleveland office of Porter Wright where he practices complex commercial litigation. He has been a CMBA member since 1982. He can be reached at (216) 443-2580 or hmckay@porterwright.com.
Are you ready to ROCK?
February 13, 2016

Music Box Supper Club

Great food, drinks, live music, dancing, and more!

We will be presenting our first Richard W. Pogue Award for Excellence in Community Leadership & Engagement to CHRISTOPHER M. CONNOR, Executive Chairman & Former CEO of The Sherwin Williams Company.

This year, we celebrate the 10th Anniversary of The 3Rs and our impactful partnership with the Cleveland and East Cleveland City Schools that is transforming lives.

For tickets and sponsorship, see CleMetroBar.org/RockTheFoundation.
Resolving to Be Judicial Partners

Happy New Year!

With the dawn of a new year comes the inevitable process of looking both backward and forward. Backward at the receding year — did it live up to expectations? What were the highpoints? Missed opportunities? And of course, from looking backward, we look forward making action plans for the new year ahead. According to the Statistic Brain Research Institute:

• 45% of Americans typically make resolutions;
• 17% of Americans occasionally make resolutions; and
• 38% of Americans boycott the New Year resolution process completely.

Even though only 8% of those who make resolutions typically achieve success, people who explicitly make resolutions are 10 times more likely to attain their goals than people who don’t.

Inside the CMBA, we operate on a July 1 fiscal year. That does not, however, exempt us from using the calendar year-end to do some self-reflection. This year, we developed a few 2016 resolutions ... including challenging ourselves to be more innovative in our programs (among other things, watch for interactive audience polling in future CLEs); broadening our engagement with our membership, as well as the Greater Cleveland community (new partnerships are coming); and finalizing a three-year strategic plan before our fiscal year runs out (more on the plan in a couple of months). We also resolved to throw the best party of the year on Saturday, February 13 at the Music Box Supper Club. (Yes, a shameless plug for Rock the Foundation 11 which is nearly upon us. Got tickets? It will be a sell-out again this year!)

Beyond the CMBA, a variety of other resolutions surfaced late in December just about everywhere — in newspapers, blogs, on television and radio. Reports abounded as to resolutions people and organizations in our community were making in a collective effort to create a 2016 that proves to be better, stronger, and more successful than 2015.

Surprisingly, one important year-end resolution failed to find its way into the headlines. On December 14, as many of us began shifting into holiday mode, a group of judges from across Cuyahoga County convened to discuss a topic of critical importance: improving our justice system. More than two dozen judges gathered at the Justice Center in response to an invitation extended by Cuyahoga County Common Pleas Administrative and Presiding Judge John J. Russo to answer a call for action: specifically, a call to work collaboratively as ”Judicial Partners” focused on considering potential ways in which to improve our local system of justice.

Those who came together in December included judges from four divisions of the Cuyahoga County Court of Common Pleas (General, Domestic Relations, Juvenile and Probate), 13 municipal courts and the 8th District Court of Appeals. From this conversation, the judges agreed to create a Judicial Committee that will be charged in 2016 — and likely beyond — with evaluating suggestions for improvements to the County’s justice system.

“Recent reform suggestions have come from outside the Judicial Branch of local government,” said Judge Russo in a news release following the meeting. “Some good ideas were put forth, but without the collaboration of all of the stakeholders, no progress could realistically be made. That’s why we decided to create this group to help protect the integrity and independence of the judiciary.”

As reported further by Judge Russo, once the Judicial Committee is operational in 2016, anyone with a stake in the legal system will be able to present suggestions for improving the manner in which cases move through the courts. Anyone means anyone: private practice attorneys, law enforcement, Clerks of Courts, public defenders, prosecutors, court employees: anyone. In simplistic form, the Judicial Committee could become our legal suggestion box.

In a different but similar vein, the CMBA reintroduced the Bench-Bar Committee in November of 2015. This Board-level committee provides a vehicle for Common Pleas, Municipal and Federal judges to meet with CMBA members representing diverse practice areas for open conversations about issues that are of importance to both the bench and the bar. When the Judicial Committee becomes operational and invites input from stakeholders in our system of justice, it will provide another avenue for substantive collaboration within our profession working toward judicial progress.

Will every idea for improvement move forward under the Judicial Committee? Likely not. Most opportunities for change bring along some sort of cost — financial or otherwise. In the end, decisions as to implementation of changes will probably come about as priorities are established, potential impacts are considered, and costs are measured. However, the creation of the Judicial Committee represents good news for Cleveland lawyers who practice in the courts and who have ideas as to how to improve the system.

Judge K.J. Montgomery, Shaker Heights Municipal Court Judge and representative of the Northern Ohio Municipal Judges’ Association — and member of the Judicial Committee — stated following the inaugural December meeting: “The Courts have always been willing to look at ideas that can improve how justice is provided to the citizens of Cuyahoga County. They deserve nothing less than the best service we can offer.”

Working to make our system of justice better, stronger and more successful in 2016 than it was in 2015 might just be a resolution to which every CMBA member can commit.

Rebecca Ruppert McMahon is the Executive Director of the CMBA and the CMBF. She has been a CMBA member since 1995. She can be reached at (216) 696-3525 or rmcmahon@clemetrobar.org.
Regulations X and Z Create Powerful New Tools for Mortgage Loan Borrowers

BY MARC DANN

Lawyers who practice in Bankruptcy or who litigate judicial foreclosures in Ohio should be aware of powerful new regulations that have been promulgated by the Consumer Finance Protection Bureau (CFPB) under the Real Estate Settlement Protection Act 12 USC 2601 et seq (RESPA) and the Truth in Lending Act 16 USC 1501 et seq (TILA). These regulations create, for the first time, a private right of action when a mortgage loan servicer fails to properly and promptly respond to requests for information, correct irregularities with application of payments, assessments of fees and charges, or to comply with new strict timelines for handling applications for loan modifications, deeds in lieu of foreclosures and short sales.

Regulation X to RESPA (12 CFR 1024 et seq) and Regulation Z to TILA (12 CFR 1026 et seq) took effect on January 10, 2014. These regulations set high standards for the conduct of mortgage loan servicers. Lawyers who work with clients who have potential issues with their home mortgage lenders and Bankruptcy Practitioners in particular should be on the look out for potential claims that their clients may have against their mortgage loan servicer.

