

EXPERIENCED ATTORNEYS

JOIN

CUMMINGS, McCLOREY, DAVIS & ACHO, P.L.C.

AUGUST, 2001

Since our July newsletter went to print, a couple of exciting things have taken place at Cummings, McClorey, Davis & Acho. In addition to three experienced attorneys joining our firm, we are honored to announce that one of our partners was recently elected to the State Bar of Michigan's Board of Commissioners.

Greg Ulrich was thrilled when he heard the news that he had been elected to the State Bar's Board of Commissioners. The board acts as the primary managing body for the State Bar and sets its policy between Representative Assembly meetings. Greg will sit on the board for a three year term and will represent District H (Wayne County). Throughout his legal career, he has served three terms as State Bar Commissioner, chairperson and clerk of the Representative Assembly and has been active in various Bar committees. He concentrates his practice on business litigation, real estate, technology, alternative dispute resolution and governmental matters. Greg received his Juris Doctorate from University of Detroit School of Law in 1977 and his undergraduate degree, *magna cum laude*, from University of Detroit in English and Philosophy in 1974.

Three experienced and knowledgeable attorneys recently joined the firm. Each attorney has a unique and specialized background and is a welcome addition to Cummings, McClorey, Davis & Acho.

Karie Holder Boylan joined our firm as an associate in June, 2001. She focuses her practice on police misconduct and civil rights litigation, auto negligence and no fault, municipal law and insurance defense. Before becoming an attorney, she was a police officer for 10 years where she testified as an expert in accident reconstruction and taught five regional police academies. Karie is a member of the National Council for Political Science and Administration and the State Bar of Michigan. She

received her Juris Doctorate from Notre Dame in 1996, her Bachelor of Art's degree from Northern Michigan University in Management in 1982 and her associate's degree from Oakland Community College in Criminal Justice in 1987.

Alan Jablin joined our Phoenix office as an associate in June, 2001. He focuses his practice on litigation, corporate and business law, health care and wills and estates. Alan is a member of the Arizona, California and Michigan bar associations and a mediator for the Michigan Circuit and District Courts. He received his Juris Doctorate from Detroit College of Law in 1973 and his Bachelor of Science degree from Wayne State University in Accounting in 1970.

Christopher K. Cooke joined our firm in August, 2001 as a partner managing the Traverse City office. He replaces Philip Crowley who has moved to Florida, but remains "of counsel" to our firm and our firm's clients. Chris brings with him 18 years of experience as a seasoned trial lawyer who has handled all types of personal injury, wrongful death and major property damage and subrogation cases. We are delighted to have him join our firm and supervise the cases within the Northern Michigan area. Chris received his Juris Doctorate from Thomas M. Cooley Law School in 1982 and his Bachelor of Science degree from Albion College in Computational Mathematics and Economics in 1977.

This is the second newsletter that we have distributed to our clients and colleagues so far we have received a terrific response! Because the monthly newsletter is written with your specific needs in mind, please let us know if there is a particular area of the law you are interested in learning more about. We will prepare an interesting article on that topic for a future publication.

Timothy Young, Managing Partner

in this
issue

Understanding Construction Law	2
Areas of Practice	2
Attorney Profile	3
Protecting Your Company's Secrets	3
Office Locations	4

UNDERSTANDING CONSTRUCTION LAW

HOW TO MAKE CHANGES TO AN EXISTING CONTRACT

Summer is in full swing and with the sunny and warm weather comes construction. Whether you are building your dream home, an addition to your existing home or a building for a business, it is important to have a basic understanding of Construction Law and how it relates to you.



Before construction begins, a contract between the owner and contractor must be signed. Most projects involve, and often require, changes from what was originally designed. Changes are necessary for several reasons. First, the owner may change his/her mind about what their specific needs are. Second, the owner's representatives may have made interpretations of the contract requirements that differ from the contractor's interpretations. Thirdly, unexpected conditions could be encountered at the job site during construction. When changes are necessary, it is important to know how to go about making them after the contract has been signed.

Historically, the contractor was counted on to take these types of variables into consideration during a project and was burdened with the risk that the project could cost more than anticipated and agreed to. *The Supreme Court in United States v Speirin*, 248 U.S. 132 (1918) established the doctrine that the contractor bears the risk of unknown or unexpected site conditions stating:

“[w]here one agrees to do, for fixed sum, a thing possible to be performed, he [she] will not be excused or become entitled to additional compensation, because unforeseen difficulties are encountered.”

Consequently, as a result of bargaining over the construction contract, the assumption of risk and the related price inflation contingency to cover these variables, the “changes clause” was included in most standard construction agreements.

The changes clause is intended to allow the parties in a construction contract to change the design, when necessary, if it proves to be too costly or unsuitable, when subsurface conditions are discovered that necessitate design changes or to properly attribute cost to the responsible party. Other contingencies can also be addressed, such as design errors that are discovered, if new materials or equipment becomes available, if specified materials or equipment are unavailable, or to reflect changes in the time or dollar amount as a result of such change orders.

