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ATTORNEYS AT LAW

SPRING 2010

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### **DON'T FORGET!**

*For your convenience,  
we are open late every Tuesday  
evening for no-cost Estate  
Planning consultations!*

**P**icture yourself floating down a pristine tributary of Lake Michigan or trolling slowing along Lake Michigan's lakeshore on a beautiful summer's day. Then picture yourself being attacked by a fish that can grow in excess of 100 lbs., jumping into your boat and striking your body! This is the scenario that could possibly play out if the Asian carp problem is not addressed immediately.

As most readers probably know due to the recent media attention, the big head and silver carp (commonly referred to as the Asian carp) are currently believed to be in the Illinois River in Chicago, which is a tributary to Lake Michigan. These strange, gluttonous fish have already ruined the ecosystem of the Mississippi River and some of its tributaries by devouring the basic food chain and starving out native fish. If

## WHAT A BUNCH OF CARP!

Asian carp reach Lake Michigan and its tributaries, they could do the same to the Great Lakes.

Virtually everything that lives in the Great Lakes and its tributaries depend on the plankton that the Asian carp devour. For example, fresh water mussels filter plankton, baby fish of all species slurp plankton until they are big enough for adult fodder, and the big predatory fish that anglers love (such as salmon, steelhead and walleye) prey on smaller species that rely on this plankton. Asian carp consume 40 percent of their weight in plankton daily. For every adult carp, which can grow to 100 lbs. or more, that makes 30-40 lbs. of plankton unavailable to any other fish in the water, EVERY SINGLE DAY!

The purpose of this article is not to advise you of information that you already know,

but instead to urge you to do whatever you can to support the movement to stop the invasion of the Asian carp. This can be done by simply writing letters to your congressperson or senator in your district or by supporting petitions that are being circulated by various groups.

It is my belief that people outside of the Midwest region do not understand the greatness and importance of the Great Lakes and its ecosystem. It is our job, the people who live in the Midwest, who have an understanding of the brilliance of these waters, to advocate on behalf of the Great Lakes and their tributaries.

*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).*

## BOLHOUSE ATTORNEYS TO SPEAK AT GRANDVILLE/JENISON CHAMBER EVENT

**J**oin the attorneys of Bolhouse Law as they present an educational business seminar to members of the West Michigan Business Community. Rick Bolhouse, Tom Vander Hulst and Joel Baar are pleased to be the guest speakers at a combined meeting of the Grandville/Jenison, Hudsonville, and Allendale Chambers of Commerce. The

seminar is open to the public - you do not need to be a member of any of the participating chambers to attend.

Rick, Tom and Joel will be discussing common mistakes that business owners make that could cripple their business. More importantly, they will offer advice on how to avoid these costly mistakes.

Topics to be covered include:

- Employee Issues
- Insurance Issues
- Collections
- Liability Issues
- Government Regulations

The seminar will be held from noon - 1:30 on Thursday, April 29th, at The Pinnacle

Center located at 3330 Highland Drive in Hudsonville. Lunch will be served. If you have any questions, please call Barb at 616-531-7711.

If you'd like to attend, please register on-line at [www.bolouselaw.com](http://www.bolouselaw.com) or by calling our office at 616-531-7711.

## LICENSE REQUIREMENTS UNDER MICHIGAN'S CONSTRUCTION LIEN ACT

Please join us for

### "The Michigan Builders Trust Fund Act and The Michigan Construction Lien Act"

A seminar to educate West  
Michigan builders, contrac-  
tors, subcontractors, labor-  
ers or material suppliers on  
how to properly utilize con-  
struction liens and avoid  
trust fund violations.

Thursday, May 27th  
12 noon

Grandville Banquet Center  
2900 Wilson Ave SW  
Grandville, MI 49418

~ Lunch will be served ~

There is no cost to attend but  
reservations are required.  
Please call 616-531-7711 or  
register on line at our website  
at [www.bolhouselaw.com](http://www.bolhouselaw.com).