The regulations create a new mechanism for borrowers and their counsel to obtain information about a mortgage loan, including information about escrow calculations, application of payments and servicer originated charges like late fees, inspection costs and appraisals. Borrowers can also confirm the content of their original loan documents and quickly identify the name of the owner and master servicer of their notes. This information can be critical for defending judicial foreclosures, planning bankruptcy filings, determining whether causes of action might exist for a borrower under the new regulations or determining whether or not a borrower might be eligible for a modification of their loan. Unlike Qualified Written Requests, which still are available under RESPA, a borrower sending a Request for Information under the new regulations is not required to have a dispute with the lender to make the request.

Such requests can also be helpful for lawyers and title agents handling real estate transactions. A servicer is now required to provide written payoff and reinstatement information within seven business days of receipt of request insuring that residential real estate can close quickly.

The new regulations under both Regulations X and Z also provide for a pre-litigation dispute resolution process. Under the new process a borrower can send a notice of error to a lender. The regulations allow 30 days for the lender to respond or correct the error. Suit cannot be brought for many violations of the regulations unless the lender fails to correct an error within the allotted time period.

While the regulations provide the opportunity to obtain a panoply of information and ability to correct mortgage servicing errors in a timely and efficient fashion, the new regulations and the initial case law interpreting it require strict compliance for borrowers seeking to enforce. For example, a servicer is allowed to designate a specific address for requests for information and notices of error and to ignore requests sent to other seemingly reasonable addresses like the billing address or any other address identified on lender sent materials. Protection against foreclosure activity during the loss mitigation only applies to a borrower’s first application after January 10, 2014 and will not apply to subsequent applications.

One other key feature of the new regulations is a requirement that monthly statements with detailed information be sent to mortgage loan borrowers on a monthly basis. While there is an exception to this rule for borrowers who have filed bankruptcy, for all other borrowers this will allow borrowers to have detailed and through information about their loan on a monthly basis.
Awareness of potential liability of mortgage loan servicers has become even more important in light of the recent decision by many large bank loan servicers to scale down their loan servicing business. This results in more and more mortgage loans being serviced by small, thinly capitalized non-bank servicing companies. These new loan servicers have less reputational risk and are more prone to violate the new servicing regulations. Ironically, the transfers of servicing rights in and of itself often causes servicers to fall out of compliance with the new regulations.

Clients who could benefit from Regulations X and Z Case Review:
1. Borrowers who have been recently discharged from Chapter 13 or Chapter 7 especially in light of Bankruptcy rule 3002.1 that allows for a mortgage loan to be deemed current on discharge in a Chapter 13 Bankruptcy.
2. Borrowers who have filed Bankruptcy to avoid Foreclosure but who had an application for loss mitigation pending. The regulations prohibit affirmative acts toward foreclosure when a borrower has submitted a complete loan modification.
3. Borrowers who had a contract to sell their home by way of a short sale, when the servicer failed to make a decision within 30 business days from submission of application as required by the regulations and then the buyer withdrew.
4. Borrowers with loan modifications where the loan modification has not been honored by a loan servicer or successive loan servicer.
5. Borrowers who have trial loan modifications that last beyond three months.
6. Borrowers with Lender Placed or Forced Placed Insurance.
7. Borrowers with excessive escrow deficiencies.
8. Borrowers with a loan modification that is not recognized by a new servicer.

Practitioners should be aware of the following fact patterns that form the basis of a RESPA claim:
1. When Homeowner/Borrowers have submitted a facially complete loan modification application and loan servicer moves forward in any way to foreclose. (This includes referral to foreclosure counsel, filing of a Foreclosure Complaint in a judicial foreclosure state, filing or recording a foreclosure notice in a non-judicial state, filing a motion for relief from stay in Bankruptcy, filing a dispositive motion in a judicial foreclosure, setting a date for a sheriff’s sale or failing to avoid a judgment or withdraw a sale.
2. When a mortgage loan servicer fails to honor an agreed to loan modification.
3. When a mortgage loan servicer fails to make a decision on a short sale within 30 business days.
4. When a mortgage loan servicer refers for foreclosure before a borrower is 120 days past due.
5. When a mortgage loan servicer fails to properly calculate escrow or an escrow shortage and overcharges to amortize escrow shortages. Note that a servicer may only hold a two-month cushion for taxes, homeowner’s insurance and private mortgage insurance in escrow.
6. Charging for unnecessary appraisals, legal fees, property inspections and other corporate advances.

Practitioners should also be aware of potential claims under TILA:
1. When a mortgage loan servicer fails to provide correct information on monthly statements to Borrower (Borrowers in Bankruptcy are currently exempted). For example, for someone who is 45 days behind, each statement is required to show a six-month history.
2. When a mortgage loan servicer fails to send statements at all (Borrowers in Bankruptcy or discharged from Bankruptcy are currently exempt). This happens more often than one might think.
3. When a mortgage loan servicer fails to apply payments on the same day as they receive them.
4. When a mortgage loan servicer applies payment to fees or corporate advances before principal interest taxes and insurance are brought current.
5. When a mortgage loan servicer fails to provide the name of owner, master servicer and servicer within 10 business days of the date of receipt of written request, payoff or reinstatement figures within seven business days of receipt of written request.

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Marc Dann is is managing parter of the The Dann Law Firm. He is a former Ohio Attorney General and member of the Ohio Senate. He has been a CMBA member since 2008. He can be reached at (216) 373-0539 or mdann@dannlaw.com.
A New Procedure for Dealing with Lawyer Incivility

Lawyers and Judges Can Now Enlist the Assistance of the CMBA’s Professionalism Conciliation Panel

BY HEATHER ZIRKE

ou open your email to find another message from opposing counsel informing you that he plans to seek a fifth continuance of your case. This lawyer has already caused significant delays, costing your client thousands of dollars, and refuses to discuss stipulations even though there is no real dispute between the parties. You don’t want to file a grievance and you’re not even sure if these problems amount to a violation of the ethics rules. What should you do?

Or, you and another lawyer are continually fighting over objections and questions at depositions. What can be done?

The CMBA now has a Professionalism Conciliation Panel to help improve the deportment of lawyers in Cuyahoga County in their interaction with each other and with courts. The Panel will use the Statement of Professionalism issued by the Supreme Court of Ohio in 1997 and the Lawyer’s Creed of Professionalism adopted by the CMBA in 2013 as the guiding principles for the new program.

A lawyer or judge may call the CMBA if they believe the conduct of a lawyer, or of multiple lawyers, has been inconsistent with the Principles of Professionalism and that the assistance of the Panel may help alleviate the situation.

