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# 120

## RESOLVING DISTRESSED AGRICULTURAL LOANS IN MISSOURI

by **Michael D. Fielding**

# 131

## NEW MISSOURI LAWYERS SWORN IN DURING SPRING 2022 ENROLLMENT CEREMONY

Enrollment Ceremonies mark the official start of each Missouri lawyer's career. Meet some of the 136 new lawyers who joined the legal profession this spring.

by **Nicole Roberts-Hillen**

# REPORTS



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JOURNAL OF THE
# MISSOURI BAR



## Editorial Policy

The JOURNAL OF THE MISSOURI BAR helps Missouri Bar members keep abreast of changes in legal developments as they meet their professional obligations. The JOURNAL welcomes submissions of articles concerning legal topics of interest to Missouri lawyers. Criteria for publication include the article's quality, its substantive value, its interest to Missouri lawyers, and the originality of its subject matter. Submissions that relate to cases pending before any court or agency, and submissions previously published wholly or substantially in another publication will not be accepted. Consistent with the JOURNAL'S format, the language of submissions should be gender-neutral.

The JOURNAL OF THE MISSOURI BAR encourages all Missouri Bar members to contribute articles for publication.

Opinions and positions stated in signed material are those of the authors and not necessarily those of The Missouri Bar or the JOURNAL. The material within this publication is presented as information for lawyers to use, in conjunction with other research they deem necessary, in the exercise of their independent judgment. The Missouri Bar does not provide legal or professional advice. The Editorial Board does not perform independent research on submitted articles.

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Address all correspondence to: Hannah Kiddoo Frevert, Editor, JOURNAL OF THE MISSOURI BAR, 326 Monroe Street, P.O. Box 119, Jefferson City, MO 65102-0119, hkiddoo@mobar.org.



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# TAKE ME OUT TO THE BALLGAME — AND ANNUAL MEETING

JOHN GRIMM

"PEOPLE ASK ME WHAT I DO IN THE WINTER WHEN THERE'S NO BASEBALL. I'LL TELL YOU WHAT I DO. I STARE OUT THE WINDOW AND WAIT FOR SPRING."
-ROGER HORNSBY SR.

As I write this column, we are about a month into the 2022 baseball season. My favorite team, the St. Louis Cardinals, are near the top of the National League Central division. My second favorite team, the Kansas City Royals, are near the bottom of the American League Central division.

As a native of Southeast Missouri, I have always been a Cardinals fan, but I did not attend a lot of baseball games as a kid. That changed when I moved to Kansas City for law school in 1984. It was a great time to watch the Royals, with dominating players such as George Brett at third base and Bret Saberhagen on the mound. **As I recall, bleacher seats cost less than $10, a price even law students could afford on occasion.**

John Grimm

My friends on the western side of the state don't need to remind me about the outcome of the World Series in 1985. Nor do we need to re-hash the equities of Game 6. While I was disappointed the Cardinals lost, at least they were beat by a team I really liked. After graduating from law school in 1987, I moved to St. Louis and watched the Cardinals compete in another World Series. The following spring, I found some friends to share season tickets, and we've had them ever since.

The start of baseball season tells us that summer is right around the corner. Hopefully, summer allows each of us to take some extra time off work. Perhaps you will go to a ball game, go to the lake, or take a vacation. **Regardless, spending time away from the rigors of law practice is vitally important to our well-being and emotional health.** And don't forget, Missouri lawyers benefit from access to a variety of travel discounts through the bar.

For many, baseball evokes memories of time spent with families. You may have played youth baseball, coached your daughter's softball team, or sat in the stands watching your grandchild. Even though these activities can sometimes be grueling, the quality family time that comes with it can never be replaced.

By the time this column is published, Mother's Day will have passed, but Father's Day will be just around the corner. **I urge you to take a few extra minutes to think about your own special memories with family members.** If your parents are still living, maybe you'll have a chance to pay them a visit or talk by phone. Alternatively, consider contacting someone who may live alone or who doesn't have family nearby. I assure you it will be worth your while.

I'm also excited about baseball season because it reminds me of The Missouri Bar's Annual Meeting Sept. 14-16 in Springfield. Why? Because in addition to quality speakers and CLE programs, there will be some outstanding social opportunities. **In particular, the Best of Missouri reception will be held at Hammons Field, home of the Cardinals' AA affiliate.** This event always receives high marks from attendees, and I am confident this year will be no exception. Registration for Annual Meeting will open within a few weeks.

Finally, baseball season means hope. Hope for a winning record for our Missouri teams. Hope for the playoffs. Perhaps even hope for another World Series win. And hope you will join us at Annual Meeting!

# NEED CLE?

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INTERACTIVE

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DYNAMIC


## MISSOURI BAR PRESENTS

### JUNE 22

**Litigation Skills**

**The Tiger King Trial: Murder for Hire**

*[Attendees] "like the concept of using a popular documentary as teaching tool."*

*"Awesome, entertaining, very interesting and fun!"*

### JUNE 27

**Ethics**

**An Attorney's Guide to Judicial Misconduct**

*"Very informative and entertaining presentation on a difficult subject for attorneys."*

*"Very good program presented with excellent insight from an experienced litigator."*

### JUNE 30

**Gender Bias**

**Examining Roles of Women Attorneys in Movies and TV**

We will review portrayals of women attorneys in clips from hit TV shows and also films included in the American Bar Association's poll of the "Best Lawyer Movies" to learn to identify gender bias and discuss how to combat it.

**Attorneys have described Phil's presentations as...**

*"A great review for veteran trial attorneys and an excellent teaching tool for new attorneys."*

**SIGN UP** for these webinars and look for dates of other Philip Bogdanoff Webinars at

***https://bit.ly/mobogdanoff***

# Excitement in the air

MISCHA BUFORD EPPS

ARE YOU READY FOR SUMMER? AT MY HOUSE, SUMMER MEANS ENJOYING THE SUNSHINE WITH SUMMER CAMPS, WALKS IN THE PARK, AND VACATIONS TO VISIT FAMILY AND FRIENDS.

**And in my professional life, this season marks the start of several exciting events and changes.**

The 2022 Solo & Small Firm Conference is just around the corner, with learning sessions taking place June 9-11, both virtually and in person. As usual, the meeting will be filled with quality, timely programming, including more than 60 breakout sessions highlighting technology trends, litigation or GAL issues, practice growth, and much more.

**Mischa Buford Epps**

Perhaps most significantly, this year marks the return of an in-person attendance option for the first time since the COVID-19 pandemic turned the world upside down and shifted meetings to digital spaces. For those who have joined us at a MOSOLO Small Firm Conference in the past, this should be a welcome return to building in-person connections with colleagues from across the state. Here at the bar, we routinely hear from lawyers who appreciate the chance to collaborate in a casual setting and practice solo, together. **Learn more at MoBar.org/SOLO.**

**It's also time to begin thinking about elections for The Missouri Bar Board of Governors.** With roughly half of board members' terms expiring each year, currently, there are 19 board seats up for election this year. While it's always difficult to say goodbye to a departing governor, there's a certain excitement that comes with welcoming new faces to the group, and with them fresh voices and ideas. Serving on the Board of Governors is a unique way to contribute to the policy-making decisions of the bar. Our board members have a variety of practice areas and settings and represent the bar's 15 geographic districts.

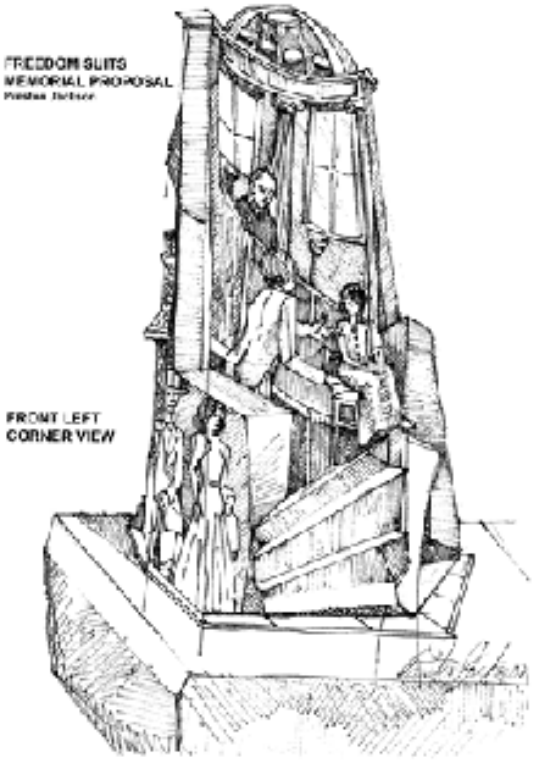
**If you're interested in filling one of these vacancies, you have until June 21 to submit your nomination petition.**

Finally, I've been keeping a close eye on the Freedom Suits Memorial that's going up in St. Louis. This monument, set to be unveiled on June 20, will commemorate and honor the hundreds of enslaved plaintiffs who took great personal risk to sue for their freedom in the decades leading up to the Civil War. It will also serve to honor the lawyers and judges who helped them.

**While I've only seen sketches of the 14 foot-tall, cast bronze sculpture, I'm already inspired by the idea of it standing tall on the east plaza of the Civic Courts Building downtown, a short walk from the Old Courthouse, where so many monumental suits were tried.** I know many individuals, legal organizations, and firms from across the state have donated funding and energy to bring this concept to life. That work will be well worth it. Special congratulations to St. Louis Circuit Judge David C. Mason, who first conceived the memorial.

Whatever summer means to you, I hope you'll make The Missouri Bar and our resources a part of it, whether that means attending a CLE, saving on travel costs through your Member Benefits, or simply signing the petition of a lawyer seeking election to the board.

Best regards,
Mischa



IN BRIEF

## ATTEND THE PREMIER DWI CONFERENCE IN JULY

The 20th Annual Bernard Edelman DWI Law & Science Seminar is slated for July 28-29, and lawyers will have the option to attend the seminar in Lake Ozark or online. Presented by MoBarCLE and the Missouri Association of Criminal Defense Lawyers, the premier conference will feature national and local presenters who cover basic and advanced techniques lawyers need to be on the cutting edge of DWI defense. Don't miss out on the early rate, which ends June 27, at MoBar.org/DWI.

## REMEMBERING WELLNESS

At the end of your evening, start closing your screens an hour before bedtime to help set the stage for sleep.

## MOBAR MEMORY

Did you know The Missouri Bar once honored Savannah Guthrie with an Excellence in Legal Journalism Award? Guthrie, now a co-anchor on NBC's "Today" show, accepted the recognition from W. Dudley McCarter, then bar president, during the 1994 Missouri Press Association Convention.


Lawyers must complete their **MCLE hours** by June 30 and file their MCLE annual reports online by July 31.

**The 2022 Family Law Conference** is set for Aug. 4-6 in Branson.

**The 2022 Annual Meeting** will be held Sept. 14-16 in Springfield.

**For more information, visit MoBar.org**

## COMPLETE AND FILE YOUR ANNUAL MCLE FOR 2021-22

Lawyers must complete their annual 15 continuing legal education hours by June 30 and file their online annual reports by July 31. Three of the 15 CLE hours must be devoted to ethics topics, with one of those ethics hours covering diversity, inclusion, cultural competency, or elimination of bias.

Remember to remove email filters on Missouri Bar communications and have an updated email address on file to avoid missing important reminders. To review MCLE requirements and file your annual report, visit MoBar.org/MCLE. For a list of upcoming CLE opportunities, visit MoBarCLE.MoBar.org, or scan here using your smartphone.

## MEET #MOLAWYERS – DR. ADRIENNE B. HAYNES, ESQ.

*Adrienne Haynes is the managing partner of SEED Law and a graduate of the University of Missouri-Kansas City School of Law. From Peoria, IL, Haynes joined The Missouri Bar in 2015. Haynes has also presented at MOSOLO since 2019.*

**SEED Law's mission is to partner with entrepreneurs and businesses to provide legal solutions that promote sustainable business practices. Why did you want to focus your business on this area?** Before law school, I was an entrepreneur who was beginning to understand that policies, processes, and infrastructure were the keys to sustainability. Through SEED Law, we are able to provide on-going, practical educational opportunities and consistent general counsel for our clients. Ultimately, our entire state is better off when business owners and economic contributors understand and have incorporated legal protections.

**Who is your legal mentor?** I am fortunate to have 300+ legal mentors through the Black Female Attorneys Network, Inc. I have been volunteering with the network since I was in law school, and I've learned an immense amount from our membership – both personally and professionally. Through the guidance and support I've received from BFA, I'm a better lawyer and community member.

**What do you most enjoy about presenting at MOSOLO?** I love hearing from students looking to start their own firms after graduation and meeting practicing lawyers transitioning into running their own firms. It's a great chance to share the things I wish I would have known (hindsight is 20/20) and some of our strategies.

**What is something you want to do that is on your bucket list?** My current bucket list has 102 goals, with 73 items left to do. Much of the list revolves around travel, developing sustainable generational wealth strategies for my family, and of course, being in the same room as Oprah.

**What is one food you despise?** I accidently ordered skate fish at a restaurant, and it now tops the list of food I despise.

*Editor's note: These responses have been edited for clarity and brevity. Do you know someone who should be featured in Meet #MOLawyers? Let us know by emailing nroberts@mobar.org.*

## TECH TIP

Spring and summer are popular times to travel, but staying secure while on the go can be difficult. The following tips can help you maintain security when away from home:

1) Only use phone and tablet chargers you bring with you. This includes the cable and charging brick.

