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# BOLHOUSE, BAAR & LEFERE, P.C.

## ATTORNEYS AT LAW

FALL 2011

### Making Sure our Collection Toolbox is Full

A significant portion of my practice involves collecting bad debts for my clients. Admittedly, a sensitive area right now, considering the economy that both individuals and businesses are operating in today. Nonetheless, we've been collecting bad debts for our clients for a long time, and to be honest, we're very good at it. We are privileged to represent banks, credit unions, leasing companies, automobile dealerships, trucking companies, medical professionals, and even other attorneys in collecting bills that aren't being paid.

One of the key elements in successful collecting is getting quality information from our client early on in the collection process. Specifically, our clients need to have done a good job of getting information on the front end so that we can use all of the tools in our toolbox when it comes time to collect on the back end.

A contract signed by every customer of your business is critical. The contract needs to

provide for security, payment of actual attorney fees, interest or a time/price differential for amounts not paid, and so forth. Getting a detailed credit application is also important. Customers want you to trust them to pay their debt, so they need to provide you with the appropriate information for you to determine if they are credit-worthy. The credit application or contract should also provide that you have the right to run a credit check. We're happy to work with you to develop a basic contract that will be very helpful if you ever need to begin collection proceedings.

Keeping a ledger of communications between you and the debtor, noting the date, time, and details of each conversation, is very important. We obtain very useful information from these notes regarding the debtor's place of employment, payments which they state will be forthcoming, assets they have, etc. We ask our clients to make copies of all checks they receive from the debtor, before

depositing them, to have a record of where they bank.

We continually assist our clients in developing, implementing and updating their pre-debt collection practices which can dramatically increase their chances of recovery should collection proceedings become necessary. All the information gathered then allows us to use all of the collection tools in our toolbox when we seek to obtain a judgment and when we subsequently seek to turn that judgment into cash for our clients.

These are times when many businesses and individuals are struggling financially. You need to make sure that you take the steps necessary to keep your accounts receivable as low as possible by using the proper contracts and gathering as much information as you can in case collection proceedings becomes necessary.

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### Health Insurer Denied your Claim? File an Appeal

If your health insurer refuses to pay a claim, did you know that there is an appeals process in Michigan that may help you get that claim paid?

A Government Accountability Office report dated March 2011 found that most claims are denied due to billing and eligibility issues versus disagreements over whether the care was medically appropriate. What's more, the odds are about 50/50 that if you appeal an insurer's decision, you'll win.

Michigan consumers have additional protections under the

Patient's Right to Independent Review Act (PRIRA) of 2000. PRIRA appeals occur after a consumer has exhausted their right to an internal appeal filed with their health carrier and a formal meeting between the carrier and the consumer. Appeals under PRIRA include but are not limited to the denial of health benefit claims, reduction in benefits or a refusal to provide health care coverage.

Pursuant to PRIRA, within sixty (60) days of receiving notice of an adverse determination, a covered person has the right to

file a request for an external review with the Commissioner of the Office of Financial and Insurance Services. If the Commissioner decides to reverse the adverse determination, the health carrier must immediately approve the coverage that was subject to the adverse determination. Although PRIRA does not provide an opportunity for an evidentiary hearing, the covered person is entitled to seek judicial review of the Commissioner's decision in a circuit court.

In 2008, one third of all Michigan consumers who exercised this right won their appeal or had their appeal resolved before a decision was issued.

So, before pulling out your checkbook or credit card, be sure to exhaust the appeals process. And feel free to call me if you have questions about the process.

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## The Dangers of Waiving Inspections and Surveys

In today's down economy, buying and selling real estate can be a stressful endeavor. But with prices and interest rates at an all time low, many people are still excited about investing in real estate. However, because home values are so low, sellers have begun to aggressively pass along the costs of the purchase to the buyer.

The trend today is for the buyer to be responsible for all or a significant portion of the closing costs including items that have traditionally been the responsibility of the seller. In response, many buyers try to save money by shying away from real estate agents, waiving inspections and declining professional surveys.