After that, the Panel member will contact the lawyer who is the subject of the call. The identity of the caller who made the report will be given to the lawyer unless circumstances warrant keeping the identity of the caller confidential.

If the Panel member decides the behavior complained of by the caller is inconsistent with the Principles of Professionalism, the Panel member may provide a copy of the applicable principle to the lawyer as a means of persuading the lawyer to change his or her conduct. The Panel member may take further steps as needed to help resolve the situation through informal discussions, counseling, mediation or other action to help the lawyer act in a manner consistent with the Principles of Professionalism in the future.

The same procedures are available if a judge informs Bar Counsel that two lawyers can’t seem to agree on procedural matters and that both lawyers might benefit from meeting with a Panel member.

The conciliation process is confidential and is entirely voluntary. The purpose of the conciliation is to improve the atmosphere or climate in which lawyers are interacting with each other or with the court, and should not be deemed to be an alternative forum for resolving the underlying legal dispute.

The CMBA strongly urges all Cuyahoga County lawyers and judges to make use of this new program and to thereby help improve the level of professionalism in this community. Therefore, do not hesitate to call Bar Counsel if you have a situation that you believe can benefit from this procedure or if you would like further information.

Heather Zirke serves as Bar Counsel for the CMBA. She has been with the CMBA since 2005. She can be reached at (216) 696-3525 or hzirke@clemetrobar.org.
Jennifer Himmelein

Pro Se Divorce Clinics at the CMBA
A Chance to Help Those in Need Who Have Nowhere Else to Turn

If you're old enough to be reading the Bar Journal, you're old enough to have experienced at least two or more of the most major experiences in life, like graduating from college, moving cross-country, having a child, getting married, or for some of us, getting divorced. We've handled these events as best we could at the time and hopefully were able to move on with our lives. But what if you couldn't? What if you were stuck at a point in your life because of financial difficulties or lack of procedural know-how, and you couldn't get to the next milestone that was just over the horizon?

The Pro Se and Pro Se “Plus” Divorce Clinics at the CMBA seek to help low-income individuals in our community move on with their lives by guiding them through the paperwork and process of obtaining a simple divorce without the need to hire an attorney they cannot afford. The Family Law Section of the CMBA, in partnership with The Legal Aid Society of Cleveland, hosts Pro Se clinics every month and Pro Se “Plus” clinics every other month to help those in the community seeking simple divorces, where participants have: no major assets in dispute; been separated for more than a year; no minor children from the marriage or if there are, then support and custody have already been settled; and demonstrated financial need. During these clinics, the clients are assisted by volunteers who help them fill out the necessary forms for filing a Complaint for Divorce. The clients are carefully screened for eligibility requirements and conflicts by Legal Aid before attending the clinic. In 2014-15, the clinics served 184 individuals with the help of 33 dedicated volunteers, totaling over 100 volunteer hours.

In 2012, the Pro Se Divorce Clinics were expanded to start a second clinic, held every other month, called Pro Se “Plus.” This clinic was formed to reach out to clients who had minor children with their spouse, but who already had a child support order in place through a county Child Support Enforcement Agency or Juvenile Court. This clinic was historically run in the same manner as the regular clinic in terms of its structure. When that began to pose a time problem and seemed to limit the clients who could benefit from such a clinic, ways to modify the clinic were sought to extend its benefits to the most people with the smallest burden on volunteers’ time.

On December 14, 2015, CMBA clinic and Legal Aid volunteers welcomed the judge and attorneys who coordinate the widely successful divorce clinics in Lake County: Lake County Domestic Relations Court Judge Colleen Falkowski; attorneys Ann Bergen, Darya Klammer, Anna Parise; and attorney Kari White from Legal Aid. To a group of interested, potential new volunteers, the group explained how their program runs and how divorce clinics can benefit practitioners, the judiciary, and clients.

We learned that thanks to the dedication of the court and clinic volunteers, the Lake County model takes all types of clients with any type of issue. For their clinics, clients fill out intake forms with all of their necessary information in advance. Those forms are submitted to volunteer attorneys who draft the necessary paperwork, and then clients are brought in during a clinic in to meet with a volunteer attorney to review the paperwork that was drafted in advance. This clinic through Lake County is also coordinated with the Clerk of Courts, who has a makeshift filing station set up to receive the filings as they are completed at the clinic. It is a very well-crafted system that can serve a wide range of clients who need help obtaining a divorce for a variety of reasons, but who are universally grateful for the friendly, efficient, and effective help they receive.

The presentation taught us how such clinics can be a win-win-win situation, and we heard how the program coordinators combat common myths and challenges to earn the support of volunteers. For example, many volunteers fear initially that the clinics take away paid work, when the reality is that clinics help individuals who would never be able to afford an attorney anyway — the work is pro bono for the truly needy. Volunteers are sometimes concerned that it will be too much commitment, when they’re already spread thin as it is. However, both the Lake County model and the CMBA clinics offer volunteers the chance to sign up for as many clinics or as few as their schedules can bear, for just over an hour of their time on a Friday. If they can’t make it downtown, volunteers can help by agreeing to review and complete simple documents on their own time to help the clinics run more quickly. And training and assistance is always available for those whose practices aren’t primarily in family law — it truly is an easy way to get involved.

After reviewing the Lake County Domestic Relations Court pro se clinics this year, we sought to mirror their program as much as possible, which has seen great success in terms of recruiting volunteers and helping clients. We’ve created a new intake sheet for Legal Aid to use to pre-screen clients and fill out their forms in advance. The clinic has not yet been expanded to include any additional clientele, but the hope is that when this clinic gets a stronger, wider volunteer base and gains some more solid footing, we will be able to offer all income-eligible clients in...
the Cleveland community, no matter their divorce-related issues, the opportunity to attend a clinic and start down their new path in life.

As we learned at the Lake County presentation and by our own experience, these clinics offer many benefits to the court and the bar. The court is helped by having pro se litigants who are able to have appropriately filed forms and some information about the divorce process without relying on the court to do so or having their incorrectly filed cases overwhelm the system. The bar is helped by having these litigants get their divorce cases heard, with little volunteer time needed from volunteer attorneys, without causing a burden on the court system in doing so. Unlike accepting pro bono cases on a case-by-case basis, there is no risk to the volunteer attorneys of conflict issues and the amount of volunteer time is vastly diminished.