2) Avoid using public Wi-Fi if possible. Most cellphone plans include hotspot functionality, which is a much more secure alternative. If you must use public Wi-Fi, connect to your office or home VPN (virtual private network) immediately after getting on the network.

3) Disable fingerprint and face recognition on your phone. The Transportation Security Administration can legally require you to unlock your phone using these methods but cannot force you to divulge your PIN.

## OUT OF THE OFFICE

In 2020, St. Louis lawyer Whittney Dunn took a day off to explore Johnson's Shut-Ins State Park with her husband. The adventure, which was prompted by a "get moving" challenge from The Bar Association of Metropolitan St. Louis, provided both exercise and a chance to view beautiful fall colors.


*Share your "Out of the Office" photo with us for a chance to be featured in In Brief. Email hkiddoo@mobar.org or tag us on social media using #MOLawyersLivingWell.*

# THE FLAG

W. Dudley McCarter[1]

## STATUTORY CAPS ON PUNITIVE DAMAGES IS CONSTITUTIONAL FOR CAUSES OF ACTION THAT DID NOT EXIST IN 1820

***All Star Awards v. HALO Branded Solutions*, 2022 WL 1019012 (Mo. banc 2022).**

A jury awarded All Star Awards & Ad Specialties Inc. $25,541.88 in actual damages after finding All Star's employee, Doug Ford, breached his duty of loyalty to All Star and that HALO Branded Solutions conspired with Ford to breach this duty of loyalty. The jury found Ford and HALO tortiously interfered with All Star's business, awarding All Star $500,000 in actual damages. The jury also assessed $5.5 million in punitive damages against HALO. The circuit court reduced the punitive damages award to $2,627,709 pursuant to § 510.265. All Star Awards & Ad Specialties Inc. appealed the circuit court's decision to reduce the jury's punitive damages award. The Supreme Court of Missouri affirmed the circuit court's judgment in *All Star Awards v. HALO Branded Solutions*.[2]

W. Dudley McCarter

Article 1, § 22(a) of the Missouri Constitution states, "the right of trial by jury as heretofore enjoyed shall remain inviolate," meaning litigants pursuing legal claims today have a right to a jury trial if they would have enjoyed such a right at common law when the Missouri Constitution was adopted in 1820.[3] "As heretofore enjoyed" limits the modern scope of the right to trial by jury.[4] In 2005, the Missouri Legislature enacted § 510.265, capping the punitive damages amount litigants can recover. "Statutory caps on punitive damages violate the right to a trial by jury as provided by Article I, § 22(a) if the litigant's common law cause of action existed in 1820 and the claim would have supported a finding of punitive damages in 1820."[5] However, if a legal cause of action didn't exist in 1820 or the modern common law claim isn't sufficiently "analogous" to a claim existing in 1820, then Article I, § 22(a) does not guarantee litigants the right to have a jury make an unlimited determination of damages, and the legislature may enact statutory limits on punitive damages.[6]

"All Star has, therefore, not demonstrated civil conspiracy to breach the duty of loyalty was a claim entitling it to punitive damages at common law in 1820, and the circuit court did not err in applying the cap in section 510.265 to the punitive damages arising from the modern claim," the Supreme Court of Missouri found.[7] It noted Missouri also didn't recognize a cause of action for tortious interference with a business expectancy in 1820.[8]

## STATUTE BARRING USE OF PUBLIC FUNDS FOR POLITICAL PURPOSES IS VALID

***City of Maryland Heights v. State of Missouri*, 638 S.W.3d 895 (Mo. banc 2022).**

Officials of political subdivisions in St. Louis County sued Missouri, stating § 115.646, RSMo violates the First and Fourteenth amendments of the U.S. Constitution. Section 115.646 prohibits officials from directly using public funds to advocate, support, or oppose a ballot measure or candidate for public office. The circuit court agreed and entered a declaratory judgment that § 115.646 violated the officials' right to free speech and was void for vagueness. The Supreme Court of Missouri reversed a circuit court's decision in *City of Maryland Heights v. State of Missouri*.[9]

When the plaintiffs initiated their lawsuit, § 115.646 provided:

> No contribution or expenditure of public funds shall be made directly by any officer, employee or agent of any political subdivision to advocate, support, or oppose any ballot measure or candidate for public office. This section shall not be construed to prohibit any public official of a political subdivision from making public appearances or from issuing press releases concerning any such ballot measure.

The circuit court declared § 115.646 violates the free speech clause of the First Amendment because "it regulates the officials' speech based on the content of their speech and fails strict scrutiny."[10] However, the Supreme Court of Missouri disagreed that § 115.646 regulates officials' speech, purports to regulate officials' speech when they don't use public funds, and prohibits the use of private or personal funds to subsidize officials' speech. Rather, the Court ruled, § 115.646 regulates the use of public funds to subsidize the officials' speech. "In other words, section 115.646 does not limit or prohibit officials' speech; it merely prohibits them from using public funds to facilitate or augment that speech."[11]

The Court also found that the circuit court erred in declaring that § 115.646 is unconstitutionally vague in violation of the due process clause of the Fourteenth Amendment. "Although section 115.646 does not define 'ballot measure,' section 130.011(2) provides a definition of 'ballot measure' that, even though not strictly applicable to chapter 115, nevertheless comports with the common

understanding of the phrase and refutes that it cannot be understood by a reasonable person."[12]

## CO-WORKER NOT LIABLE FOR BREACH OF EMPLOYER'S NONDELEGABLE DUTY OF CARE

***Miller v. Bucy*, 2022 WL 453331 (Mo. App. E.D. 2022).**

Barbara Miller brought a wrongful death claim against co-employees alleging they acted outside the employer's nondelegable duties and engaged in negligent acts which "purposefully and dangerously caused or increased the risk" of James Quinn's death. The co-employees asked the court to dismiss the wrongful death claim on the basis that § 287.120.1 of the Workers' Compensation Law prevented Miller from holding them personally liable for breaches of the employer's nondelegable duties of care to Quinn. The circuit court dismissed Miller's wrongful death petition, and Miller appealed the judgment. The Missouri Court of Appeals-Eastern District affirmed the dismissal in *Miller v. Bucy*.[13]

"[T]o maintain a negligence action against a co-employee, ***a plaintiff must show that the co-employee breached a duty separate and distinct from the employer's nondelegable duty to provide a safe workspace*** for all employees."[14] An employer's nondelegable duty to provide a safe workplace is limited to risks that are reasonably foreseeable.[15] "[W]hen an employee's injuries result from ... the ***manner*** in which the work was being done, the injuries ***are attributable*** to a breach of the employer's nondelegable duty to provide a safe workplace."[16]

The petition failed to state a claim for co-employee common law liability, the Court of Appeals found. "We note that our decision reflects the Supreme Court's clear intention to restore the breadth of the Act as the near-exclusive remedy for workplace injuries and a shield to co-employee liability."[17]

## OFFICIAL IMMUNITY PROTECTS PUBLIC OFFICIALS FROM LIABILITY IN TORT FOR PERFORMING DISCRETIONARY ACTS

***Conway v. Caldwell*, 2022 WL 774549 (Mo. App. W.D. 2022).**

A.J. was a little boy who died because of severe abuse from his father and stepmother after multiple hotline calls were made. Judy Conway, et al. ("appellants") filed a petition alleging Rebecca Caldwell and other Missouri Department of Social Services employees ("respondents") had a special duty to protect A.J. from foreseeable danger of harm from the father and stepmother. The circuit court ruled the respondents were protected by the official immunity doctrine. The appellants appealed the ruling, and the Missouri Court of Appeals-Western District affirmed the judgment in *Conway v. Caldwell*.[18]

Official immunity protects public officials who are sued in their individual capacities "from liability for alleged acts of negligence committed" when the official acts within the court of his or her official duties and acts without malice.[19] "The purpose of this doctrine is to allow public officials to make judgments affecting the public safety and welfare without the fear of personal liability."[20] Official immunity, however, only "protects public employees from liability for alleged acts of negligence committed during the course of their official duties for the performance of discretionary acts," meaning official immunity doesn't protect public employees from alleged acts of negligence when they perform ministerial duties.[21]The question here is whether the respondents were performing discretionary acts or ministerial acts in their interactions with A.J. and his family.

The appellants argued that various statutes and protocols required Missouri Department of Social Services employees to report A.J.'s case "to the proper authorities" once A.J.'s family refused to cooperate, and this requirement rendered the MoDSS employees' next steps ministerial in nature.[22] However, while a statute or regulation may indicate a public official has the authority or duty to act in a certain situation does not indicate whether the act is ministerial or clerical, which is not covered under official immunity.[23] "Thus the relevant inquiry is not whether the law authorizes, regulates, or requires an action. Instead, it is whether the action itself is ministerial or clerical ... And[ ] even when a clerical or ministerial act appears to be authorized or required by statue, official immunity will still apply if the official retains authority to decide when and how the act is to be done."[24]

The Court of Appeals found the "MoDSS employees' decisions as to what actions to take following hotline calls of abuse, followed by their own investigations and necessarily weighing the interest and safety of the child against the goal of keeping the family intact are equally far from the sort of ministerial or clerical acts contemplated by the 'narrow' exception to official immunity."[25]

### Endnotes

1 W. Dudley McCarter, a former president of The Missouri Bar, is a partner in the St. Louis law firm of Behr, McCarter, Potter, Neely & Hyde.
2 WL 1019012 (Mo. banc 2022).
3 *Dodson v. Ferrara*, 491 S.W.3d 542, 553 (Mo. banc 2016).
4 *Watts v. Lester E. Cox Med. Ctrs.*, 376 S.W.3d 633, 638 (Mo. banc 2012).
5 *All Star Awards*, WL 1019012 at 3 (citing *Lewellen v. Franklin*, 441 S.W.3d 136, 143 (Mo. banc 2014); *Dodson*, 491 S.W.3d at 557).
6 *Watts*, 376 S.W.3d at 638.
7 *All Star Awards*, WL 1019012 at 5.
8 *Id.*
9 638 S.W.3d 895 (Mo. banc 2022).
10 *Id.* at 898.
11 *Id. See also Sweetman v. State Elections Enf't Comm'n*, 732 A.2d 144, 157 (Conn. 1999).
12 *Id.* at 899.
13 2022 WL 453331 (Mo. App. E.D. 2022).
14 *Conner v. Ogletree*, 542 S.W.3d 315, 319 (Mo. Banc 2018).
15 *Id.* at 322.
16 *Id.* at 327.
17 2022 WL 453331 at 6. *See also Brock v. Dunne*, 637 S.W.3d 22, 3-4 (Mo. banc 2021).
18 2022 WL 774549 (Mo. App. W.D. 2022).
19 *State ex rel. Alsup v. Kamatzar*, 588 S.W.3d 187, 190 (Mo. banc 2019).
20 *Id.*
21 *Laughlin v. Perry*, 604 S.W.3d 621, 627 (Mo. banc 2020).
22 2022 WL 774549 at 6.
23 *Alsup*, 588 S.W.3d at 191.
24 *Id.*
25 2022 WL 774549 at 6 (citing *Alsup*, 588 S.W.3d at 193-94).

# Resolving Distressed Agricultural Loans in Missouri

Michael D. Fielding[1]

Agriculture is a key component of Missouri's economy. According to the Missouri Department of Agriculture,[2] Missouri has 95,000 farms (second in the nation), with an average of 291 acres.[3] Nearly 28 million acres in the state are devoted to farmland, and agriculture employs approximately 460,000 people throughout the state.[4]

Nationwide, Missouri is in the top 10 states for production of hay, rice, soybeans, cotton, corn, beef cows, goats, turkeys, hogs, broiler chickens, horses, and ponies.[5] Clearly, agriculture is critically important to Missouri.

Despite its seemingly idyllic nature, farming is not an easy profession. Constantly fluctuating market prices and weather conditions coupled with increasing input costs and extremely thin margins in the ever increasingly competitive global marketplace put Missouri producers under constant financial stress. Given the inflationary pressures facing the U.S. economy and expected interest rate hikes, it is likely that the coming years will see an uptick in distressed farm loans. Unfortunately, it would take a lengthy book to adequately address in sufficient detail the myriad of legal challenges that arise when producers suffer financial setbacks. Rather, this article is intended to identify high-level, key issues that practitioners should have in mind when seeking to resolve a distressed agricultural loan. By understanding how the individual building blocks work, lawyers will be more empowered to craft resolutions that are likely to succeed based on the unique circumstances of their individual clients.

**Pre-enforcement considerations**

Loan workouts present an opportunity for both the lender and borrower to resolve past mistakes and create a more sustainable path for full loan performance. The first step in this process is a review of the loan file — *i.e.,* determining whether the underlying loan documents are free of any drafting errors and if they were properly signed. What are lenders considering when they do this? Lenders want to verify that deeds of trust and Uniform Commercial Code financing statements were properly filed to perfect their liens. Lenders may obtain real estate title reports; search UCC filings; and look for state and federal tax liens and judgment liens to determine the priority of their liens vis-à-vis other creditors. Lenders will want to verify that federal government payments have been properly assigned to them and that they are named as the loss payee on crop insurance policies. Lenders will also want to verify that any Notices of Security Interest under the Food Security Act have been properly and timely issued. If a lender determines that a possible substantive error exists with the underlying loan documents, then the lender may use the workout negotiations to correct the deficiency.