In most purchase contracts, the buyer has a specific number of

days to obtain inspections and surveys. The seller is then required to address any issues presented or the buyer can rescind the agreement and retain any earnest money they may have paid. When a buyer waives the right to an inspection and/or boundary survey, there is little recourse when a defect is discovered after closing.

In most cases, a buyer's right to assert a claim against the seller may be barred and they may have unwittingly purchased a property in need of significant repairs. Worse, they may even have assumed the obligation to defend a property line dispute with a neighbor. Both are very expensive endeavors and can be avoided through due diligence.

For over 30 years our practice has been handling real estate transactions, both commercial and residential, and we have developed relationships with experienced and trustworthy inspectors and surveyors. We recommend obtaining both an inspection and survey for all real estate transactions in order to avoid large and unnecessary expenses later on.

If you need any assistance buying or selling property or would like us to recommend one of these specialists, please let us know.

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## 'City of Champions' Again?

**Q**uestion: When was the last time the Lions and the Tigers made the playoffs in the same year?

**A**nsWER: Believe it or not, it's happened only once! And we have to go all the way back to 1935 – before the Super Bowl era.

In 1935 the Tigers made the playoffs behind the talents of such legendary baseball players as Hank Greenberg, Charlie Gehringer, Mickey Cochrane (a player / coach that year), Goose Goslin, Schoolboy Rowe, and Tommy Bridges. Hank Greenberg led the way with 36 home runs and 170 runs batted in. The Tigers went on to win the World Series that year.

As for the Lions, they made the playoffs and won their first

NFL Championship that year. They would go on to win 3 more NFL Championships in the Pre-Super Bowl era. However, following the *Curse of Bobby Layne*, 'cast' in 1958 by Layne himself when the Lions traded him to Pittsburgh, the Lions didn't fare as well! Now, with the 50-year curse having expired in 2008 (the year the Lions went 0-16), the Lions are now 4-0 as I write this article, and just might be headed for the playoffs.

On top of all that success, the Red Wings won the Stanley Cup in 1935-36. Let's hope that 2011 is like 1935 – when both the Lions and Tigers made the playoffs and won their respective championships.

With the success of the Lions, the Tigers, the Red Wings, and other Detroit athletes such as the great Joe Louis, Detroit was dubbed the "City of Champions" in 1935.

What does all this have to do with the law? Absolutely nothing, it's just really fun stuff to write about!

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## Protecting Your Business with a PMSI

Summer has ended, cooler weather has set in and the kids are back in school. More than likely, if you're reading this newsletter, your school days are well behind you. However, that doesn't mean that your education should end. Today's lesson: Purchase Money Security Interest or "PMSI."

One way businesses can mitigate credit risks on goods they sell is to employ a relatively simple security device, the PMSI. The PMSI is defined as "a security interest in goods that are collateral for an obligation to pay for those goods by the purchaser." The value of a PMSI is that it provides businesses who sell goods on credit with priority over other creditors who may have a conflicting security interest, i.e. banks. A properly perfected PMSI will have superior rights to the specific goods that the seller is selling to the purchaser.

In order to establish a properly perfected PMSI, a business must do the following:

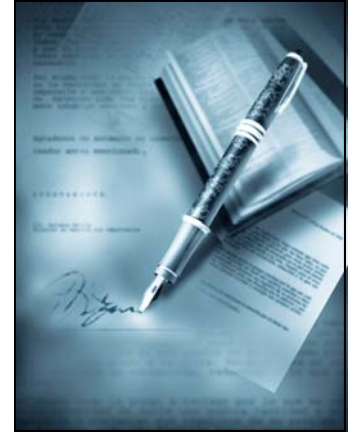
- Have a fully executed Security Agreement. A very simple way to establish the Security Agreement is to insert simple PMSI language into the existing contractual documents that are being used with your business. You will need to make sure that this contractual document is signed by the buyer of the goods recognizing the establishment of a PMSI.
- The PMSI must be perfected by filing a UCC Financing Statement in the appropriate jurisdiction.
- The UCC Financing Statement must be filed within 20 days of the purchaser taking possession of the goods sold.

