

## 2012 Year in Review



T. Joseph Seward

Happy New Year! As 2013 is upon us, I'd like to take a few moments to reflect back on 2012 and the successful year we had at the Firm. The Firm received some significant verdicts and settlements on behalf of our clients. In addition, we hired several new attorneys, won numerous awards and celebrated some remarkable anniversaries.

Five attorneys joined the Firm in 2012.

Tim Mudd joined our Kansas City, MO office; Julianne Polgar, Douglas Curlew and Kali Lester joined our Livonia office; and Lisa Vogler joined our Traverse City office.

**Tim Mudd** practices in the areas of criminal defense, municipal law, insurance dispute litigation, personal injury and wrongful death litigation and defending servicemen and service women involved in court martial proceedings. Mr. Mudd is licensed to practice in Missouri and Kansas. He can be reached at (816) 842-1880 or tmudd@cmda-law.com.

**Julianne Polgar** practices in the areas of municipal law and appellate law. Additionally, she writes briefs for all levels of state and federal courts, argues cases in both the state and federal courts of appeals and performs research for all areas of law handled by the Firm. She can be reached at (734) 261-2400 or jpolgar@cmda-law.com.

**Douglas Curlew** practices in the areas of appellate law and personal injury defense. Additionally, he performs research and writing assignments for all of the Firm's practice areas. He can be reached at (734) 261-2400 or dcurlew@cmda-law.com.

**Kali Lester** practices in the areas of municipal law, utility law

and appellate law. Additionally, she writes briefs for all levels of state and federal courts and performs research and writing assignments for all of the Firm's practice areas. She can be reached at (734) 261-2400 or klester@cmda-law.com.

**Lisa Vogler** practices in the areas of municipal law, insurance defense, and commercial and personal injury litigation. As an entrepreneur and general counsel for a family business, she has extensive background and experience in all issues related to business, including employment law, risk management, contract negotiation and business taxation. She can be reached at (231) 922-1888 or lvogler@cmda-law.com.

All of these attorneys are wonderful assets to the Firm, and I am sure you will hear much more about them in future newsletters.

In other news, **Ronald Acho**, a co-founder and partner of the Firm, was the recipient of the Community Service and Dedication Award by the Chaldean-American Bar Association (CABA). He was selected to receive this award for his many years of legal service to the Chaldean community and to the members of CABA.

**Ethan Vinson**, a partner in our Livonia office, was selected for Life Membership in the Sixth Circuit Judicial Conference by the United States Court of Appeals. Life members are recognized for their integrity, honesty, capability, civility and dedication to the administration of justice. He practices in the areas of municipal law, labor and employment law, insurance law, commercial litigation and appellate law.

**Haider Kazim**, a partner in our Traverse City office, was named to Michigan Super Lawyers Rising Stars list as one of the top up-and-coming attorneys in Michigan for 2012. He practices in the areas of municipal law, zoning and land use and insurance defense.

*continued on page 2*

## 2012 Year in Review (cont.)

**Timothy Ferrand**, a partner in our Sterling Heights office, was recently selected as a 2013 Top Rated Lawyer in Labor & Employment by American Lawyer Media and Martindale-Hubbell. Furthermore, Mr. Ferrand has achieved the AV Preeminent peer review rating, which is the highest rating in legal ability and ethical standards. He practices in the areas of municipal law, labor and employment law and utility law.

**Jim Acho**, a senior attorney in our Livonia office, was named 2013 dBusiness Top Lawyer in the Entertainment and Sports Field category. He practices in the areas of labor and employment law, entertainment and sports law, commercial law and personal injury law.

Six of our employees celebrated important anniversaries with

the Firm in 2012. **Ed Salah**, an attorney, celebrated his 30th anniversary with the Firm; **Robert Hahn**, a partner, **Marcia Wilkerson Guy**, the Firm's office manager, **Cindy Hinks**, a paralegal, and **Janice Canouts**, a legal assistant, all celebrated their 25th year with the Firm; and **Amy Sabolik** celebrated her 15th year with the Firm.

We are fortunate to have such a wonderful group of people working at the Firm and thank them all for their dedication.

As we enter our 48th year of business, we are honored and appreciative for the trust you have placed in all of us and for allowing us continue to be one of Michigan's premier law firms. Have a great 2013.

*T. Joseph Seward, Managing Partner*

## Michigan Legislation Update

### RECENTLY ENACTED MICHIGAN LAWS



*Karen M. Daley*

#### Emergency Manager Law

The Governor recently signed a law that gives distressed communities the ability to choose an emergency manager or other remedies to fix their finances. The bill was approved by lawmakers after voters repealed an emergency-manager law in the fall election. Under the old law, the power to send an emergency manager rested solely with the governor. Now, under the new law,

if a review team finds that a financial emergency exists, local governments and school districts have four choices, including requesting an emergency manager, asking for a mediator, filing for bankruptcy or introducing a reform plan with the state. The law will go into effect in late March.

#### Social Media Privacy for Employees

The "Internet privacy protection act," which was recently signed into law, is aimed at prohibiting employers from asking job applicants and employees for online passwords and other account information. Under the act, an employer cannot request an employee or an applicant for employment to grant access to, allow observation of, or disclose information that allows access to or observation of the employee's or applicant's personal Internet account. In addition, an employer cannot discharge, discipline, fail to hire, or otherwise penalize an employee or applicant for failure to provide such information. The act also prohibits educational institutions from asking for private account information from students and would penalize them for dismissing or failing to accept students who do not

provide such details. The purpose of the act is to help protect access to personal Twitter, Facebook and other social media accounts.