The underlying collateral will play a major role in how a lender approaches a distressed loan workout. The major classes of agricultural-related collateral include agricultural products (*i.e.*, crops and livestock); agricultural inputs (*e.g.*, seed, fertilizer, weed killer, animal feed, animal health products, etc.); non-titled farm equipment; titled vehicles and trailers; real estate (including mineral and water rights associated with the land); and general intangibles (*e.g.*, rights to government payments, rights to crop insurance payments, etc.). The lender will want to know the estimated value, quality, and current condition of each of these different classes. Lenders will gather information about the collateral in multiple ways including appraisals, onsite visits, requesting business records from the borrower, and obtaining updated personal financial statements. Because the vast majority of farm collateral is both fungible and moveable, lenders will be keenly interested in confirming that appropriate safeguards are in place to prevent the concealment of assets or sale without remittance of the funds to the lender. Lenders are most likely to take aggressive action where the collateral is at risk of disappearance or significant depreciation (*e.g.*, a herd or crop that is not being properly maintained by the producer).

As a practical matter — and provided that no major loan defaults have occurred and the trust level with the borrower is still good — many lenders prefer some sort of consensual workout rather than forced liquidation of collateral or the initiation of legal proceedings. But borrowers should not think that a lender's initial inclination toward a workout means the borrower will get a free pass. It is a relatively rare event that a well-performing producer is hit so hard by life's unfortunate circumstances that he or she is forced into a loan workout. Rather, the much more common scenario is one where the producer has some underlying problems (*e.g.*, poor record management, inefficient production methods, poor cost control, etc.) which puts them on shaky financial ground when hit with a life storm. Producers such as that should realize that a loan workout will of necessity require that they make core, substantive changes to improve their operations. The table below identifies different options for both borrowers and lenders in a distressed agricultural loan situation.

**Government payments, crop insurance, and other federal liens**

Given their pervasiveness and critical role in farming, it is essential that practitioners understand the mechanics of lien rights in governmental payments and crop insurance. Under the Uniform Commercial Code governmental payments are general intangibles which are perfected under state law through the traditional means of a security agreement and a UCC-1 financing statement filing with the Missouri Secretary of State. But standing alone, this practice is insufficient to fully protect the lender's lien rights as the federal government does not review those state filings. To protect its interest, the lender must comply with the Assignment of Claim Act.[6] This means the producer must fill out paperwork at the local Farm Service Agency, assigning the government payments to the lender. If the documentation is not completed, then the federal government will simply remit the payment to the producer.

Because crop insurance is governed by the Federal Crop Insurance Act,[7] a standard security agreement and UCC filing also will be insufficient to fully protect the lender's interest in the crop insurance proceeds, even though they too constitute general intangibles under state law. Federal law takes priority if a lender tries to get proceeds of crop insurance from the Federal Crop Insurance Corporation or one of its agents.[8] But this preemptive effect ends once the producer receives the proceeds and state law again becomes controlling.[9] Similar to governmental payments, a lender's lien in crop insurance proceeds is obtained by having the borrower/producer complete an assignment of insurance proceeds form from the crop insurer. But even if a lender fails to obtain that assignment, the lender can still become perfected in the proceeds once they are deposited into the borrower's account, provided that the lender has a security agreement covering the deposit account.[10] Borrowers may attempt to avoid this result by depositing the funds at another financial institution. But they do so at their own peril as such actions are viewed very negatively by lenders who, in turn, will take appropriate steps to protect their interests.

Another federal statute impacting distressed farm loans is the Perishable Agricultural Commodities Act,[11] which protects the sellers of unprocessed produce. PACA imposes

## Table: Distressed Loan Workout Options

| Borrower/Farmer | Lender |
|---|---|
| Additional collateral pledge | Amend or extend loan documents |
| Additional guaranties | Forbearance agreement |
| Liquidation or turnover of collateral | Non-judicial foreclosure of real and personal property |
| Refinance | Initiate legal action |
| Bankruptcy (Chapter 7, 11, or 12) | Seek the appointment of a receiver |

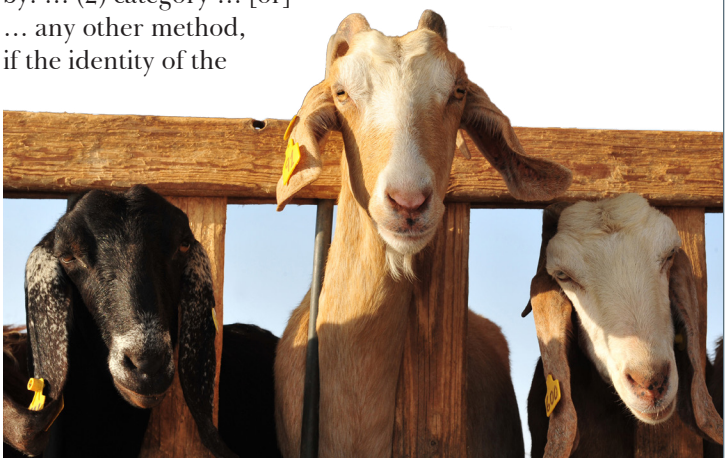
a floating trust on the assets of the produce buyer which will trump even a lender's lien. Parties that are paid with PACA trust funds (including lenders who receive payment on secured debt obligations) can be required to disgorge the funds they received. Similar to PACA, the Packers and Stockyards Act[12] impacts buyers of livestock. The PSA protects sellers of livestock, livestock products, and poultry. The PSA also imposes a floating trust on the assets of buyers which trumps interest of other creditors (including secured lenders).

In resolving distressed agricultural loans, one must determine whether there are any priority federal tax liens.[13] To take priority over a lender, the IRS must file a Notice of Federal Tax Lien. A lender's lien can trump a tax lien in two situations. Under the 45-day Disbursement Rule, three elements must be met: (1) the lender must fully perfect before the issuance of the NFTL; (2) any disbursement made within 45 days after the NFTL is filed must be done without notice of the NFTL's existence; and (3) the lender's lien will only attach to the borrower's property owned when the NFTL is filed.[14] The second situation (45-day commercial transaction financing) has four components: (1) the taxpayer must acquire the property within 45 days of the NFTL filing; (2) the lender must not have notice of the NFTL; (3) the loan was made as part of the borrower's ordinary course of business; and (4) the collateral must fall within certain specified categories (*e.g.,* raw materials, inventory, accounts receivable, etc.).[15] Conversely, if the lender knows of the NFTL or if the borrower acquires the property more than 45 days after the NFTL is filed, then the IRS will take priority.

**Farm personal property**

*General UCC provisions*

The law regarding liens in personal property used in farming operations is no different than that which applies to non-farming commercial personal property. A security interest will attach to the farm-related personal property when (1) value is given; (2) the borrower has rights in the collateral; and (3) the security agreement describes the collateral.[16] A "description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described."[17] "[A] description of collateral reasonably identifies the collateral if it identifies the collateral by: … (2) category … [or] … any other method, if the identity of the collateral is objectively determinable."[18] Generally a lien in personal property is perfected by the filing of a financing statement[19] but perfection in titled vehicles is accomplished through a filing with the Missouri Department of Revenue.[20] Perfection in proceeds of collateral is governed by § 400.9-315, RSMo. Generally speaking, the entity that is either first to file its financing statement or first to perfect its lien will be in a senior position.[21] But a financier who obtains a purchase money security interest will trump a pre-existing lender with a blanket lien.[22] Some types of collateral require control for priority purposes (the most noteworthy being deposit accounts).[23]



*Agricultural liens vs. traditional personal property liens*

A question that arises in distressed debt settings is whether an entity with an agricultural lien takes priority over a lender with a traditional lien in the borrower's assets. An "agricultural lien" is a lien that arises by operation of law (and is not contingent on the lienholder's possession of personal property) for either goods or services provided in connection with a debtor's farming operation or leasing real property in connection with a farming operation.[24] Examples of agricultural liens include[25] those for trespassing livestock,[26] liens by governmental entities for control of weeds and pests,[27] agisters liens,[28] and landlord's liens on crops for rent.[29] To be safe and avoid possibly contentious litigation, entities claiming an agricultural lien in a debtor's assets should comply with the requirements outlined in UCC Article 9 regarding perfection, priority, and enforcement of their liens.[30]

*The UCC's farm products exception*

Practitioners dealing with distressed agricultural loans need to have a solid understanding regarding the interrelationship of state and federal law on liens in farm products due to the conflicting treatment that is given to them under the federal Food Security Act[31] and the UCC. As a threshold matter, the "FSA is not meant to preempt or interfere with other provisions of the U.C.C. regarding the creation, perfection, and priority of security interests."[32] However, the FSA does preempt the "farm products" exception found in the UCC.[33]

Both the FSA and UCC define the term "farm products" in a similar manner. Specifically, the UCC definition is "goods … with respect to which the debtor is engaged in a farming operation and which are [c]rops grown, growing, or to be grown … livestock, born or unborn … supplies used or produced in a farming operation; or products of crops or livestock in their unmanufactured states."[34] Similarly, the FSA's definition of that term includes "an agricultural commodity such as wheat, corn, soybeans, or a species of livestock such as cattle, hogs, sheep, horses, or poultry used or produced in farming operations, or a product of such crop or livestock in its unmanufactured state (such as ginned cotton, wool-clip, maple syrup, milk, and eggs), that is in the possession of a person engaged in farming operations."[35]

But despite the similar definitions, the two statutory schemes treat liens in farm products very differently. Under

the UCC, a lien in farm products will continue in those goods even following an ordinary course sale by the producer.[36] Conversely, the FSA's general rule is that "a buyer who in the ordinary course of business buys a farm product from a seller engaged in farming operations shall take free of a security interest created by the seller, even though the security interest is perfected; and the buyer knows of the existence of such interest."[37] Significantly, however, the FSA has a major exception to this general rule. Specifically, the entity who purchases the farm products will take those goods subject to the lender's lien if, within one year "before the sale of the farm products, the buyer has received from the secured party or the seller written notice of the security interest organized according to farm products" which contains the secured party's name and address; debtor's name and address; the debtor's social security number or taxpayer identification number; and "a description of the farm products subject to the security interest created by the debtor, including the amount of such products where applicable, crop year, and the name of each county … in which the farm products are produced or located."[38]

There are several practical points from these rules. First, if a lender fails to timely re-issue its notice of security interest each year, then the lender will lose its lien in the farm products once they are sold. But if a lender timely issues its notice but the buyer fails to jointly remit the proceeds to the lender and borrower, the lender can pursue a claim against the buyer.[39] Because Missouri has not adopted a centralized filing system with respect to the FSA, borrowers have an incentive to travel great distances to find a buyer that has not received a notice of security interest such that the borrower may simply pocket the sales proceeds. While the borrower may benefit from this "out-of-trust" sale in the short-term, it will be an event of default under the applicable loan documents and create grounds for the lender to take more aggressive action against the borrower.[40]

*Liquidation of personal property collateral*

Secured creditors can use both nonjudicial and judicial remedies to enforce their security interests.[41] Non-judicial remedies include a turnover notification to an account debtor,[42] set-off of a deposit account,[43] or reposes the collateral or render it unusable.[44] In taking these actions, a secured party must take care not to "breach the peace."[45] "After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing."[46] But all parts of the liquidation of the collateral must be "commercially reasonable."[47] The collateral can be sold privately or publicly,[48] but there must be timely notice of the sale.[49] The secured creditor can also accept the collateral in full or partial satisfaction of the indebtedness owed.[50]

**Farm foreclosures**

While judicial foreclosure proceedings are allowed in Missouri, the vast majority of foreclosures are done through non-judicial foreclosure, whereby foreclosure of real estate occurs without a legal proceeding being filed (*i.e.,* foreclosure of a deed-of-trust). Missouri lawyers must act swiftly because non-judicial foreclosures can be accomplished in just a matter of weeks. The workout options in those situations include attempting a resolution before publication notice of the foreclosure begins, attempting to obtain a judicial injunction of the sale (assuming grounds exist to do so), or attempting to judicially challenge the sale once it has been completed.