From a contractor's point of view, one of the most important laws in Michigan is the Construction Lien Act ("CLA"). This law provides remedies and protection for homeowners, contractors and laborers and ensures that those who are entitled to payment for their labor receive it.

Under the CLA, a building project is classified as either commercial or residential. Understanding the distinction between the two and following the correct procedures for each can make all the difference in a contractor's ability to collect on a particular job.

In order for a contractor to take advantage of the CLA, the contractor must have a written contract directly with the owner, provide the owner with a Notice of Furnishing, execute Sworn Statements and record a Claim of Lien within

ninety (90) days of providing the last labor or material on the project.

A residential builder who meets all of the other requirements previously stated may only enforce his lien rights under the CLA if he is a licensed contractor in the State of Michigan. This is the most overlooked requirement of the CLA and the ramifications to a contractor who fails to obtain a residential builder's license can be devastating.

To illustrate, if a contractor working on a commercial project fails to fulfill his obligations under the lien act (for example, doesn't record a Claim of Lien within the required timeframe) he may still have another avenue to pursue collection - filing suit in state court. However, if a builder is working on a residential project, and he is not licensed,

not only does he lose the ability to foreclose on his construction lien (precisely because he is not licensed), recent case law suggests he may lose the right to sue in state court to collect money due, leaving him with no recourse at all.

If you have any questions about the Michigan Construction Lien Act or your rights as a contractor or property owner, please plan to attend our upcoming seminar on the CLA. (See sidebar.) If you are unable to attend, feel free to schedule an appointment with one of our attorneys who can help guide you through the CLA.

Mark Hofstee focuses his practice in the areas of Estate Planning, Business Law, Criminal Defense and General Litigation. Reach him at [markh@bolhouselaw.com](mailto:markh@bolhouselaw.com).

## "SHARE THE WARMTH" A RESOUNDING SUCCESS!

As most of our readers are aware from the last issue of our newsletter, our firm was honored to participate in *Share the Warmth*, a coat drive sponsored by two local radio stations, JQ99 and 1260 The Pledge.

During the months of January and February our firm helped collect coats, hats, gloves, mittens, and blankets for distribution to people in need. Our office served as an official donation site where our clients, our neighbors and the radio stations' listeners could drop off their donated items which were then distributed to

individuals and families in Muskegon, Ottawa, Kent and Allegan counties. In addition, JQ99 broadcasted live from our office on Tuesday evening, January 19th. JQ99's morning show personalities, Chris and Emilee, were on hand to accept donations, share refreshments and visit with the dozens of donors who stopped by. (And are they ever popular!)

Everyone who donated a coat or a blanket during the live broadcast that Tuesday evening was entered into a drawing to win a full Estate Plan, a \$1,500 value, courtesy of our firm. The lucky winners were Kenneth &

Mary Jo Kruh from Jenison, pictured at left.

It was a great evening and we were happy to be a part of a wonderful project. A big thank you to everyone who stopped by and made a donation! We look forward to next year!



Ken & Mary Jo Kruh

## **MICHIGAN'S NEW "SUPER DRUNK" LAW**

In 2008, Michigan's Legislature passed a revision to the state's Drunk Driving Law to address situations where the convicted driver has an abnormally high bodily alcohol content (BAC). The revision, signed into law by Governor Granholm in January, 2009, is being referred to as Michigan's "Super Drunk" Law.

While the legal threshold for operating while intoxicated is currently .08 grams of alcohol per 100 milliliters of blood or per 210 liters of breath, the Super Drunk Law addresses drivers who have a BAC of 0.17 or higher. Drivers convicted of being super drunk will be subject to increased

penalties including a one-year suspension of driving privileges (for a first offender), increased fines and an increase in potential jail time (from 93 days to 180 days). Super drunk drivers will be required to complete a one-year alcohol rehabilitation program.