Once you have accomplished the three steps above, you, as a business, will have a PMSI for five (5) years on goods sold to the customer after the execution and perfection of the PMSI. The PMSI arms

businesses with remedies that assist in collecting its receivable, including retrieving and reselling any goods that are sold on credit for which a purchaser fails to pay for.

This article is simply meant to be a "cliff note" version of the full lesson on Purchase Money Security Interests. Any company that is looking to better secure their position as a seller on credit is welcome to contact me or one of the other Business Law attorneys at our office to further discuss the options of how to effectively include Purchase Money Security Interest language in the current contractual documents that are being used by your company.

*David Lefere focuses his practice in the areas of Business Law, Commercial Litigation and Collections/Creditors' Rights. You can reach him at [davidl@bolouselaw.com](mailto:davidl@bolouselaw.com).*



## Michelle McLean to Present at "Ask-the-Lawyer"

In an effort to bring basic information on various areas of law to the public, the Grand Rapids Bar Association has teamed with the Grand Rapids Public Library to present five "Ask the Lawyer" programs. These events will feature a GRBA member attorney discussing the basics of their area of expertise and answering questions from the audience.

Our firm's own Michelle McLean will be presenting on

the topic of Child Custody and Support. All events run from 6:30-7:30 pm at the downtown library and are free to attend.

Topics include:

- November 15: Child Custody and Support
- January 17: Bankruptcy
- March 20: Tenants' Rights
- May 15: Social Security/Disability

For more information contact the Grand Rapids Bar Association at 616-454-5550 or Michelle McLean at [michellem@bolouselaw.com](mailto:michellem@bolouselaw.com) or 531-7711.





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### **Death & Taxes**

**B**enjamin Franklin reportedly wrote in a 1789 letter to Jean-Baptiste Leroy, "In this world nothing can be said to be certain except death and taxes." I'd like to add another certainty: government will forever be messing around with your taxes.

Michigan taxpayers will face some changes beginning in the 2012 tax year. While the actual tax rate will go down (from 4.35% to 4.25%) many exemptions and credits will be reduced or eliminated.

One of more controversial changes is how pensions will be taxed (not including social security and military pensions). This change is projected to increase revenues by \$343 million per year. How this change will affect individual retirees depends on when they were born and whether or not a court challenge to the change is successful. Stay tuned.

Another change is the phase out of the personal exemption (\$3,700). The personal

exemption will be phased out for taxpayers filing a single return earning between \$75,000 and \$100,000 and for taxpayers filing joint returns earning between \$150,000 and \$200,000. This change is projected to raise \$84 million.

The Michigan Homestead Property Tax Credit and Michigan Earned Income Tax Credit will also be reduced. The Homestead Property Tax Credit will be phased out for taxpayers earning between \$41,000 and \$50,000. Further, taxpayers with homes worth more than \$135,000 would not qualify for the credit regardless of income. The Michigan Earned Income Tax Credit will be reduced from 20% of the Federal Earned Income Tax Credit to 4%, which will reduce the average credit from \$430 to \$143. The projected increase in revenue from these two changes is \$533 million.

There are several smaller changes including the elimination of the \$600 per child tax deduction, the adoption cost credit, and

the ability to take a credit for city income taxes and donations to public broadcasting, universities, homeless shelters, food banks and community foundations. These changes are projected to increase revenues by \$90 million.

It goes without saying that each of these changes will make some group unhappy. When we attorneys settle cases, a settlement is deemed to be a good one if no one is happy about it, but everyone can tolerate it. Whether the changes to Michigan's tax laws will be deemed good, because no one is happy about them but everyone can tolerate them, remains to be seen.

*Tom Vander Hulst focuses his practice in the areas of Business Law, Estate Planning/Probate, and Tax Law. Reach him at [tomvh@bolouselaw.com](mailto:tomvh@bolouselaw.com).*