#### 4-Year Degrees from Community Colleges

Previously, Michigan's Community College Act prohibited the state's community colleges from awarding 4-year degrees. However, Legislation was recently enacted that will allow community colleges to now grant bachelor's degrees in several fields of study. The bill allows community college students to receive a four-year degree in culinary arts and energy production, maritime and cement technology.

#### Corrections Officers: New Employee Training

In 1982, the legislature passed the Michigan Correctional Officers' Training Act. Under the act, all correctional officers must complete a minimum of 320 hours of new employee training, which includes academic coursework and testing as well as physical training, at the central training academy. New Legislation was recently signed, however, that allows this training to now be provided by a college or community college.

#### Recording of Custodial Interrogations

Under new legislation, law enforcement officials interrogating an individual in custodial detention regarding the individual's involvement in the commission of a major felony now has to make a time-stamped, audiovisual recording of the entire interrogation. A major felony recording has to include the law enforcement official's notification to the individual of his or her Miranda rights. Although a major felony recording can be objected to, it may be made without the consent or knowledge

*continued on page 3*

## Michigan Legislation Update (cont.)

of, or despite the objection of, the individual being interrogated.

However, any failure to record a statement or to preserve a recorded statement does not prevent any law enforcement officer present during the taking of the statement from testifying in court as to the circumstances and content of the individual's statement if the court determines that the statement otherwise is admissible. Furthermore, the failure to comply with the recording requirements does not create a civil cause of action against a department or individual.

The Legislature will annually appropriate funds to the Michigan Commission on Law Enforcement Standards (MCOLES) for distribution to law enforcement agencies throughout the State to allow them to purchase audiovisual recording equipment for the purposes of the bill. Law enforcement agencies will have to implement the bill's requirements within 120 days after receiving these funds from MCOLES. If a law enforcement agency has the audiovisual recording equipment that complies with the MCOLES standards on the bill's effective date, that agency will have to comply with the bill within 60 days after its effective date. The new law will take effect in late March.

### Wolf Hunting

Although gray wolves were once on the endangered species list, they have made such a comeback in Michigan's Upper Peninsula that they are on the verge of being hunted once again. The Governor recently signed a bill that designates the wolves as a game animal and authorizes the Natural Resources Commission to set a hunting season for the animals. However, it should be noted that the bill does not establish a wolf hunting season or guarantee that one will be established. Rather, it grants authority to the Natural Resources Commission, which is constitutionally charged with regulating the taking of all game in Michigan, to make a determination as to whether a wolf hunting season should be established at an undetermined date in the future.

### Open Meetings Act: Emergency Meeting Notices

Under the Open Meetings Act, generally speaking, a public body must issue a public notice at least 18 hours before it meets. However, prior to recently enacted legislation, nothing in the Open Meetings Act barred a public body from meeting in emergency session in the event of a severe and imminent threat to the health, safety, or welfare of the public when two-thirds of the members serving decide that delay would be detrimental to efforts to respond to the threat. The new legislation retains all of these emergency provisions but, in addition, requires the public body to provide paper copies of the notice to the public at the meeting. The notice would have to include an explanation of why the public body cannot comply with the 18-hour requirement and must be specific to the circumstances that necessitated the emergency meeting; the use of generalized explanations such as "an imminent

threat to the health of the public" or "a danger to public welfare and safety" is not sufficient. Furthermore, public bodies that directly or indirectly maintain an official internet presence would have to post the public notice of the emergency meeting and its explanation on its website in the same manner as described above. The requirement of 18-hour notice does not apply to special meetings of subcommittees of a public body.

### Anti-Indemnification Statute: Construction Contracts with Public Entities

In the construction trades, indemnity clauses are used in contracts to assign risk should damage or injury occur. An indemnity clause will typically identify the party responsible to pay for damages, the party that is being held harmless if a loss occurs, and the types of losses that are covered.

However, under Michigan law, a negligent party cannot use an indemnity clause in a construction contract to shift all obligations for which it is wholly responsible to another party. This is known as an "anti-indemnification statute." If a contract contains a clause or agreement that is prohibited under the anti-indemnification statute, the clause or agreement is considered to be against public policy and is void and unenforceable.

Currently under the statute, an agreement in a contract relative to the construction, alteration, repair, or maintenance of a building, structure, appurtenance, and appliance that purports to indemnify against liability for damages arising out of bodily injury or property damage caused by or resulting from the sole negligence of one of the parties, is against public policy and is void and unenforceable.

Recently enacted legislation has expanded this provision to include agreements relating to the design of a building or structure.

As used in the statute, "public entity" includes the State and all of its agencies; any public body corporate within the State and all agencies of that body; or any nonincorporated public body within Michigan, of whatever nature, and all agencies of that body. This includes cities, villages, townships, counties, school districts, intermediate school districts, authorities, and public colleges or universities, and their employees and agents, including construction managers retained by the public entity.

Nothing in the new legislation affects the application of the governmental immunity law. The bill will take effect on March 1, 2013.

*Karen M. Daley*

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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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