We hope that you will join us in our vision for the future of the Pro Se and Pro Se “Plus” Divorce Clinics, and help us grow our volunteer base. Whether you can commit to a single clinic or more in person throughout the year, or if you’re interested in helping complete paperwork behind the scenes, there’s a place for you. For more information and to sign up, please contact the CMBA at (216) 696-3525 or email Jessica Paine, Assistant Director of Community Programs, at jpaine@clemetrobar.org. Thank you for helping people in our community take their next step forward.

2016 Pro Se and “Plus” Divorce Clinics
All clinics held at the CMBA Conference Center
Regular clinics: 10–11 a.m.; Plus: 1–2:30 p.m.
• Jan. 15 (regular only)
• Feb. 26 (regular and Plus)
• March 18 (regular and Plus)
• April 15 (regular only)
• May 20 (regular and Plus)
• June 17 (regular only)
• July 29 (regular and Plus)
• Aug. 19 (regular only)
• Sept. 16 (regular only)
• Oct. 28 (Pro Bono Week: regular and Plus)
• Nov. 18 (regular only)

Jennifer Himmelein is a family law attorney for Cavitch, Familo & Durkin Co., LPA., and leads the monthly Pro Se and Pro Se “Plus” Divorce Clinics at the Bar. She currently co-chairs the CMBA’s Family Law Section and has been a CMBA member since 2009. She can be reached at (216) 472-4652 or jhimmelein@cavitch.com.
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In February 2013, a study by the Organisation for Economic Co-operation and Development (OECD), which had been commissioned by the G-20 countries, concluded that some multinational enterprises (MNE) purportedly use tax planning arrangements that can result in eroding the tax base of countries. This effect is commonly referred to as “base erosion and profit shifting” or BEPS. In September 2013, the OECD and G-20 adopted a 15-point Action Plan to address BEPS. Since that time, the OECD has published specific recommendations to carry out the Action Plan. Final recommendations were issued in October 2015, and the G-20 endorsed them about one month later.1

The actions identified to address BEPS generally address three key pillars: consistency of domestic rules that affect cross-border activities; strengthening existing substance requirements (e.g., rules requiring taxing rights to be aligned with value-adding activity); and improving transparency. This article addresses Action 13 — Transfer Pricing Documentation and Country-by-Country (CbC) Reporting, which is part of the “improving transparency” pillar. Specifically, this article covers, from a high level, the proposed rules and recommendations from the OECD on how the CbC Reporting requirement should be implemented.

Proposed Rules
Action 13 would require MNEs to provide high-level information regarding their worldwide business operations and transfer pricing policies in a “Master File” that would be available to all relevant tax administrations. The Master File would include an organizational structure and a description of the MNE’s businesses, intangibles, intercompany financial activities and financial and tax positions.

The action also would require that detailed transactional transfer pricing documentation be submitted in a “Local File” specific to each country. The Local File would include local entity information, including controlled transaction and financial information for such local entity.

Further, Action 13 would require large MNEs to annually file a CbC Report (Report) that would provide certain financial and business information for each jurisdiction in which the MNE does business. Each MNE would report its group’s allocation of income, taxes, and business activities on a tax jurisdiction-by-tax jurisdiction basis. A two-page model template for providing such information is set forth within the report.

The Action 13 report provides important detail regarding the information that would be required from MNEs, and should be reviewed closely to supplement the above summary. Further, Action 13 provides guidance on proper implementation of its recommendations. Certain important aspects of such implementation guidance relative to CbC Reporting are set forth below.

Guidance on Implementation
It is recommended by the OECD that the first CbC Reports be required to be filed for MNE fiscal years beginning on or after January 1, 2016. The MNE fiscal year for this purpose is the consolidated reporting period for financial statement purposes, and not necessarily the MNEs tax year. The recommendation would allow MNEs one year from the close of the fiscal year to which the Report relates to prepare and file the Report. Thus, the earliest the CbC Reports would be required to be filed would be December 31, 2017. However, the time it may take an MNE to compile the extensive information and ensure it can comply with the rules in a timely manner should not be underestimated.

The OECD has proposed that the CbC Report requirement apply only to MNE’s with annual consolidated group revenue equal to or exceeding EUR 750 million. This is expected to exclude 85 to 90 percent of MNEs tax year. The recommendation would allow MNEs one year from the close of the fiscal year to which the Report relates to prepare and file the Report. Thus, the earliest the CbC Reports would be required to be filed would be December 31, 2017. However, the time it may take an MNE to compile the extensive information and ensure it can comply with the rules in a timely manner should not be underestimated.

The OECD has proposed that the CbC Report requirement apply only to MNE’s with annual consolidated group revenue equal to or exceeding EUR 750 million. This is expected to exclude 85 to 90 percent of MNE groups from the requirement. However, the OECD intends to reconsider the appropriateness of this revenue threshold as it observes and monitors implementation of its recommendations. It also intends to analyze whether additional or different data should be in the Report. (The OECD intends to formally review implementation of the Action 13 recommendations in 2020.) No other exemptions from filing the CbC Report have been recommended by the OECD. However, the proposed rules specifically address certain income derived from international transportation or
transportation in inland waterways, which should be reviewed by relevant taxpayers.

To address privacy concerns of MNE’s, the OECD would require jurisdictions that enact CbC Reporting to simultaneously promulgate laws protecting the confidentiality of the Report. In addition, the OECD has indicated that jurisdictions should ‘appropriately’ use information in the Report. Appropriate use of the Report is to assess high-level transfer pricing risk. It should not be used to propose adjustments to the taxpayer’s income, although it may be used as a starting point in making further inquiries.

The OECD recommends that the CbC Report be filed by the ultimate parent entity of the MNE group in its resident jurisdiction, and that the Report be made automatically available to all jurisdictions in which the MNE group operates. Action 13 includes three model Competent Authority Agreements that would be used to facilitate such automatic exchange of the Report. They are based on the Convention on Mutual Administrative Assistance in Tax Matters, bilateral tax conventions, and Tax Information Exchange Agreements. The mechanism for exchange of data is intended to help protect the confidentiality of information that is shared between governments.

If the jurisdiction of the ultimate parent does not make available the CbC Report to the other jurisdictions where the MNE operates, a local filing requirement or a change of the obligation to file and exchange the Report to the next-tier parent country is recommended. For example, suppose a Luxembourg MNE has a next-tier United Kingdom (UK) entity, and that Luxembourg does not require an exchange of the CbC Report with other jurisdictions of the MNE but the UK does. In such case, the CbC Report would still be made available to non-Luxembourg jurisdictions in which the MNE operates, even though Luxembourg did not enact the requirement into law.