Lawyers representing distressed agricultural borrowers should remember that the right of redemption is a statutory right allowing landowners and lien creditors to redeem the property for a period of time following foreclosure of the property. Missouri's right of redemption is straightforward. The borrower must give notice of its intention to redeem at the time of foreclosure auction or within 10 days before the sale. Thereafter it must, within the following year, pay all indebtedness secured by the deed of trust along with taxes, legal fees, and costs.[51]

**Farm receiverships**

Receivers can be appointed for agricultural lenders in both state and federal courts.[52] In 2016, Missouri adopted the Missouri Commercial Receivership Act that applies to farm receiverships.[53] The appointment of a receiver under the MCRA results in the imposition of a stay akin to the Bankruptcy Code's automatic stay.[54] Indeed, the MCRA is very similar to Chapter 7 of the Bankruptcy Code and lays out a very detailed and broad statutory framework governing the receiver's rights and authorities including the right to assert claims and pursue actions under the Uniform Fraudulent Transfer Act;[55] subpoena documents and conduct examinations under oath;[56] use, sell, and lease property (including sales free and clear of liens);[57] assume or reject contracts and leases;[58] incur additional debt on behalf of the receivership estate;[59] and abandon property.[60] Critically, however, the MCRA has one key limitation with respect to farm receiverships: a receiver cannot sell real estate used principally in the production of crops or livestock if the owner has not consented to the sale.[61]

There are two types of receivers. A general receiver is appointed over all of the borrower's assets and has very broad powers.[62] A limited (or special) receiver is appointed over a limited class of assets and whose power will be confined to matters relating to those items.[63] The type of receiver that is appointed will depend on the particular facts and circumstances of each case. The grounds to seek the appointment of a receiver may be based on a contract[64] or statute. The MCRA identifies 14 different grounds for the appointment of a receiver, including dissolution of an entity, appointment over a revenue producing asset subject to a lien, assistance in collecting a judgment, prevention of waste, impairment or destruction of property, or prevention of irreparable harm.[65]

Receiverships have both benefits and expenses. Benefits include taking away control of the borrower's assets and

putting them into the hands of a third-party fiduciary, the prevention of wasting or mismanagement of the borrower's assets, and creating a structure for an orderly liquidation of a borrower's assets. Receiverships can be costly, though. A receiver's bond must be posted, creating an additional cost to the loan.[66] Receivers frequently engage their own counsel to represent them, resulting in administrative costs of both the receiver and his or her lawyer. Borrowers or other creditors may actively oppose the receiver's efforts, thereby prolonging the matter and creating substantial costs for the receivership estate which, in turn, adversely impacts the amount of funds that can be distributed to creditors.

It is critical to note that the MCRA subordinates the claims of the secured lender who seeks the appointment of a receiver to administrative expense claims that occur in the case.[67] This structure gives leverage to borrowers, other lienholders, and unsecured creditors. Specifically, the lender who seeks the appointment of a receiver will desire a fast and expeditious receivership proceeding to minimize administrative expense claims and maximize its own recovery. Other creditors can thwart this benefit by filing various motions challenging the receiver's actions, resulting in higher administrative expense claims. While the opposition posed by these creditors may be legally weak, the lender who moved for the appointment of the receiver will have an incentive to compromise to minimize the costs of administration, thereby providing a potential windfall to other creditors. Furthermore, even though receivers have a fiduciary obligation to act in the best interests of the estate, the structure created by the MCRA creates an incentive for the receiver and its counsel to litigate every motion that is filed because doing so increases the fees of the receiver and its counsel.

Receivers appointed in federal proceedings are to manage the receivership estate according to the state law of the forum where the property is located.[68] While the Federal Rules of Civil Procedure apply to the receivership case, the federal rule makes it clear the administration of the estate "must accord with the historical practice in federal courts or with a local rule."[69] The Local Rules for the U.S. District Court for the Western District of Missouri have some additional requirements for receivers,[70] while the Local Rules for the Eastern District of Missouri do not have any provision that supplements Rule 66.[71] The applicable federal and local procedural rules do not allow litigants or receivers to override express statutory frameworks, because the federal courts' equitable powers are "subject to express and implied statutory limitations."[72] "Courts of equity can no more disregard statutory and constitutional requirements and provisions than can courts of law."[73] Plainly stated, a court's equitable powers cannot trump specific statutory provisions.[74]

**Intercreditor conflicts**

Missouri farmers frequently have multiple secured creditors. Oftentimes this includes a bank with a blanket lien on all assets, plus other secured creditors with liens in specific pieces of collateral. As the borrower's available funds become limited, it is not uncommon to see defaults on various debt obligations which, in turn, leads to enforcement actions. When this occurs, does one lender's enforcement of its rights (which necessarily may result in financial detriment to another lender) give rise to a cause of action for the harm suffered?

A lender does not typically owe a fiduciary duty to its borrower. Rather, the general rule is that "the relationship between a bank and its depositor involves a contractual relationship between a debtor and a creditor."[75] Furthermore, a breach of contract in and of itself does not create tort liability.[76] But what happens when the actions of one lender, in enforcing its rights against a borrower, results in the borrower breaching its contract with a second lender? Does that give the second lender a tortious interference claim against the first lender?

In Missouri "a claim for tortious interference with a contract or business expectancy requires proof of each of the following: '(1) a contract or valid business expectancy; (2) defendant's knowledge of the contract or relationship; (3) a breach induced or caused by defendant's intentional interference; (4) absence of justification; and (5) damages.'"[77] The "justification" element is crucial. A party "is justified in interfering with another's business expectancy for the purpose of protecting his own economic interest as long as [that party] does not employ improper means."[78] "Justification [for a party's actions] exists if [that party] has an unqualified legal right to do the action of which the [other] complains."[79] Significantly, Missouri courts do not recognize a cause of action for intentional interference with another's performance of his or her own contract.[80] In short, "[i]t is simply not tortious for a commercial lender to lend money, take collateral, or to foreclose on collateral when a debt is not paid."[81]

Despite the fact that feuding lenders cannot assert tort claims against one another, that does not mean there will not be a dispute. Competing secured lenders will closely examine one another's loan documents to verify perfection and scope of liens. Subordinate lenders may attempt to leverage their positions by challenging the senior secured lender through motion practice or other means to extract settlement value from the senior lender so the parties do not get stuck in prolonged litigation which simply results in higher attorney's fees and greater interest through prolonged delay in repaying indebtedness. Wise lenders will seek to mitigate these potential problems by seeking lien subordination agreements at the outset of the loan.

**Chapter 12 farm bankruptcies**

*General considerations*

Farmers struggling with high debt loads may look to federal bankruptcy law for protection. But in doing so, they should keep in mind that bankruptcy is not a perfect panacea to their problems and may not always work for them. Chapter 12 of the Bankruptcy Code was specifically

enacted for farmers. Critically, however, if the debtor's total debts exceed $10 million, they will be ineligible for Chapter 12 and the only bankruptcy recourse will be the more costly and time-consuming process of Chapter 11.[82]

Only "family farmers" with regular annual income can file for Chapter 12.[83] A family farmer with regular annual income is someone "whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under chapter 12 of this title."[84] Individuals or companies can qualify as "family farmers."[85] For individuals, at least 50% of the debt must relate to farming operations, and at least 50% of their income must have come from farming.[86] To qualify as a "family farmer," a corporate entity must be at least 50% owned by a family or relatives that conduct the farming operation.[87] Additionally, over 80% of its assets must be related to the farming operation, and at least 50% of its debts must stem from the farming operation.[88] The term "farming operation" is broadly defined and "includes farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state."[89]

Chapter 12 bankruptcies offer several benefits to debtors, including retention of estate property;[90] modification of liens on real or personal property;[91] bifurcation of undersecured debts into secured and unsecured claims;[92] binding of all creditors to a confirmed plan whether the creditor agreed or disagreed with it;[93] no requirement to pay US Trustee fees;[94] and no absolute priority rule requirement such as that found in Chapter 11.[95] Additionally, a bankruptcy filing immediately triggers an automatic stay, prohibiting further debt collection efforts by creditors.[96] It also allows debtors to restructure terms of debt repayment,[97] and it allows sales of assets free and clear of liens.[98] Chapter 12 plans range from three to five years[99] (but payments on long-term secured debt can be extended beyond that time).[100] A major benefit of Chapter 12 that is not available in Chapter 11 is the ability of a farmer to sell appreciated farm ground and discharge the large tax claims attributable to the sale.[101]

But bankruptcy is not without its risks. As a practical matter, if a farmer cannot cash-flow their operations while in bankruptcy, it is highly unlikely that either (a) the farmer's plan of reorganization will be successful or (b) the farmer will be able to complete the plan payments and obtain a bankruptcy discharge. Furthermore, the debtor must seek court approval for non-ordinary course transactions.[102] The bankruptcy filing will not stop lease payment obligations.[103] A debtor's bankruptcy filing does not absolve a guarantor of liability and instead will sharpen the lender's focus on the guarantor as a source of debt repayment. Bankruptcy can also be very expensive — particularly the longer the case drags on. Debtors are obligated to pay the attorney's fees and costs of their oversecured creditors.[104]

As one contemplates bankruptcy, consider findings from academic research which has revealed three key factors that are predictive whether a debtor will seek bankruptcy protection: (1) debtor's debt level, (2) availability of cash in the short-term, and (3) whether the debtor can coordinate with its various creditors.[105] Consequently, a lender's actions — whether intentional or unintentional — can increase or decrease the likelihood of a bankruptcy filing depending on how they impact these three factors.[106]

To increase the odds of a successful outcome in bankruptcy, wise debtors will make critical preparations prior to filing to minimize the time and cost of bankruptcy while maximizing the probability of a successful outcome. A key factor for any large bankruptcy is the debtor's ability to get debtor-in-possession financing,[107] because debtors with DIP financing are more likely to successfully emerge from the bankruptcy.[108] Debtors with DIP financing also tend to have shorter bankruptcies.[109] Consequently, if the debtor can propose a plan of reorganization which remains unchanged but which sheds unsecured debt, a lender may be willing to proceed with DIP financing so the debtor will emerge stronger and better able to fulfill commitments to secured creditors.

*Plan confirmation*

To confirm a plan, a "[d]ebtor must establish all six elements contained in section 1225 of the Bankruptcy Code in order to have a plan confirmed."[110] "If the debtor fails to establish any one of the six elements in § 1225, then the court must deny confirmation of the plan."[111] Section 1225(a)(1) requires that a proposed plan comply with all provisions of Chapter 12[112] that, in turn, requires that the debtor satisfy the requirements of 11 U.S.C. § 1222 which identifies the required plan contents. Section 1225(a)(2) requires the debtor be able to pay all administrative expense and propriety claims.[113] If the debtor cannot cashflow in Chapter 12 (and thus cannot satisfy these priority claims), then its plan cannot be confirmed.

A Chapter 12 debtor must propose its plan in good faith,[114] determined on the unique facts of each case.[115] Good faith "turns on an examination of the totality of the circumstances surrounding the plan and the bankruptcy filing."[116] "The court must focus on factors such as whether the debtor has stated debts and expenses accurately; whether the debtor has made any fraudulent misrepresentation to mislead the bankruptcy court; or whether the debtor has unfairly manipulated the Bankruptcy Code."[117] "The filing of a bankruptcy petition without the intent or ability to properly reorganize is an abuse of the Bankruptcy Code[,]" which may require dismissal of the case because good faith is lacking.[118]

Under the best interests of creditors test, the debtor must show that its creditors will get more under the Chapter 12 plan than they would if the case were liquidated under Chapter 7.[119] This test is considered as of the plan's anticipated effective date.[120]

Chapter 12 allows secured claims to be treated in three different ways for purposes of plan confirmation.[121] First, the lienholder can simply accept the plan and the proposed treatment.[122] Second, the secured creditor may retain its lien with the payment of its secured claim over some specified period of time.[123] Finally, the debtor can surrender the

collateral to the creditor.[124]

Finally, to confirm a plan, the debtor must show that it "will be able to make all payments under the plan and to comply with the plan."[125] This feasibility test is a fact question.[126] "The feasibility standard requires the Court to determine whether the plan offers a reasonable prospect of success and is workable."[127] The feasibility test "'injects pragmatism into the confirmation process by prohibiting confirmation of overly optimistic reorganization plans clearly destined to fail and by not belaboring the inevitable demise of a hopelessly insolvent debtor.'"[128]

The debtor has the burden of proof on feasibility.[129] "Sincerity, honesty and willingness are not sufficient to make the plan feasible, and neither are any visionary promises."[130] Rather, "feasibility must be based on objective facts, not mere wishful thinking or pipe dreams."[131] The debtor's income and expense projections are considered in conjunction with their actual past performance.[132] "Debtors' historical yields constitute the best evidence of the reliability of their plans' projection of production."[133] Feasibility will not be established if the debtor's cash flow projection is unsupported by past performance.[134] "In short, the court must be persuaded that it is *probable* that a plan will be able to cash flow, not merely technically *possible* for it to do so."[135]

*Disposable income*

If unsecured creditors object to a proposed Chapter 12 plan, then, in order to confirm it, the debtor must "contribute for the benefit of unsecured creditors, at a minimum, all 'disposable income.'"[136] "[T]he disposable income requirement does not require that there be a specific sum for unsecured claims; rather, the debtor's plan must commit disposable income to plan payments for the period of the plan, based on projections made at the time of confirmation."[137] "Thus, at the confirmation stage, the plan must promise payment of all projected disposable income, and in so doing, provide a projection of disposable income."[138]

It is critical to recognize that "disposable income" has a flexible definition. It is defined as "income which is received by the debtor and which is not reasonably necessary to be expended (A) for the maintenance or support of the debtor or a dependent of the debtor; or (B) for the payment of expenditures necessary for the continuation, preservation, and operation of the debtor's business."[139] "The determination of what constitutes disposable income is a fact-intensive inquiry into whether debtor has 'income which is in excess of that reasonably required for maintenance and continuation of [its] farming operation from one year to the next.'"[140] Disposable income cannot be substantiated based on a back-of-the-envelope, rough estimation calculation. Indeed, "[u]ndocumented numbers or mere estimates of past years' income and expenses will not be accepted. Projections of income and expenses offered to show the funds needed to continue the operation (such as seed and fertilizer for the coming crop year) must be grounded on historical figures."[141]

*Discharge*

Debtors who complete their required plan payments will obtain their bankruptcy discharges, which discharges the debtor "from all debts provided for by the plan," but is subject to the same exceptions as a Chapter 7 discharge.[142] For example, domestic support obligations will not be discharged.[143] But the debt discharge does not automatically extend to all debts. Creditors must file adversary proceedings in the bankruptcy proceeding seeking denial of certain types of debts.[144] The most common classes for seeking denial of discharge for specific debts are: (1) money or property obtained by false pretenses where the consideration was obtained by use of a writing that was materially false;[145] (2) "for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;"[146] or (3) "for willful and malicious injury by the debtor to another entity or to the property of another entity."[147] This last category includes claims for "out-of-trust" sales if the debtor did so willfully and maliciously.[148] Consequently, a borrower who, prior to bankruptcy, engaged in out-of-trust sales may face a claim in bankruptcy seeking to deny from discharge the debt associated with those sales. The better and safer course of action is to simply remit to secured lenders the funds to which they are entitled.