The construction contract should set forth the procedures through which the construction contract can be modified to allow for changes in the work to occur without invalidating the entire contract itself. The requirement that modifications be executed through a change order or similar writing memorializes the requested change in writing with the adjusted time and price.

The formal adjustment to the contract documents serves both parties. First, it helps redress the contractor's quandary over how to perform changes and if it will be properly rewarded in time and price for the work. Secondly, the process prevents the contractor from performing non-requested work on the job as a volunteer only to later proffer a claim for an adjustment in the contract price and time for the work.

An experienced attorney from Cummings, McClorey, Davis & Acho can assist you in answering any, and all, of your specific questions relating to Construction Law. Construction on your home or business can, and should, be an enjoyable experience.

Eugene Pyatenko

Michigan's Premier Full Service Law Firm Areas of Practice

Bankruptcy and Insolvency • Corporate and Business Law • Estate Planning • Franchise Law • Commercial Litigation • General Liability and Prevention • Workers' Compensation Defense • Employment and Labor Law • Environmental Law • Government, Municipal and Administrative Law • Insurance and Reinsurance Coverage, Defense and Subrogation • Mergers and Acquisitions • Personal Injury Litigation and Defense • Real Estate • Turnaround and Financial Consulting • Sports and Entertainment Law • Technology and Computers • Civil Litigation • Appeals • School Law • Public Official Liability • Domestic Relations

Attorney Profile



W. Gregory Shanaberger

Greg Shanaberger focuses his practice on corporate and commercial litigation, employment and labor, domestic relations and business commercial transactions. He received his Juris Doctorate from University of Toledo College of Law in 1988.

Greg has extensive trial experience and in his 14 years of practicing law has yet to lose a jury trial. He is a member of the State Bar of Michigan and acts as General Counsel to many companies across the United States advising on a wide variety of issues encompassing many industries, as well as accepting judicial and nonjudicial appointments as an arbitrator, mediator and receiver.

Greg received his Bachelor of Science degree in Public Law and Government from Eastern Michigan University in 1985. He can be reached at wshanaberger@cmda-law.com or by calling our Farmington Hills office at 248.737.3333.

Eugene Pyatenko



Detroit, *magna cum laude*, in 1980.

Eugene Pyatenko started his legal career as a law clerk for Cummings, McClorey, Davis & Acho from 1978-80 and returned in 2000 as a partner. His practice areas include general commercial and business transactions (specializing in debtor/creditor rights and international joint ventures in the former Soviet Union), commercial litigation, mergers and acquisitions, real estate and lien law. He received his Juris Doctorate from University of

Throughout his legal career, he has been significantly involved in representing clients in acquisitions, mergers, insolvency and bankruptcy matters, turnaround and case management, financing transactions and corporate renewal. Gene is a member of the American Bar Association, State Bar of Michigan, Detroit Metropolitan Bar Association and Oakland County Bar Association. He has participated in numerous speaking and panel presentations relating to these matters and speaks Russian fluently.

Gene received his undergraduate degree in Russian Language and Literature from University of Michigan in 1976. He can be reached at epyatenko@cmda-law.com or by calling our Livonia office at 734.261.2400.

PROTECT YOUR COMPANY'S VALUABLE SECRETS

TIPS ON HOW TO PROTECT YOUR COMPANY'S SECRETS FROM MISUSE BY TEMPORARY EMPLOYEES

The American workplace is changing. Due to tight labor markets and changing lifestyles, temporary employees have become common in corporate America. The use of temporary employees can be a cost effective method of staffing a short term project or filling a vacancy until the right permanent employee can be hired. Temporary employees can be of great assistance to a company. However, the presence of temporary employees who do not have a strong loyalty to your company creates a risk to the security of your company's valuable and proprietary information. By permitting temporary employees unlimited access to your company's trade secrets, you risk misappropriation and misuse of your valuable information.

The Michigan Supreme Court has stated that:

"A trade secret may consist of any formula pattern, device or compilation of information which is used in one's business, and which gives him/[her] an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers."

Clearly, it is in your company's best interest to protect your trade secret from misuse. By taking several simple steps to prevent access to trade secrets by temporary employees, you will ensure the security of your confidential information.

Before a temporary employee joins your company, meet with your staff and discuss limits on their access to proprietary information. If necessary, realign employee duties in order to protect your trade secrets.

Require all temporary employees to sign Confidentiality Agreements recognizing the secret nature of your proprietary information, and require them to agree not to disclose company information as well. Signature of Confidentiality Agreements should be a condition of employment.

If possible, limit access to company files and computers, and if necessary, exclude temporary employees from staff meetings. If you hire temporary employees through an employment agency, work with that agency to ensure that it provides only employees who are willing to sign agreements protecting against disclosure of your company secrets.

Every business has trade secrets it wishes to protect from its competitors. Misappropriation and misuse of such information can give your competitors an unfair advantage and can threaten the continued viability of your business. By taking a few precautionary measures to guard your trade secrets, you can minimize the risk that comes with the use of temporary employees.

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Our Vision

To meld our legal expertise, professional support staff, technical resources and variety of locations to deliver first rate legal services at a fair value to a full range of business, municipal, insurance and individual clients.

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DAVIS & ACHO, P.L.C.

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