The OECD acknowledges that its proposed disclosure requirements are just that — proposals — and are not binding on taxpayers until implemented into law. Since the United States is a member of the OECD and G-20, it may decide to implement the above proposals. Further, the U.S. Treasury Department, on July 31, 2015, indicated it intends to develop Regulations under Sections 6011 and 6038 relating to the CbC Report. Such regulations are expected to be issued soon. (Please be aware that this article is written as of December 1, 2015, and the regulations may have been issued between then and the date this article is published.)

The OECD’s recommendations for new disclosure requirements and sharing of information, if implemented, will result in new compliance burdens for large U.S. MNEs. U.S. MNEs should understand the proposed requirements and their ability to timely comply with them, as well as stay up to date with relevant legislative updates in the United States and other jurisdictions where they operate.

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Michael Rogers is a Senior Associate in the International Tax Services group of PricewaterhouseCoopers LLP in the Cleveland office. He has a J.D. and LL.M. in Taxation, with a curriculum focus in International Taxation. He works out of PricewaterhouseCoopers LLP’s Cleveland office. He has been a CMBA member since 2009. He can be reached at (216) 875-3061 or michael.rogers@pwc.com.
A record crowd of 680 runners of all ages, plus their friends and families, gathered at the Galleria at Erieview for the Cleveland Metropolitan Bar Foundation’s annual Halloween Run for Justice. What was not to love about this year’s event? It landed on Halloween and the energy and costumes were great. The Cleveland weather cooperated, and course conditions were ideal. We partnered with the Cavaliers to celebrate their season the morning after their winning home opener — the addition of Ahmaad, Moondog, the Cavs Scream and Spirit Teams kept the crowd fired up. Mayor Frank Jackson joined us and served as our honorary race starter.

Through the generosity of our event sponsors and participants, we raised over $45,000! All event proceeds are used by the CMBF to fund our many “Lawyers Giving Back” pro bono and public service programs, including The 3Rs, that are making a positive difference in our community.

It takes a fantastic team to put together a successful special event. We offer “shout outs” to our 2015 event dream team:

- Jason Hillman and the Cleveland Cavaliers for their commitment and enthusiastic participation
- Mayor Frank Jackson for his kind remarks about The 3Rs and for helping us kick off the event
- Judges John Russo, Kristin Sweeney and Ronald Adrine and Roseanne Aumiller and Jason Hillman for presiding over the costume contest
- CMBF’s Halloween Run Committee, including Pat Krebs, Jack Kluznik, Hugh McKay, Drew Parobek and co-chairs Jon Leiken, Matt Secrist and Bart Bixenstine
- Hermes Sports and Events – Cleveland
- Our race day volunteers and CMBA staff and their families, who staffed the event both on the course and in the Galleria atrium

Visit the CMBF on Facebook to enjoy more event photos. For run results, go to www.hermescleveland.com.

Mark your calendars and plan to join us for next year’s Halloween Run for Justice on October 29, 2016.
A record crowd of 680 runners of all ages

For a fun VIDEO of the event: CleMetroBar.org/HalloweenRun
Thank You, Sponsors!

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Jonathan Mester
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Hugh McKay
Drew Parobek
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Alexander Reich
Irene Rennillo
Matthew Secrist
Carter Strang
Debbie Yue

Calfee Team – Back Row: Abbey Kinson Brown, Keith Lubbers, Will Ross, Kim Textoris, David Grover, Adam Doane. Front Row: Alex Reich, Sam Tostino

Kayla Klinkiewicz, Brianna Klinkiewicz, Michael Slaughter and Noah Braun

Ellen, Andy, Joe, Will, Bill and Henry Berglund

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For more information or to view course listings, please visit Cleveland.FastCLE.com or call (216) 696-2404.
Leadership in Law: It’s Never Too Early To Lead

Thursday, January 28, 2016 – CMBA Conference Center

8:30 a.m. Registration & Networking Breakfast
9:00 a.m. Welcome & Introductions
Nadeen Hayden, Synenberg Coletta & Moran, Chair of Young Lawyers Section
9:15 a.m. Becoming Your Own Best Champion
Roxanne Kaufman Elliott, President and i3 Leadership Master, ProLaureate
10:15 a.m. Building Lasting Relationships with Clients and Colleagues
Darrell A. Clay, Walter & Haverfield LLP
Mia M. Mounts, Parker Hannifin Corporation
11:00 a.m. Break
11:15 a.m. Developing Leadership Skills Through Non-Profit and Community Service
Caitlin A. Bell, Jones Day, CMBA Board Member
Ronald V. Johnson, KeyBank National Assn., CMBF & Legal Aid Board Member
Vanessa G. Vacante, Jones Day, Moderator
12:15 p.m. Lunch (included with program)
1:15 p.m. How Understanding Emotional Intelligence Can Help You Grow as a Leader
Jaime Bouvier, Assistant Professor, Case Western Reserve Univ. School of Law
2:15 p.m. Mastering the Art and Science of Making It Rain
Chelsea R. Mikula, Tucker Ellis LLP
Mary H. Stiles, Ohio Guidestone
3:00 p.m. Break
3:15 p.m. Striking a Balance Between Making a Living and Making a Life
K. James Sullivan, Calfee Halter & Griswold LLP
Suzana K. Koch, U.S. Attorney’s Office
4:15 p.m. Transition Happens: Driving the Bus in the Direction You Want to Go
Breakout Sessions:
From Associate to Partnership
From Unemployment to Employment
From Law Firm Life to Other Settings
5:00 p.m. Adjoin to Social

The CMBA, Academy of Medicine Education Foundation, and The Academy of Medicine of Cleveland & Northern Ohio (AMCNO) present

2016 Medical/Legal Summit

Friday and Saturday, March 11 and 12, 2016 – CMBA Conference Center

HEALTH CARE LAW INSTITUTE – MARCH 11 – 7.00 CLE, CME NOT AVAILABLE

8:00 a.m. Welcome & Introductions
8:15 a.m. Introduction to Medicare and Medicaid
9:30 a.m. Fraud and Abuse
10:30 a.m. Break
10:45 a.m. Anti-Trust

11:45 a.m. Lunch; Federal and State Update (1.25 Hours)
1:30 p.m. Billing/Audits Roundtable
2:45 p.m. Break
3:00 p.m. Life Sciences and Innovations Roundtable
4:15 p.m. Adjoin to Medical/Legal Summit