**Conclusion**

Farming in today's challenging times is not for the faint of heart. Producers face constantly changing prices driven by global factors, increasing challenges from extreme weather conditions, the ever-present threat of disease to crops and livestock, growing pressures to employ environmentally friendly farming practices, and increasing pressure on profit margins. Complicating these business concerns are the overlaying patchwork of different state and federal laws and regulations. Lawyers who advise farmers in financially difficult situations need to have a solid grasp on the underlying law and options available. Consensual resolutions should always be a top priority as they are typically the least expensive for the producer and optimize the probability of a successful workout.

**Endnotes**

Michael D. Fielding

1 Michael D. Fielding is a partner in the Food & Agribusiness unit of Husch Blackwell LLP in Kansas City who focuses his practice on helping clients successfully resolve distressed agricultural and commercial loans. Listed in the 2021 and 2022 editions of Best Lawyers in America, he has been named multiple times as a "Best of the Bar" honoree by the Kansas City Business Journal. He is licensed in Missouri, Kansas, Iowa, and Utah and is board certified in business bankruptcy by the American Board of Certification. Michael currently serves as president of the Ag Law Section of the Kansas Bar Association.

2 *See* Missouri Department of Agriculture, *Missouri Agriculture at a glance* (last visited January 31, 2022), https://agriculture.mo.gov/abd/intmkt/pdf/missouriag.pdf.

3 *Id*.
4 *Id*.
5 *Id*.
6 31 U.S.C. § 3727; 41 U.S.C. § 15.
7 7 U.S.C. § 1501 *et seq*.
8 *In re Cook*, 169 F.3d 271, 276 (5th Cir. 1999).
9 *Id*.
10 "Control" takes priority over proceeds of collateral under Mo. Rev. Stat. § 400.9-327.
11 7 U.S.C.§ 499a *et seq*.
12 7 U.S.C.§ 181 *et seq*.
13 *See* 26 U.S.C. § 6323.
14 26 U.S.C. § 6323(d).
15 26 U.S.C. § 6323(c).
16 Section 400.9-203, RSMo (2016).
17 Section 400.9-108(a), RSMo (2016).
18 Section 400.9-108(b), RSMo (2016).
19 *See* Sections 400.9-310, 400.9-312, 400.9-502, and 400.9-503, RSMo (2016).
20 Section 400.9-311(a)(2), RSMo (2016); *see also* Sections 8-135 and 58-4204, RSMo (2016).
21 Section 400.9-322, RSMo (2016).
22 Sections 400.9-103 and 400.9-324, RSMo (2016).
23 Section 400.9-327, RSMo (2016).
24 Section 9-102(5), RSMo (2016).
25 The National Agricultural Law Center has compiled a helpful quick reference of Missouri statutory liens, which can be found at: http://nationalaglawcenter.org/wp-content/uploads/assets/agliens/missouri.pdf (last visited March 1, 2022).
26 Sections 272.010-272.270, RSMo (2016).
27 Sections 263.080, 263.200, and 263.456, RSMo (2016).
28 Sections 430.030-430.060; 430.150-430.165; and 430.170-430.220, RSMo (2016).
29 Sections 441.280 and 441.300, RSMo (2016).
30 Section 400.9-109(a)(2), RSMo (2016).
31 7 U.S.C. § 1631.
32 *Battle Creek State Bank v. Preusker*, 571 N.W.2d 294, 300 (Neb. 1997).
33 *First Nat. Bank and Trust v. Miami County Co-op Ass'n*, 897 P.2d 144, 147 (Kan. 1995).
34 Section 400.9-102(34), RSMo (2016).
35 7 U.S.C. § 1631(c)(5).
36 Section 400.9-320(a), RSMo (2016). Once crops are harvested, they are no longer "crops" but rather "farm products" while they remain in the producer's hands. *In re Temple Stephens Co., Inc.*, 156 B.R. 38, 40 (Bankr. W.D. Mo. 1993).
37 7 U.S.C. § 1631(d).
38 7 U.S.C. § 1631(e).
39 *Id*; 7 U.S.C. § 1631(g).
40 Parties that participate with borrowers in out-of-trust sales may not be immune from risk. One Missouri court noted that an auctioneer will be liable for conversion if it sells cattle and remits the proceeds to the debtor rather than turning over the proceeds to the secured lender. *Ensminger v. Burton*, 805 S.W.2d 207 (Mo. App. W.D. 1991).
41 Section 400.9-601, RSMo (2016).
42 Section 400.9-607, RSMo (2016).
43 Section 400.9-607(a)(4), RSMo (2016).
44 Section 400.9-609, RSMo (2016).
45 *Id*.
46 Section 400.9-610(a), RSMo (2016).
47 Section 400.9-610(b), RSMo (2016).
48 Section 400.9-610(c), RSMo (2016).
49 Section 400.9-611, RSMo (2016).
50 Section 400.9-620, RSMo (2016).
51 Section 443.410, RSMo (2016).
52 *See* 28 U.S.C §§ 958–959; Fed. R. Civ. P. 66; Section 515.500, RSMo (2016).
53 Sections 515.500-515.665, RSMo (2016).
54 Section 515.575, RSMo (2016).
55 Sections 515.545.1(5)-(6), RSMo (2016).
56 Section 515.545.1(9), RSMo (2016).
57 Sections 515.545.1(10) and 515.645, RSMo (2016).
58 Section 515.585, RSMo (2016).
59 Section 515.590, RSMo (2016).
60 Section 515.640, RSMo (2016).
61 Section 515.645.2(1), RSMo (2016).
62 Section 515.515, RSMo (2016).
63 *Id*.
64 This occurs, for example, when a breach of contract has occurred and a contractual remedy for the breach is the appointment of a receiver. These types of provisions are extremely common in loan documents.
65 Section 515.510.1, RSMo (2016).
66 Section 515.530, RSMo (2016).
67 Section 515.625.1(2), RSMo (2016).
68 28 U.S.C. § 959(b) (A "receiver … appointed in any cause pending in any court of the United States … shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated …").
69 Fed. R. Civ. P. 66.
70 *See* W.D. Mo. Local Rule 66.1.
71 *See* E.D. Mo. Local Rules.
72 *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 1385 (2015).
73 *Id*. (quoting *I.N.S. v. Pangilinan,* 486 U.S. 875, 883 (1988)).
74 *Law v. Siegel*, 571 U.S. 415, 421 (2014) (holding court could not use its equitable powers under 11 U.S.C. § 105(a) to contravene specific provisions of Bankruptcy Code).
75 *Wood & Huston Bank v. Malan*, 815 S.W.2d 454, 458 (Mo. App. W.D. 1991).
76 *Sakabu v. Regency Const. Co., Inc.*, 392 S.W.3d 494, 499 (Mo. App. E.D. 2012); *Ryann Spencer Group, Inc. v. Assurance Co. of America,* 275 S.W.3d 284, 290 (Mo. App. E.D. 2008); *Chrysler Financial Co.L.L.C. v. Flynn*, 88 S.W.3d 142, 151 (Mo. App. S.D. 2002).
77 *Rail Switching Services., Inc. v. Marquis-Missouri Terminal, LLC*, 533 S.W.3d 245, 257 (Mo. App. E.D. 2017) (citing *Bishop & Assocs., LLC v. Ameren Corp.*, 520 S.W.3d 463, 472 (Mo. banc 2017)).
78 *Chandler v. Allen*, 108 S.W.3d 756, 760 (Mo. App. W.D. 2003).
79 *Id*.
80 *Rail Switching Services., Inc. v. Marquis-Missouri Terminal, LLC*, 533 S.W.3d 245, 259 n. 10 (Mo. App. E.D. 2017).
81 *Sierra-Bay Fed. Land Bank Assn v. Superior Court*, 227 Cal. App.3d 318, 334 (1991).
82 11 U.S.C. §§ 101(18) and 109(f).
83 11 U.S.C § 109(f).
84 11 U.S.C. § 101(19).
85 11 U.S.C. § 101(18).
86 11 U.S.C. § 101(18)(A). Note that debt calculation "exclude[s] a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation." *Id*.
87 11 U.S.C. § 101(18)(B).
88 *Id*.
89 11 U.S.C. § 101(21).
90 11 U.S.C. §§ 1207(b) and 1227(b).
91 11 U.S.C. § 1222(b)(2).
92 11 U.S.C. §§ 506(a) and 1222(b)(2).
93 11 U.S.C. § 1227.
94 28 U.S.C. § 1930.
95 11 U.S.C. § 1129(b)(2)(B)(ii).
96 11 U.S.C. § 362.
97 11 U.S.C. § 1222(b)(2).
98 11 U.S.C. § 363(f).
99 11 U.S.C. § 1222(c).
100 11 U.S.C. § 1222(b)(9).
101 11 U.S.C. § 1232.
102 11 U.S.C. § 363(b).
103 11 U.S.C. § 365(d)(3).
104 11 U.S.C. § 506(b).
105 Sris Chatterjee, Upinder S. Dhillon, and Gabriel G. Ramirez, *Coercive tender andeExchange offers in distressed high-yield debt restructurings: An empirical analysis,* 38 J. Fin. Econ., 333–360 (1995).
106 For an in-depth academic analysis considering the intersection of distressed agricultural debt and implicit biases in decision making, *see* Michael D. Fielding, *Combining the Academic with the Practical: A Meaningful Framework for More Effectively Resolving Distressed Agricultural Loans*, 26 Drake J. Ag. L., 1-61 (2021).
107 Sandeep Dahiya, Kose John, Manju Puri, and Gabriel Ramirez, 2003, *Debtor-in-possession financing and bankruptcy resolution: Empirical evidence,* 69 J. Fin. Econ., 261; *see also* Maria Carapeto, Maria, *Does Debtor-in-Possession Financing Add Value?* IFA Working Paper No. 294–1999, Cass Business School (1999).
108 Sandeep Dahiya, Kose John, Manju Puri, and Gabriel Ramirez, 2003, *Debtor-in-possession financing and bankruptcy resolution: Empirical evidence*, 69 J. Fin. Econ.259–280 (2003).
109 *Id*.
110 *In re Michels*, 305 B.R. 868, 872 (8th Cir. B.A.P. 2004).

111 *In re Rice*, 357 B.R. 514, 518 (8th Cir. B.A.P. 2006).
112 11 U.S.C. § 1225(a)(1).
113 11 U.S.C. § 1225(a)(2); *see also* 11 U.S.C. §§ 503 and 507.
114 11 U.S.C. § 1225(a)(3).
115 *In re Barger*, 233 B.R. 80, 83 (8th Cir. B.A.P. 1999).
116 *Id*. at 83.
117 *Id*.
118 *In re Euerle Farms, Inc*., 861 F.2d 1089, 1092 (8th Cir. 1988).
119 11 U.S.C. § 1225(a)(4).
120 *In re Bremer*, 104 B.R. 999, 1006 (Bankr. W.D. Mo. 1989).
121 11 U.S.C. § 1225(a)(5).
122 11 U.S.C. § 1225(a)(5)(A).
123 11 U.S.C. § 1225(a)(5)(B).
124 11 U.S.C. § 1225(a)(5)(C).
125 11 U.S.C. § 1225(a)(6).
126 *In re Lockard*, 234 B.R. 484, 492 (Bankr. W.D. Mo. 1999).
127 *In re Richards*, 2004 WL 764526 (Bankr. N.D. Iowa 2004).
128 *In re Foertsch*, 167 B.R. 555, 565 (Bankr. D.N.D. 1994) (citation omitted).
129 *In re Lockard*, 234 B.R. 484, 492 (Bankr. W.D. Mo. 1999).
130 *Id*. (quoting *In re Clarkson*, 767 F.2d 417, 420 (8th Cir. 1985)); *see also In re Clark*, 288 B.R. 237, 248 (Bankr. D. Kan. 2003) ("A plan's 'income projections must be based on concrete evidence and must not be speculative or conjectural'" (internal citations omitted)).
131 *Id*.; *In re Tofsrud*, 230 B.R. 862, 872 (Bankr. D.N.D. 1999).
132 *In re Weber*, 297 B.R. 567, 571 (Bankr. N.D. Iowa 2003); *In re Lockard*, 234 B.R. 484, 492 (Bankr. W.D. Mo. 1999); *see also In re Foertsch*, 167 B.R. 555, 565 (Bankr. D.N.D. 1994).
133 *In re Stallings*, 290 B.R. 777, 791 (Bankr. D. Idaho 2003).
134 *In re Foertsch*, 167 B.R. 555, 566 (Bankr. D.N.D. 1994).
135 *Id*.
136 *Agribank, FCB v. Honey*, 167 B.R. 540 (W.D. Mo. 1994) (citing 11 U.S.C. § 1225(b)(1)); *see also Rowley v. Yarnall*, 22 F.3d 190, 191 (8th Cir. 1994).
137 *Matter of Schwarz*, 85 B.R. 829, 832 (Bankr. S.D. Iowa 1988); *see also Rowley v. Yarnall*, 22 F.3d 190, 193 (8th Cir. 1994).
138 *In re Meyer*, 173 B.R. 419, 424 (Bankr. D. Kan. 1994).
139 11 U.S.C. § 1225(b)(2).
140 *In re Broken Bow Ranch, Inc*., 33 F.3d 1005, 1008 (8th Cir. 1994) (citing *In re Coffman*, 90 B.R. 878, 885 (Bankr. W.D. Tenn. 1988)).
141 *In re Kuhlman*, 118 B.R. 731, 739 (Bankr. D.S.D. 1990).
142 11 U.S.C. §§ 1228-1228(a)(2), incorporating the 11 U.S.C. § 523(a) discharge exceptions.
143 11 U.S.C. § 523(a)(5).
144 11 U.S.C. § 523(c). The deadline for filing a denial of discharge complaint for claims under 11 U.S.C § 523(c) is "60 days after the first date set for the meeting of creditors under [11 U.S.C.] § 341(a)." Fed. R. Bankr. P. 4007(c).
145 11 U.S.C. § 523(a)(2).
146 11 U.S.C. § 523(a)(4).
147 11 U.S.C. § 523(a)(6).
148 *See generally In re Tinkler*, 311 B.R. 869, 882 and n.1 (Bankr. D. Colo. 2004).