Michigan's Super Drunk Law becomes effective October 31, 2010. With these stiffer penalties, along with the currently applicable \$2,000 worth of driver responsibility fees, an individual accused of operating while intoxicated should not attempt to navigate the court system without qualified representation.

For answers to your questions regarding Michigan OWI laws, or if you, a friend or a family member has been charged with OWI, please feel free to contact one of our experienced criminal defense attorneys.

*Mike Risko focuses his practice on civil and criminal litigation and has significant experience representing those who have been accused of or charged with Operating While Intoxicated. Reach him at [miker@bolhouselaw.com](mailto:miker@bolhouselaw.com).*



## **MICHIGAN GOES SMOKE-FREE MAY 1st**

On May 1, 2010 Michigan's smoke-free legislation goes into effect. For some, this is cause for celebration and relief. For others, it is a frustrating nuisance. But for business owners, there is work to be done. There are new rules and regulations which must be followed. While bars and restaurants will have the biggest adjustment, the vast majority of public places are also subject to the smoke-free legislation's new rules and penalties.

The person who owns, operates, manages, or is in control of a bar, restaurant, or workplace is required to make an effort to prevent customers and workers from smoking. The legislation describes

specific measures that must be taken in order for the law to be properly carried out.

The law states that the owner of the public place must post no smoking signs, remove ashtrays, inform smokers that they are in violation of state law, refuse to serve smokers, and, if the individual continues to smoke, ask him or her to leave the establishment.

A business found to be in violation will be directed to comply with the regulations and will be subject to a civil fine of not more than \$100.00 for a first violation and not more than \$500.00 for a second or subsequent violation. In addition, the business in violation can be subject to enforcement by the state or

civil legal action by a private citizen.

*Jeannine Bolhouse focuses her practice in the areas of Family Law, Civil Litigation and Collections. Reach her at [jeannineb@bolhouselaw.com](mailto:jeannineb@bolhouselaw.com).*





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## **THERE'S A NEW LAW IN TOWN**

**Y**ou probably haven't read about it in the newspaper, but a new law governing trusts went into effect April 1, 2010 which affects every trust that exists in the State of Michigan. It is called the *Michigan Trust Code* and has been in the making for the past six years. The Michigan Trust Code is Michigan's first comprehensive statute governing the creation, administration, termination and modification of trusts.

A trust is an agreement whereby one individual, the "Settlor," entrusts property to another individual, the "Trustee," who agrees to manage and distribute the property for the benefit of one or more beneficiaries, as provided in the agreement. A single person can establish a trust as the settlor. A husband and wife, or two or more unrelated people, could set up a trust in which case all would be settlors. The new law clarifies under what circumstances a person is considered capable of creating a trust, the responsibilities of the trustee and the rights of the beneficiaries.

The most common type of trust is a revocable trust, which means the settlor can change or revoke the trust at any time. Often the same person is the settlor, the trustee, and the beneficiary of the trust. In these instances the settlor usually can do anything he or she desires with the trust property. When the settlor dies or becomes incapacitated, the successor trustee must give certain notices and accounting to certain people. Some of these requirements can be limited in the trust; for example the trust could limit who receives an accounting from the trustee under certain circumstance.

Trusts have several advantages over Wills including:

- Avoiding the probate process, especially advantageous for those who own real property in more than one state;
- Maintaining privacy regarding assets;
- Delaying distribution of estate for a period of time after death;

- Providing for minor or disabled children or grandchildren;
- Providing management of assets if the settlor becomes incapacitated; and
- Minimizing estate taxes

Trusts are the most flexible tool used in estate planning. However, they are more complex to draft and operate and, consequently, more expensive than Wills. The complexity of a Trust and the number of trusts necessary to achieve one's estate planning goals will depend on specific individual circumstances.

If you have any questions about trusts or would like your trust reviewed in light of the new law, please contact us for an appointment. We maintain evening hours on Tuesdays for your convenience.

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