MEDICAL/LEGAL SUMMIT – FRIDAY SESSION – MARCH 11 – 1.50 CLE, 1.50 CME

4:15 p.m. Registration
4:30 p.m. Welcome & Introductions
Anne Owings Ford, CMBA President
Matthew E. Levy M.D., AMCNO President
4:45 p.m. Keynote Presentation: Welcome to Healthcare in 21st Century America
Margaret E. O’Kane, Founding and Current President of the National Committee for Quality Assurance (NCQA)

She was elected a member of the Institute of Medicine in 1999 and received the 2009 Picker Institute Individual Award for Excellence in the Advancement of Patient-Centered Care. Modern Healthcare magazine has named O’Kane one of the “100 Most Influential People in Healthcare” ten times, most recently in 2015, and one of the “Top 25 Women in Healthcare” three times. She received the 2012 Gail L. Warden Leadership Excellence Award from the National Center for Healthcare Leadership.

O’Kane holds a master’s degree in health administration and planning from Johns Hopkins University, where she received the Distinguished Alumnus Award and serves on the Advisory Board of the Bloomberg School of Public Health.

6:15 p.m. Adjoin to Networking Reception

SATURDAY SESSION – MARCH 12 – 4.00 CLE, 4.00 CME

7:30 a.m. Registration & Breakfast
8:00 a.m. Welcome & Introductions
8:15 a.m. Telemedicine: Achieving High-Quality Innovative Healthcare Delivery – Plenary Session
9:15 a.m. End of Life Issues – Plenary Session
10:15 a.m. Break
10:30 a.m. Breakout Sessions:
Practicing in an “Opioid Epidemic” – Best Practices, New Regulations and Other Developments
HIPAA Update and Implications of the Use of Electronic Medical Records
11:30 a.m. Break
11:45 a.m. Breakout Sessions:
Tort Reform: Application of Caps to Damage Awards and Collateral Sources and the Impact of the Affordable Care Act (ACA)
Ohio Medical Board Round Up: One Bite, Mandatory Reporting and Other Issues
12:45 p.m. Adjoin
The CMBA gratefully acknowledges the many attorneys who served as CLE program chairs for Fall 2015.

From selecting topics and speakers to coordinating the efforts of their planning committees to moderating the program, we appreciate the many (non-billable) hours our chairs devote to their programs.

If you are interested in becoming more involved with the CMBA as a seminar chair, please contact Samantha Pringle (springle@clemetrobar.org) or Carmen Franklin (cfranklin@clemetrobar.org), or call us at (216) 696-2404.

Professionalism in the Deposition Battlefield and Sealing the Deal

Frank R. DeSanctis, Thompson Hine LLP
Jack S. Klunzak, Weston Hurd LLP

Municipal Court Update Series


Seeing It From All Sides: Navigating the Course of a Business Deal

Michael J. Kackza, McDonald Hopkins, LLC

Suzana K. Koch, U.S. Attorney’s Office

Mark D. Kozel, BDO

Beth Ann Schenz, The Huntington National Bank

Robert M. Stefanic, Ice Miller LLP

42nd Annual Estate Planning Institute

Erica E. McGregor, Tucker Ellis LLP

Best Practices in Mediation and Settlement Conferences

Mark J. Wacht, Wacht Kurant LLC

Laura W. Creed, Cuyahoga County Court of Common Pleas

37th Annual Real Estate Law Institute

Kevin M. Hinkel, Kadish, Hinkel & Weibel

Paul J. Singer, Singerman Mills Desberg & Kauntz

Resilience: How Lawyers Can Prepare for and Cope with the Unexpected in Practice

Kimberly Vanover Riley, Montgomery Rennie & Jonson

Deborah A. Coleman, Coleman Law LLC

9th Annual Special Education Law Forum

Linda M. Gerczynski, Hickman & Lowder Co., LPA

Disorder in the Court

Philip Bogdanoff, Esq.

What’s Trending in Insurance Coverage: #Cyber Risk #Data Security

K. James Sullivan, Caffee Holter & Griswald LLP

58th Annual Cleveland Tax Institute

Peter A. Igel, Tucker Ellis LLP

Advanced Worker’s Compensation Medical/Legal Seminar

Carol D. Strassman, Ross Brittain & Schonberg Co., LPA

Anthony A. Bucco, Ross Brittain & Schonberg Co., LPA

Managing the Media: Lawyers and the Press

Bruce M. Hennes, Hennes Communications

Legal Eagles Year End Update

John A. Grecol, Darling Duffy Co., LPA

New Lawyer Bootcamp

Ian N. Friedman, Friedman & Nemecek, LLC

Pitfalls and Pointers for Young Litigators

Clare Gravens, Cuyahoga County Court of Common Pleas

Lisa Sanniti, Special Assistant U.S. Attorney

Bob Terbrack, Kelley & Ferraro, LLP

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### January

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<td>Estate Planning Section Lunch &amp; CLE Grievance Committee Meeting</td>
<td>CAP Meeting – 11:30 a.m. CMBA Executive Committee Meeting Labor &amp; Employment Section Lunch &amp; CLE Ohio Mock Trial Competition Volunteer Training</td>
<td>Family Law Section Lunch &amp; CLE</td>
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<td>PLI – 8:30 a.m.</td>
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<td>Resilience: How Lawyers Can Prepare for and Cope with the Unexpected in Practice Video Replay – 8:30 a.m. PLI – 8:30 a.m. Membership Committee Meeting</td>
<td>CMBA Board of Trustees Meeting 3Rs Committee Meeting</td>
<td>It’s Never to Early to Lead – 8:30 a.m. Court Rules Committee Meeting PLI – 8:30 a.m.</td>
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<td>PLI – 8:30 a.m. Ohio Mock Trial Cuyahoga District Competition – 11:30 a.m. – 5:30 p.m. (Justice Center and Cuyahoga County Courthouse)</td>
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### February