# Welcome TO THE PROFESSION





# New Missouri lawyers sworn in during Spring 2022 Enrollment Ceremony

NICOLE ROBERTS-HILLEN

Every morning, Hon. Gary Lynch sees a navy blue button on his dresser with the words, "Proud to be a Missouri lawyer."

On April 22, 2022, he brought that button to the Spring Enrollment Ceremony, held it up, and encouraged the eager new lawyers there to maintain that level of pride throughout their careers.

About 60 of the 136 lawyers who passed the February 2022 Bar Exam took their oath of admission in April at the Missouri Capitol Building in Jefferson City, with their friends and families nearby to celebrate. Judges of the Supreme Court of Missouri, officers of The Missouri Bar, and members of the Board of Law Examiners also welcomed the new lawyers into the profession.

"Savor those feelings today of being proud to be an attorney but commit yourself that right now, starting tomorrow, everyday you're going to strive to meet those professional expectations, those professional requirements, and do the best job you can as a lawyer," Lynch said. "If you do that every day, you're going to build a career that you are not only proud of, but that has helped so many people along the way."

Michelle Lewis and Joshua Saleem understand what it means to stay committed to a dream. The two new lawyers graduated from the Saint Louis University School of Law part-time evening program.

"We had the extra challenge of working and living our lives and balancing family, all while studying and going through law school," Lewis said. "It's very, very emotional."

Saleem said he is relieved to officially be a lawyer but also proud of his accomplishment. He added he wouldn't have finished law school if it hadn't been for the support of his family, coworkers, and church.

Shaunessy Carr, a Saint Louis University School of Law graduate, agreed that family support was vital while attending law school during the COVID-19 pandemic, which created an extra layer of challenges.

Missouri Bar 2021-22 President John Grimm congratulated the new lawyers while acknowledging that the hard work isn't finished. Now, they have a duty to even better serve their clients.

"It's what we do as lawyers – we help people," he said prior to the lawyers taking their oaths. "We solve problems, and the best lawyers in my view are those who help people solve problems while maintaining the professionalism and civility that you, in just a few moments, will swear to honor."

Grimm also encouraged the new lawyers to get involved – whether that be participating in Missouri Bar activities, volunteering with their churches, or serving on local city councils and school boards. Visit MoBar.org/Get-Involved to learn how you can participate in bar activities.

The new lawyers themselves had some words of wisdom to pass along to current and future law students.

Lewis noted that if it's your passion and dream, pursue it.

"I personally am living proof that you are never too old, and the opportunity is there for everybody," she said. "It's achievable. It is hard and is difficult, but it's achievable and it's so worth it."

Carr added law students need to continuously look forward instead of pondering on the past.

"Don't let one bad grade discourage you. Don't let one bad semester discourage you. Keep moving," she said.

Saleem also advised law students to not give up too quickly.

"I remember not doing well on the LSAT 15 years ago and thinking that was the end of the road for me but then later in life, like Michelle, I tried again and did well the second time. So, never give up," he said.

> "Don't let one bad grade discourage you. Don't let one bad semester discourage you. Keep moving."

The Missouri Bar is here to help lawyers even better serve their clients. Enrollees are encouraged to view the plethora of resources available to them at MoBar.org/New-Members. In addition, The Missouri Bar Young Lawyers' Section sent welcome packets to the state's enrollees.

The Missouri Bar streamed the event live on Facebook and posted photos from the ceremony on its social media channels. Visit Facebook.com/MissouriBar to view scenes from the April 22 enrollment ceremony, and share your photos from the enrollment ceremony on social media using the #NewMOLawyers hashtag.

Endnotes

1 Nicole Roberts-Hillen is assistant editor of the Journal and communications coordinator at The Missouri Bar.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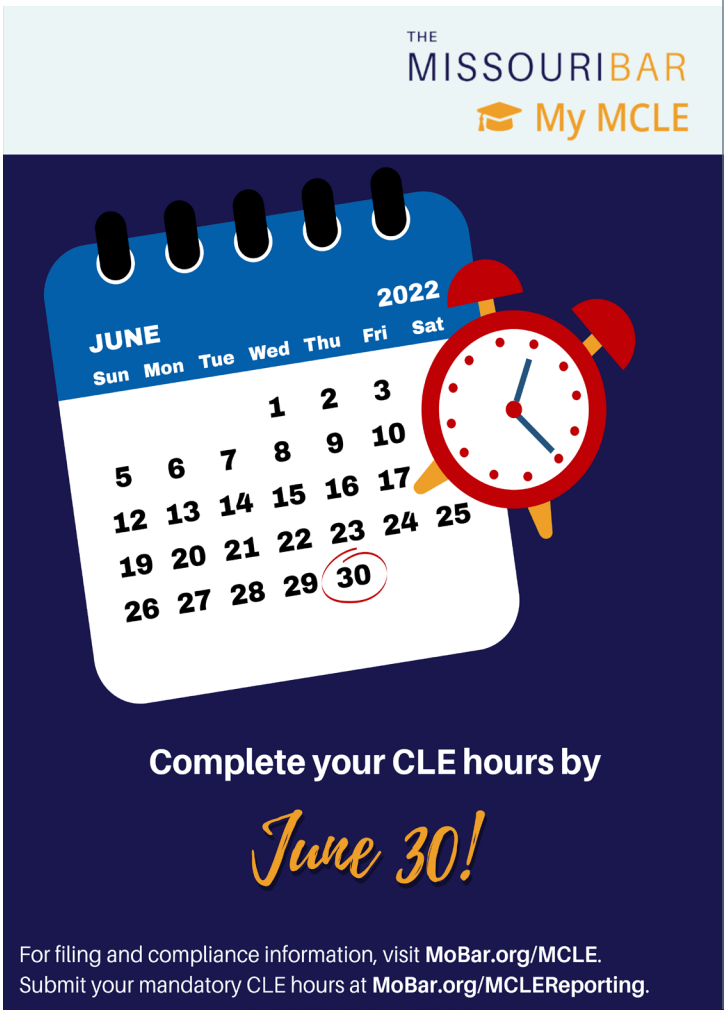
# Resources
## for The Road Ahead

If you're one of the 136 individuals who passed the February 2022 Bar Exam, The Missouri Bar welcomes you to the profession!

Whether you're searching for a job, settling into your dream position, or hanging out your shingle, we're here to help. Through the bar, lawyers have access to discounted practice management tools, a variety of networking events, Continuing Legal Education opportunities, and so much more.

### "New Lawyer Survival Guide"

Transitioning from law school to the workplace can be both challenging and exciting, which is why the Young Lawyers' Section created the "New Lawyer Survival Guide."




It provides tips for utilizing The Missouri Bar's member services, adjusting to your new organization, interacting with other lawyers, developing relationships with clients, focusing on your well-being, and more. Download the "New Lawyer Survival Guide" at MoBar.org/site/content/About/Young_Lawyers_Section.aspx.

### CLE and MCLE requirements

You can find Minimum Continuing Legal Education information – including credit requirements, deadlines, and frequently asked questions – at MoBar.org. Missouri Bar members can access hundreds of accredited CLE programs at MoBarCLE.MoBar.org. Note that some are offered at free or reduced costs for new lawyers.

### Jobs for Lawyers

The Missouri Bar offers information about lawyer job opportunities and office space availability at no cost to any firm, employer, and organization where a juris doctorate is required or preferred. To learn more and start browsing openings, visit MoBar.org/JobsForLawyers.

### connect.MOBAR

With connect.MOBAR, distance no longer deters lawyers from interacting with each other. connect.MOBAR includes several online communities that focus on various topics and specialties – lawyer well-being, solo and small firm practices, diversity, and more. Lawyers also have access to the bar's forms bank, which contains a plethora of useful documents you can use while practicing. Start joining online communities by visiting connect.MoBar.org.

### Legal research tools

Missouri Bar members have free access to Fastcase to help them with their legal research. You can also stay updated on changes in the law by viewing MoBarCLE's deskbooks and guidebooks at MoBar.org/mobarcle-deskbook-guidebook.

### Missouri Lawyers' Assistance Program

Your mental health matters. MOLAP is a free professional and confidential counseling program that Missouri lawyers, their immediate family members who live with them, and law students can access. Call 1-800-688-7859 or visit MoBar.org/molap to learn more.

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# Admonitions: Examples of the Most Common Disciplinary Sanction

Cecilia Young[1]

In 2021, the Office of the Chief Disciplinary Counsel received 1,692 complaints against lawyers and issued 70 admonitions – the most common and lowest form of sanction in the disciplinary process.

The Rules of Professional Conduct allow the OCDC, Regional Disciplinary Committee, or a division thereof to issue an admonition following an investigation when there is a determination that there is probable cause to believe that the lawyer committed professional misconduct.[2] If the Chief Disciplinary Counsel, a majority of the Regional Disciplinary Committee, or a majority of a division finds that the lawyer's conduct is of such nature that further proceedings are not warranted, a written admonition may be administered to the respondent.[3] Admonitions do not restrict a lawyer's ability to practice and are for minor rule violations that do not warrant formal discipline by the Supreme Court of Missouri. Like other sanctions, once the admonition is accepted, it is a public document and part of the lawyer's record.[4]

Many lawyers are aware of the problems that arise when they don't provide clients with adequate communication or procrastinate and fail to act with diligence on client matters. Of the 1,692 complaints OCDC received in 2021, 328 complaints were opened based on Rule 4-1.4 Communication violations, and 259 were opened based on Rule 4-1.3 Diligence. However, failing to promptly return phone calls and communicate with clients or act with diligence on client matters are not the only behaviors that lawyers need to avoid. There are numerous other actions, and in some cases inactions, that are in violation of the Rules of Professional Conduct and can lead to admonitions.

The following admonition summaries are intended to provide information and guidance to lawyers to avoid conduct that could result in the issuance of an admonition.

**Secretly recording conversations with clients**

A lawyer recorded conversations with clients without notifying them that they were being recorded and/or without obtaining the clients' consent. The lawyer received an admonition for failing in their duty of loyalty to their clients and violation of Rule 4-1.4. This rule provides that a lawyer shall keep the client reasonably informed about the status of a matter. In addition, Missouri Advisory Committee Formal Opinion 123 further explains that if an attorney is recording a conversation with a current client, "the attorney must give some notice to the client that the attorney is, or may be, recording the conversation." The notice could be given at the onset of the recording or the lawyer could have previously informed the client that the lawyer records conversations from time to time, which would eliminate the need to notify the client each time.

**Unauthorized practice of law due to CLE suspension**

A lawyer's Missouri license was suspended for failing to complete the required continuing legal education credit hours or file an exemption. The lawyer was not practicing in Missouri and did not timely report CLE hours or an exemption for two reporting years. Because the lawyer was not practicing in Missouri, the lawyer was not required to complete or report credit hours to The Missouri Bar's MCLE department. The lawyer was, however, required to report an exemption from the reporting requirement. Had the lawyer changed their classification to Category 3, they would not have had to report even the exemption.

The lawyer received an admonition for violation of Rule 4-5.5(a), which states "a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction or assist another in doing so."

**Communication with a minor without the presence of the guardian ad litem**

While representing a father in a custody dispute, the lawyer met privately with a minor outside of the presence of the guardian ad litem. The lawyer received an admonition for violation of Rule 4-4.2, which states that a "lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order."

**Respect for rights of third persons**

While representing a client in a domestic matter and responding to an email from the lawyer's client, the lawyer inadvertently also sent the message to the opposing party. When the opposing party replied to the email telling the lawyer not to email them, the lawyer responded directly to the opposing party by crudely insulting the opposing party.

The lawyer received an admonition for violation of Rule

4-4.4, which states, "[i]n representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person or use methods of obtaining evidence that violate the legal rights of such a person."

**Commission of a criminal act**

The lawyer pled no contest to a misdemeanor marijuana possession charge for an incident that occurred in another state. The lawyer received an admonition for violation of Rule 4-8.4(b), which identifies as professional misconduct commission of a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

**Duties to former clients**

The lawyer represented a client in a criminal matter stemming from the client selling illegal cannabinoids. The United States' Attorney's Office filed a motion to disqualify the lawyer alleging that the lawyer had a conflict of interest. The US Attorney's Office advised the court that the lawyer had previously represented four individuals who had supplied the synthetic cannabinoids to the lawyer's client. The US Attorney's Office also advised the court that the four suppliers might testify against the lawyer's client at trial as they had entered into cooperation agreements with the government. The lawyer had not obtained the consent of his four former clients to represent the current client. The court found that a conflict did exist and removed the lawyer from the case.

The lawyer received an admonition for violation of Rule 4-1.9(a) that provides "[a] lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interest are materially adverse to the interest of the former client unless the former client gives informed consent, confirmed in writing."

**Conduct prejudicial to the administration of justice**

During the representation of a client on a criminal matter and an administrative proceeding resulting from a motor vehicle accident, the lawyer served subpoenas – issued by the Missouri Department of Revenue in connection with the administrative proceeding – on several police officers. The subpoenas "commanded" the police officers to appear before the DOR "to testify" on behalf of the client in "an administrative hearing." The police officers were to appear at the lawyer's office. The lawyer did not provide notice to DOR's counsel regarding the subpoenas served on the police officers. In fact, the subpoenas were not issued for the police officers to testify in an administrative hearing before the DOR. The true purpose of the subpoenas was to have the police officers appear at the lawyer's office for depositions.

The lawyer received an admonition for violation of Rule 4-8.4(d) which states, "[i]t is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice."

**Returning client files upon terminating representation**

In a complaint to the OCDC, the client claimed that he sent his lawyer a letter requesting that the lawyer provide the client with his file. In the lawyer's response to the complaint, the lawyer denied receiving the client's letter and advised the OCDC that he would not return the file to the client unless the client paid the lawyer in advance to have the file copied.

The lawyer received an admonition for violation of Rule 4-1.16(d), providing that upon termination of representation a lawyer shall take steps to protect a client's interests such as surrendering papers and property to which the client is entitled. In addition, Missouri Advisory Committee Formal Opinion 115 further explains that, per Rule 4-1.16(d), the file belongs to the client except for those things contained in the file for which the lawyer had borne out-of-pocket expenses, such as transcripts. The formal opinion further provides that if the lawyer wishes to retain a copy of the file, the lawyer, not the client, must bear the cost of copying the file.

**Failing to respond to disciplinary counsel**

The OCDC made numerous requests for information to the lawyer by telephone calls, emails, and letters. The lawyer did not have a telephone conversation with the OCDC until nine months after the initial request. After the telephone conversation, the lawyer took another 11 months to send a letter responding to the request for information.

The lawyer received an admonition for violation of Rule 4-8.1(c), which provides that a lawyer in connection with a disciplinary matter shall not "knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority."

**Failing to act with reasonable diligence and expedite litigation**

A client hired the lawyer to represent them in a slip-and-fall incident. During the representation, the lawyer did not respond to repeated requests from the insurance company to make a demand. The lawyer filed suit approximately four years after the client retained him, and the lawyer admitted that he failed to prosecute the case in a timely manner. In addition, because the lawyer failed to promptly serve the defendants, he had to seek dismissal without prejudice two years later. One year after the dismissal, the lawyer refiled the petition, but court records showed return information on defendants' summonses were not on file.

The lawyer received an admonition for violating Rule 4-1.3, for failing to act with reasonable diligence and promptness in representing a client, and Rule 4-3.2, which states "[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client."

**Trust accounts and overdraft notifications**

The lawyer's bank notified the OCDC regarding the lawyer's client trust account had been overdrawn. Review of the lawyer's client trust account and additional discussions with the lawyer revealed that the lawyer was not maintaining a general ledger and the account was properly reconciled. In addition, it was discovered that the lawyer maintained a small

balance of $100 in personal funds in the client trust account. The lawyer's records also revealed that funds were disbursed from the account prior to allowing a "reasonable time" to pass to ensure the deposited funds were both "collected" and were "good funds."

The lawyer received an admonition for violation of Rule 4-1.15, which requires a lawyer to maintain separate and adequate record-keeping of all client funds. The lawyer should have created systems to assure that client funds were protected. In addition, while a lawyer may deposit limited funds in the client trust account for the sole purpose of paying known bank service charges, the lawyer may not hold additional personal funds in the trust account for any other reason.

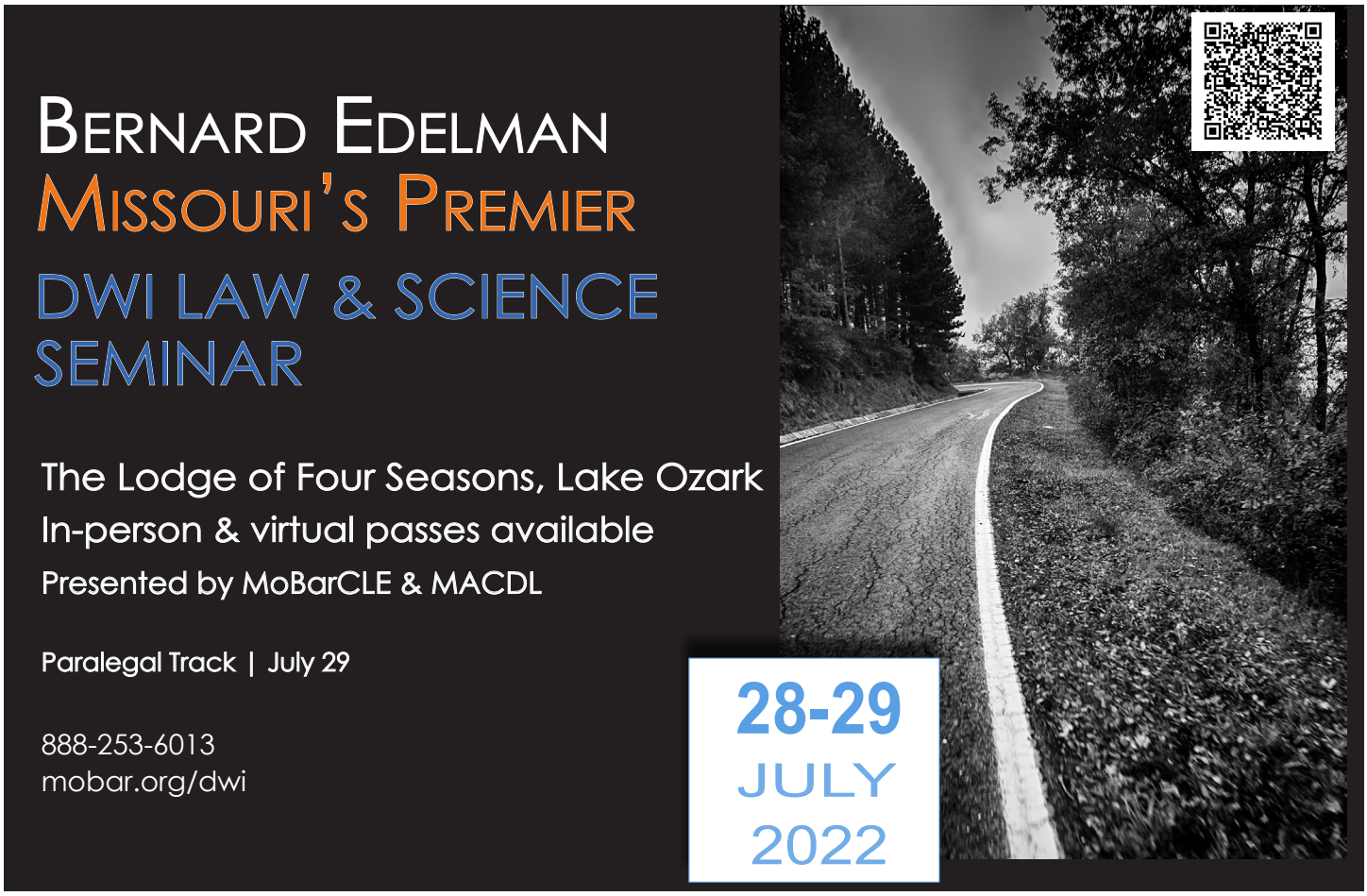
**Conclusion**

An admonition establishes a disciplinary history and may also be used to assist in evaluating the lawyer's future conduct. Admonitions should be viewed as informative and as a warning to the lawyer that he or she may need to be more careful to ensure compliance with the Rules of Professional Conduct in the future.

**Endnotes**

1 Cecilia Young is staff counsel for the Office of Chief Disciplinary Counsel in Jefferson City.
2 Supreme Court Rule 5.11(a).
3 Supreme Court Rule 5.11(b).
4 Supreme Court Rule 5.31(b)(3).





## DISCIPLINARY ACTIONS

### SUSPENSIONS

3/28/22 — Brian William Costello
#52685
1201 NW Briarcliff Pkwy., Ste. 200
Kansas City, MO 64116-1772

### REINSTATEMENTS

3/9/22 — Roger C. Jones
#35415
1410 St. Louis St.
Springfield, MO 65802-3126

### DISBARMENTS

2/16/22 — Kevin W. Kenney
#44147
8500 Belinger Rd.
Leawood, KS 66206

### REPRIMANDS

3/11/22 — Stephen Wayne Holaday
#62010
3500 N. Village Dr., Ste. 282
St. Joseph, MO 64506



## DIVERSITY AND INCLUSION IN THE BAR

The Missouri Bar is dedicated to fostering diversity and inclusion in the profession and wants all Missouri lawyers to view it as a place they belong.

Lawyers are encouraged to serve on The Missouri Bar Diversity Committee and apply for Leadership Academy, appointment vacancies, and seats on the bar's Board of Governors and Young Lawyers' Section. Members can also access resources, like MoBarCLE elimination of bias programs, implicit bias videos, and more.

Learn more at MoBar.org/Diversity_Inclusion.

# USING METRICS AND KEY PERFORMANCE INDICATORS TO IMPROVE EFFICIENCY AND CREATE A SHARED VISION

ERICA FUJIMOTO, AFFINITY CONSULTING GROUP[1]

Law firms typically follow one of two models: In one model, a firm analyzes data and understands its business based on reports. In the other, a firm eyeballs its circumstances and hopes for the best.

You might assume the former firm has a clearer sense of direction and the latter is surviving from day to day. In reality, neither firm's approach to self-assessment may be accurate.

While guessing is never the best way to run a business, many firms manage to achieve some level of success because their owners and leaders have a hands-on approach and are intuitively aware of their firm's strengths and weaknesses. Conversely, running reports based on unreliable, irrelevant, or misleading data is a waste of time. If a business report is like a map, how can it help if you don't know where you want to go?

Metrics can help a firm refine its direction and collect and measure data to determine whether it's on the right track. High-achieving firms use metrics to gauge the market, improve internal performance, promote staff accountability, open lines of communication, increase profitability, and facilitate future planning.

**What to measure and analyze**

Key performance indicators (KPIs) are quantifiable measurements specific to a firm and its business. KPIs reflect the effectiveness of an organization's strategies and goals. KPIs can be used for, and by, all levels of an organization to analyze performance, make improvements, and identify issues before they become critical.

For KPIs to accurately measure the effectiveness of a firm's strategies, the firm first needs to establish a baseline. This requires a discussion of how the firm currently is operating, what is and isn't working well, and what plans and actions are needed for desired improvements. Answers to these questions usually lead to clear, measurable target indicators.

There is no better time than now to start mapping your desired KPIs. You might be encouraged by the amount of useful data that can be extracted from case-management software; time, billing, and accounting software; and document-storage and other systems. If you don't use these software, many third-party exporting solutions exist. In any case, you probably have access to more useful data than you realize for measuring your newly developed target indicators.

KPIs reflect your firm's strategies and goals. Metrics are

| METRIC | DESCRIPTION | HOW IT CAN BE PUT TO USE |
|---|---|---|
| Realization | The difference between the chargeable, per-hour rate and the rate paid by a client after write-offs. This enables a firm to know how much money is needed to sustain business. | Realization rates that are low could be indicative of too many write-offs, an efficiency problem, billing delays, etc. |
| Aged accounts receivable | Invoiced fees and costs that have not yet been paid to the firm. | Overdue amounts can reveal issues with collection or billing processes. |
| Utilization | Billable hours divided by total hours, expressed as a percentage. | Establishing a utilization policy and creating a foundation to consistently measure it can help uncover scheduling problems; productivity, motivational and morale issues; whether people are billing all the time they worked; and whether they are productively managing non-billable hours. |
| Hourly billed charges | The amount of hourly fees billed by timekeepers during a specific period. | Used for setting a daily or weekly billing target, determining whether processes are broken or if there are not enough or too many files per timekeeper, calculating whether bonuses are needed, etc. |
| Client costs advanced | The amounts that are paid out of pocket by the firm and reimbursed later by the clients. | Amounts not being paid in full by clients may be a result of untimely or incorrect billing, high outside vendor rates, etc. |

measurements used to assess present and future patterns, trends, and behaviors. For simplicity, the table in this article lists financial metrics. Most law firms would benefit from a set of similar standard metrics when assessing the health of their bottom line. Other metrics may be useful for specific specialties and industries.