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<td>CMBF Executive Committee Meeting – 8:15 a.m. Grievance Committee Meeting</td>
<td>PLI – 8:30 a.m. WIL Section Meeting Diversity &amp; Inclusion Meeting – 4 p.m.</td>
<td>YLS Council Meeting</td>
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<td>MCP Interviews – 3 p.m.</td>
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<td>PLI – 8:30 a.m.</td>
<td>ADR Section Insurance Law Section CMBF Board of Trustees – 4:30 p.m.</td>
<td>PLI – 8:30 a.m. CMBA Executive Committee Meeting UPOL Committee Meeting Workers’ Comp Section Meeting &amp; CLE</td>
<td>Ethics Committee Meeting Real Estate Law Section Lunch &amp; Guest Presentation VLA Committee WKI Inn of Court/CMBA Diversity &amp; Inclusion Committee Program – 5 p.m.</td>
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<td>Pillars Program – 10 a.m. Estate Planning Section Meeting &amp; CLE Grievance Committee Meeting</td>
<td>CMBA Board of Trustees Labor &amp; Employment Section Meeting &amp; CLE</td>
<td>PLI – 8:30 a.m. Family Law Section Meeting &amp; CLE</td>
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<td>Pro Se “Plus” Divorce Clinic – 1 p.m. Ohio Mock Trial Cuyahoga Regional Competition – 11:30 a.m. – 5:30 p.m. (Cuyahoga County Courthouse) WIL Wellness Retreat – 2:30 p.m. (Global Center for Health Innovation)</td>
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<td>3Rs Committee Meeting</td>
<td>PLI – 8:30 a.m. Court Rules Committee Meeting</td>
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**Saturday, February 13** – Rock the Foundation 11

All events are held at the CMBA Conference Center at noon unless otherwise noted. Information is current as of publication date.
Employment

A Lake County home builder is looking for a candidate with extensive bookkeeping experience in the residential construction field. Please send resumes to ghall.935@gmail.com.

Law Practice For Sale

Interested in firm to assume Ohio-based established Motorcycle Injury Practice. For more information, call (440) 413-1927 or send inquiries to 32201 Lakeshore Blvd., Willowick, Ohio 44095

Office Space/Sharing

55 Public Square Building – Large corner office, 17th floor; Beautiful Lake Views, Secretary Space Available. Call Jim or Kevin at (216) 696-0600.

55 Public Square – Office available in nicely decorated suite with receptionist, fax and copier. (216) 771-8084.

Avon – New office space with multiple professionals. Great for networking. Desirable location across from Avon Commons on Detroit Road. Many included amenities. Contact Doug: (440) 937-1551.


Beachwood – LaPlace Mall, corner of Cedar and Richmond near Beachwood Place and Legacy Village. Upper level, sunny office space available with the usual amenities. Separate area for assistant. Free underground parking. Call (216) 292-4666 or email limlaw@sbcglobal.net.

Bedford – Law Offices available with conference room/library, kitchen, receptionist, and mentoring from CJM grad with 40+ years legal experience. (440) 439-5959


Brecksville – Conference room and mailing services available in the Ganley Building for $50 or $150 per month. Possible legal referrals. (440) 526-6411, ask for Laurie.

Chagrin Falls – Furnished office available with other attorneys in eastside law firm. Chagrin Falls location with parking. $500/month includes office, WiFi, kitchen and conference room. Contact lawfirmchagrinfalls@gmail.com.

Chagrin Falls – Great office space available at 36 S. Franklin St. in downtown Chagrin Falls. It’s move-in ready and has a lot of history and character. We have up to 2,000 square feet available that can be leased partially or in its entirety. Please call Kim at (440) 571-7777 for more information.

Downtown Cleveland – Prime Offices Available – Cleveland Litigation Firm – Growing Cleveland-based Business Litigation Boutique is offering up to three partner and associate sized offices for sublease. Related office services also available: including reception, secretarial and conference rooms. This, recently expanded class A and newly remodeled, space is located in North Point Tower in downtown Cleveland. For additional information, please contact Arthur Miller, Firm Administrator; Kaufman and Company at (216) 912-5515

Downtown Cleveland – Rockefeller Bldg. @ W. 6th & Superior. Exceptional office space, exceptional value. All window space, no interior offices. Contact Ben Cappadora or Therese Manos at (216) 696-3929.

Fairview Park Office Space – Beautifully remodeled. Many amenities included. As low as $475 per month. Call (440) 895-1234 to schedule a visit.

Highland Heights – Fantastic offices available. Includes receptionist, waiting area, conference room, kitchen, phone, printer/copier/fax, Internet. Space available for paralegal/secretary. Contact Annette at (440) 720-0379 or asamber@hendersonschmidlin.com.

IMG Center – E. 9th and St. Clair – Office space available in suite with several other attorneys. Telephone, receptionist, fax, copier, secretarial available. Referrals possible. Contact Ty Fazio at (216) 589-5622.

Lakewood – Office Space – Comfortable revitalized century law office building on Madison Avenue with free parking. Large conference room. Contact Kenneth J. Knabe (216) 228-7200 or knabe@brownandszaller.com.

Leader Building – Office space available in elegant suite with several other attorneys. Receptionist, optional secretarial space, library/conference room, fax, copier, telephone system, kitchen. (216) 861-1070 for information.

Mayfield Heights – Beautiful office space in Mayfield Heights available with conference room, receptionist, all necessary law firm amenities, complimentary practices. Rent negotiable. (440) 473-5262.

Mentor – Two offices available at Carrabine & Reardon. Expense sharing arrangement is negotiable. Great location! Contact Jim Carrabine at (440) 974-9911.

Parma/North Royalton – Office spaces in modern suite available now. Contact Paul T. Kirner at (440) 884-4300.


Superior Building – Offices available in professionally decorated suite. Congenial environment with possible referrals. Will also consider barter arrangement for younger attorney seeking to establish own practice. Jack Abel or Lori Zoccolo at (216) 621-6138.

Terminal Tower – Law offices available in prime location with reception area, secretarial space, conference room, copier, fax and kitchen. Reasonable rent. Call (216) 241-2022.
Partners in mediation, Inc. will be in Cleveland to present their 40-hour Divorce Mediation Training

February 11, 12 & 13 and March 3 & 4, 2016

The training will provide participants with the skills to handle disputes arising in separation, divorce, post-decree and never-married parent situations.

It will include aspects of both parenting and property dispute resolution. We use a variety of training approaches, including lecture, discussion, exercises, role play and video examples to teach mediation techniques and appropriate interventions.

The training group will be at least 10 people, and no more than 25. Ohio CLEs and CEUs (for counselors, social workers, and marriage & family therapists) will be provided. Our Rule 16 approval is pending, and we have always been approved in the past several years. This training is designed to fulfill the 40 hour divorce mediation training requirement of the Ohio Supreme Court, Dispute Resolution Section, and Rule 16, Rules of Superintendence.

To register, contact Barbara or Margaret at Partners in Mediation, Inc. at (513) 651-1010 or mediators@fuse.net.

Registration: $950 per person

Register today at PartnersInMediation.com.

Unique Cleveland Warehouse District
Executive and Associate Offices with available full services, amenities, and referrals. Convenient to court houses, restaurants, and parking. Call Pam MacAdams (216) 621-4244.

For Sale

Nice Office Furniture – desk, credenza, chair, bookcases, filing cabinet, storage for case files, leather couch, computer desk, modern marble work table (216) 856-5600

Sligh Mahogany Leather – Top Desk and Matching 4-Drawer Credenza – Tower East Office in Shaker Heights. Madelon Sprague at (216) 310-2512 or Madisprague@gmail.com

Services


Experienced Attorney willing to co-counsel cases in Cleveland and all municipal courts – Contact Joe at (216) 363-6050.


Experienced Process Server – Super competitive prices – flat rate $50/address within Cuyahoga County. First attempt within 24 hours. Pente Legal Solutions (216) 548-7608 or Lisa.vaccariello@pentellc.com

JD / Banking / CRE – Brown Gibbons Lang Real Estate Partners – Highly-experienced dealmakers in Healthcare, Hospitality, Industrial, Multifamily. Brian Lenahan (216) 920-6656 or blenahan@oglco.com

Looking to slow down or starting to think about retirement? Attorney with established probate/estate planning/small business practice looking to expand current practice; (216) 245-8861

MarcoAuction.com – Court: Estate and Probate, Divorce, Power of Attorney; Real Estate: Residential and Commercial: Appraisals; Insurance, Jewelry and Antiques and Chattel Items: Farming equipment – Marco Marinucci, Auctioneer – (440) 487-1878 or RealEstateAuctions39@yahoo.com

Premise Security Expert Witness and Consultant – 3 years experience – 6 years providing expert services to attorneys – Thomas J. Lekan, (440) 223-5730 or tlekan@gmail.com – www.lekanconsulting.com

Trial Attorney – Experienced trial attorney in business litigation, personal injury, and complex family law. (25+ trials). Federal and State. stephen@neebittinger.com; (440) 782-7825.

Video Conference, Deposition Facility – Plaza West Conference Center, Rocky River offers conferencing and remote video, “smart” whiteboard conference facilities for 5–33 participants. plazawestcc.com (440) 333-5484.

Advertise Here! First 25 words are free for members ($1 per additional word, all words $2 for non-members). Contact Jackie Baraona at jbaraona@clemetrobar.org.
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New Associations & Promotions

Attorney Christopher A. Gray has joined the Litigation Department at Wickens Herzer Panza Cook & Batista Co.

Reminger Co., LPA is pleased to announce that Matthew Barbara has joined the Cleveland office. Matt focuses his practice on insurance coverage/bad faith, appellate advocacy, health care, professional liability and general liability litigation.

Smith Marshall, LLP is pleased to announce that Kalen L. Dearnbarger has joined the firm as an associate.

Honors

Larry W. Zukerman, immediate past present of the William K. Thomas Inn of Court, and Hon. Joan Synenberg, national board member of the American Inns of Court received recognition from Hon. Carl E. Stewart, Chief Judge, U.S. Court of Appeals Fifth Circuit for their leadership of the William K. Thomas Inn of Court and for obtaining platinum status, the highest level of achievement for the 2014-2015 term.

Littler’s Cleveland office recently earned a “Tier 1” ranking by U.S. News – Best Lawyers’ annual “Best Law Firms” list. The national firm also was named “Law Firm of the Year” in the Litigation – Labor & Employment category.

Littler earned a perfect score of 100 in the Human Rights Campaign Foundation’s Corporate Equality Index (CEI). The CEI is a national survey and report on corporate policies and practices related to LGBT workplace equality.

Giffen & Kaminski is pleased to announce its inclusion in this year’s “Best Law Firms” list, as reported by U.S. News & World Report and Best Lawyers.

Nurenberg, Paris, Heller & McCarthy Co., LPA is pleased to announce that they were ranked in the 2016 Best Lawyers® Metropolitan Tier 1 for Personal Injury Litigation in Cleveland and Tier 3 in Medical Malpractice Law.


Edward Chyun recently earned a leadership role on the National Asian Pacific American Bar Association’s labor and employment committee.

Thresher, Dinsmore & Dolan is proud to announce that attorneys Ezio Listati, John Liber, Mary Jane Trapp and Laura Wellen have all been selected for inclusion into the 2016 Ohio Super Lawyers magazine.

Elections & Appointments

Reminger Co., LPA is pleased to announce that attorney Tony Catanzarite was named to the Board of Directors for the Stallions Baseball Club, a premier nonprofit youth travel baseball organization.

Karen L. Giffen and Kerin Lyn Kaminski received invitations to join the Fellowship of the Litigation Counsel of America™, a prestigious trial lawyer honorary society.

Ulmer & Berne announces that Cleveland-based partner James N. Kline has been elected Secretary of the Ohio Association of Civil Trial Attorneys.

The International Association of Defense Counsel (IADC) has announced the formation of its Social Justice Pro Bono Committee to extend the organization’s social justice mission by helping to expand and support pro bono programs among IADC member attorneys.

Something To Share?

Send brief member news and notices for the Briefcase to Jackie Baraona at jbaraona@clemetrobar.org. Please send announcements by the 1st of the month prior to publication to guarantee inclusion.

Nurenberg, Paris, Heller & McCarthy announces the following attorneys named to the Ohio Super Lawyers magazine: Andrew R. Young, David M. Paris, Jamie R. Lebovitz, Jeffrey A. Leikin, Jonathan D. Mester, Kathleen J. St. John and William S. Jacobson. David Herman has been selected to Rising Stars.

The Best Lawyers in America® has recognized Ray, Robinson, Carle & Davies P.L.L.C. with a Cleveland Tier 1 ranking and a National Tier 3 ranking for Admiralty & Maritime Law in the 2016 Edition of U.S. News – Best Lawyers “Best Law Firms.” In addition, Julia R. Brouhard and Sandra M. Kelly have been selected by their peers for inclusion in the 2016 edition for Admiralty & Maritime Law.

The International Association of Defense Counsel (IADC) has announced the formation of its Social Justice Pro Bono Committee to extend the organization’s social justice mission by helping to expand and support pro bono programs among IADC member attorneys.
February 13, 2016
Music Box Supper Club
Great food, drinks, live music, dancing, and more!