**Aim for continuous improvement**

Once you establish relevant and measurable KPIs and metrics, the next step is to create reports that track them. In some cases, you may need to manually track this information. But, if possible, automate as much of the data collection, reporting, and delivery process as you can. An ideal process is one that takes care of the data collection, storage, and delivery itself, placing minimal burden on staff. Make sure your data reports are sent to the appropriate lawyers, managers, and staff at useful intervals. The goal is for these reports to be reviewed regularly to inform decision making.

When reviewing your data, it's important to focus on potential issues and opportunities for improvement. Once those improvements have been made, continue to learn from the data and adjust your KPIs and metrics to ensure your business processes provide truly helpful – and rewarding – feedback loops.

**Endnotes**

1 Erica Fujimoto is the director of default services at Affinity Consulting.

# References to Babe Ruth in advocacy and judicial opinions

Douglas E. Abrams[1]

In 2015, the federal district court for the Eastern District of Pennsylvania decided West Palm Beach Police Pension Fund v. DFC Global Corp.[2] The plaintiffs alleged defendant DFC Global, a leading payday loan company, had harmed investors by fraudulently disseminating materially misleading statements concerning its lending practices. The district court denied, as premature, motions to dismiss.[3]

**Douglas E. Abrams**

A threshold issue raised in the parties' early submissions concerned whether some challenged statements made by DFC Global were statements of fact or opinion. The district court drew this distinction: "If one were to posit that Babe Ruth's purported hijinks and carousing made him an immoral person, such a position would qualify as an opinion. An argument that Babe Ruth was not one of baseball's greatest power hitters is incorrect and adding the phrase 'I believe' or 'in my opinion' does not alter the analysis."[4]

* * *

By referencing the New York Yankees legend to help focus a legal issue or to add color to the discussion, the Pennsylvania district court joined dozens of other federal and state courts that have accented their written opinions in recent years by citing or quoting well-known cultural markers from sports, popular entertainment, or literature.[5] Several of my prior "Writing It Right" articles have highlighted recent judicial references to the terminologies, rules, and traditions of baseball;[6] football;[7] and other participation and spectator sports that help shape American life, including basketball, golf, and hockey.[8] Other courts have referenced classic television shows and classic movies.[9] Still other courts have invoked literature by referencing well-known children's stories, fairy tales, and Aesop's Fables.[10] More recently, I wrote about recent judicial references to William Shakespeare's plays[11] and Charles Dickens' novels.[12]

The common theme of these "Writing It Right" articles is that the courts' use of well-known cultural references in their opinions invites advocates to enhance their briefs and other submissions with references to similar well-known cultural markers. As I wrote in 2019, "advocates should feel comfortable following the courts' lead by carefully referencing [cultural markers] to help sharpen substantive and procedural arguments in the filings they submit."[13]

This referencing by advocates is consistent with advice about effective advocacy delivered by leading judges. "Think of the poor judge who is reading . . . hundreds and hundreds of these briefs," says Chief Justice John G. Roberts Jr. "Liven up their life just a bit . . . with something interesting."[14]

Justice Antonin Scalia similarly urged brief writers "[m]ake it interesting."[15] "I don't think the law has to be dull." "Legal briefs are necessarily filled with abstract concepts that are difficult to explain," Justice Scalia continued.[16] "Nothing clarifies their meaning as well as examples" that "cause the serious legal points you're making to be more vivid, more lively, and hence more memorable."[17]

Advocates' appropriate references to Babe Ruth, a true cultural icon, fit the bill.

**Babe Ruth as a cultural icon[18]**

In 2018, biographer Jane Leavy wrote that "[m]ore than a century after his major-league debut, and seventy years after his death, Babe Ruth remains the lodestar of American fame. And that star has not diminished."[19] The Sarasota Herald-Tribune calls Ruth "[o]ne of the biggest cultural icons in the history of this country."[20] The Boston Globe concurs that he "looms large in American popular culture."[21] The Portland Oregonian echoes the recognition: Ruth's "cultural impact, ... his hold on the public consciousness as the Sultan of Swat, the Bambino, the exemplar of baseball power, continues …"[22]

Voices such as these know what they are talking about.

Ruth played from 1914 to 1935 (from 1914 to 1919 primarily as a standout pitcher with the Boston Red Sox; from 1920 to 1934 as a slugging right fielder with the New York Yankees; and briefly in 1935 with the Boston Braves). Ruth's glory years were with the Yankees in the 1920s, a decade that saw leading athletes win unprecedented media and popular acclaim. "[T]hrough their pervasive presence in the media," the 6th U.S. Circuit Court of Appeals has written, "sports and entertainment celebrities … have become valuable means of expression in our culture."[23] The 6th Circuit wrote these words in 2003 but could have written them in the 1920s, when Ruth captivated the media and the public.

Baseball was the unchallenged "national pastime" in the 1920s, a few decades before pro football and pro basketball began to claim growing shares of the national sports stage. On and off the field, Ruth dominated Major League Baseball like no other player then or now. And he dominated as the brightest star on the Yankees, the most storied franchise in sports history. He set two of Major League Baseball's most hallowed records – most home runs in a season (60 in 1927), and most career home runs (714).[24]

But there is more. "It wasn't that he hit more home runs than anybody else," syndicated sportswriter Red Smith said about Ruth, but that "he hit them better, higher, farther, with more theatrical timing and a more flamboyant flourish."[25] Ruth's luster remains untarnished today, even after both records were broken decades after his death in 1948.

**A "judicial home run"**

In the 21st century, judges continue to acknowledge Ruth's lasting imprint on American culture.[26] *DFC Global* is only one recent decision whose opinion cites the Babe in cases that did not raise claims, defenses, or issues concerning the Yankees, baseball, or sports generally.[27] Here are three other such recent decisions, which (together with *DFC Global* above) complete a "judicial round tripper."

*Vosse v. The City of New York*

In *Vosse v. The City of New York*, resident Brigitte Vosse, who lived in upper Manhattan's Ansonia condominium building, challenged an $800 fine the city imposed on her for placing an illuminated peace symbol in the window of her 17th-floor unit.[28] The city sought to enforce its public safety zoning ordinance that prohibited most displays of illuminated signs higher than 40 feet above curb level.

On remand from the 2nd U.S. Court of Appeals, the New York federal district court rejected Vosse's claim that the city ordinance was a content-based restriction that violated her First Amendment speech rights. The district court upheld the ordinance as a reasonable time, place, and manner restriction on speech.

Before resolving the dispositive constitutional issues, the district court offered this dictum about the Ansonia condominium building's pedigree: "The Court feels compelled to note that many legendary members of the New York Yankees called the Ansonia home in the first half of the twentieth century, including … most notably, Babe Ruth, who moved in after the Boston Red Sox sold his contract to the Yankees in 1919."[29]

*Smith v. Wakefield, LP*

In 2019, the Maryland Court of Appeals (the state's highest court) decided *Smith v. Wakefield, LP*, a suit for unpaid back rent on the lease of a residential unit in a Baltimore City condominium.[30] Landlord Wakefield, LP, filed suit seven years after tenant Gregory Smith had vacated the unit and stopped paying rent.

*Smith*'s threshold issue was whether the suit was time-barred. The landlord argued the applicable limitations period was 12 years, the period set by statute for suits for breach of contracts under seal. The court, however, agreed with the tenant that the applicable limitations period was three years, the period set by statute for suits seeking back rent for a residential lease.

*Smith* explained its resolution this way: "[H]istorically, a residential lease typically was made under seal. Yet an action to collect back rent under that lease was subject to a three-year period of limitations. That remained true if the lease was entered into and the action was brought when the State adopted its first constitution in 1776, when Abraham Lincoln was president in the mid-1800s, when Babe Ruth was born in Baltimore at the turn of the next century, or when humankind first stepped onto the moon 50 years ago."[31]

*Vespers Realty Advisors, Inc. v. Binswanger Management Corp.*

In 2006, the Massachusetts Superior Court decided *Vespers Realty Advisors, Inc. v. Binswanger Management Corp.*[32] The court granted plaintiff Vespers' motion to vacate the sole arbitrator's award in favor of Vespers in an amount the movant considered "wholly inadequate."[33] Over Vespers' objection, the sole arbitrator appointed pursuant to the parties' management agreement was the chief financial officer of a Binswanger agent.

The superior court held that Vespers had not validly waived its right to an impartial arbitrator because "in Massachusetts, a party may not waive its right to an impartial arbitrator and . . . any agreement appointing an evidently partial arbitrator is unenforceable."[34] The superior court applied a 1927 state supreme judicial court holding,[35] whose age posed no barrier to 21st century application: "[T]his Supreme Judicial Court decision," the superior court explained, "was issued the same year that Babe Ruth hit 60 home runs, but this Court is aware of no case overruling it and still finds it controlling authority."[36]

**Endnotes**

1 Douglas E. Abrams, a University of Missouri law professor, has written or co-written six books, which have appeared in a total of 22 editions. Four U.S. Supreme Court decisions have cited his law review articles. His writings have been downloaded more than 42,000 times (in 153 countries). His latest book is Effective Legal Writing: A Guide for Students and Practitioners (West Academic 2d ed. 2021).

2 2015 WL 3755218 (E.D. Pa. June 16, 2015).

3 *Id.* 1.
4 *Id.* 13.
5 Other recent decisions citing Babe Ruth include *Club Madonna, Inc. v. City of Miami Beach*, 924 F.3d 1370, 1374 n.1 (11th Cir. 2019); *Hughes v. Judd*, 108 F. Supp.3d 1167, 1174 (M.D. Fla. 2015); *Serco Inc. v. U.S.*, 81 Fed. Cl. 463 (U.S. Ct. Fed. Cl. 2008); *Encarnacion-Montero v. U.S.*, 34 F. Supp.3d 202 (D.P.R. Feb. 10, 2014); *In re Schuessler*, 386 B.R. 458, 485 n.14 (Bankr. S.D.N.Y. 2008); *In re IBP, Inc.*, 2001 WL406292, 1 (Del. Ct. Chan. Apr. 16, 2015); *People v. Thompson*, 118 N.Y.S.3d 383, 5 (N.Y. Sup. Ct. 2019).
For complete discussion and analysis of earlier decisions citing Babe Ruth, see Robert M. Jarvis, *Babe Ruth as Legal Hero*, 22 Fla. St. U. L. Rev. 885, 891-94 (1995).
6 Douglas E. Abrams, *References to Baseball in Judicial Opinions and Written Advocacy,* 72 J. Mo. Bar 268 (Sept.-Oct. 2016).
7 Douglas E. Abrams, *References to Football in Judicial Opinions and Written Advocacy,* 73 J. Mo. Bar 34 (Jan.-Feb. 2017).
8 Douglas E. Abrams, *References to Spring's Championship Sports in Judicial Opinions and Written Advocacy,* 73 J. Mo. Bar 168 (May-June 2017).
9 Douglas E. Abrams, *References to Television Shows in Judicial Opinions and Written Advocacy (Part 1),* 75 J. Mo. Bar 25 ((Jan.-Feb. 2019); Douglas E. Abrams, *References to Television Shows in Judicial Opinions and Written Advocacy (Part 2),* 75 J. Mo. Bar 85 (Mar.-Apr. 2019); Douglas E. Abrams, *References to Movies in Judicial Opinions and Written Advocacy (Part 1),* 75 J. Mo. Bar 222 (Sept.-Oct. 2019); Douglas E. Abrams, *References to Movies in Judicial Opinions and Written Advocacy (Part 2),* 75 J. Mo. Bar 297 (Nov.-Dec. 2019).
10 Douglas E. Abrams, *References to Children's Stories and Fairy Tales in Judicial Opinions and Written Advocacy,* 76 J. Mo. Bar 212 (Sept.-Oct. 2020); Douglas E. Abrams, *References to Aesop's Fables in Judicial Opinions and Written Advocacy,* 77 J. Mo. Bar 24 (Jan.–Feb. 2021).
11 Douglas E. Abrams, *Shakespeare in the Courts*, 77 J. Mo. Bar 132 (May-June 2021).
12 Douglas E. Abrams, *Charles Dickens' Novels in the Courts*, 78 J. Mo. Bar 29 (Jan.-Feb. 2022).
13 Douglas E. Abrams, *References to Television Shows in Judicial Opinions and Written Advocacy (Part 1),* 75 J. Mo. Bar 25, 25 ((Jan.-Feb. 2019).
14 Bryan A. Garner, *Interviews with Supreme Court Justices: Chief Justice John G. Roberts, Jr.*, 13 Scribes J. Legal Writing 5, 18 (2010).
15 Antonin Scalia & Bryan A. Garner, Making Your Case: The Art of Persuading Judges 112 (2018).
16 *Id.* at 111, 122.
17 *Id.*
18 For complete discussion and analysis of Babe Ruth's impact on American culture, see Jane Leavy, The Big Fella: Babe Ruth and the World He Created (2018).
19 *Id.* at xix.
20 *Most Famous Person Who Ever Visited Here? It Takes a Genius*, Sarasota Herald Trib., Oct. 28, 2021. *See also, e.g.*, Holiday Mathis, *Horoscopes: Porcine New Year's Resolutions*, Nashua Telegraph, Feb. 6, 2019 (calling Ruth "one of the greatest sports heroes of American culture"); *Elvis Presley and Babe Ruth Among Trump's First Medal of Freedom Honorees,* N.Y. Times, Nov. 10, 2018 (calling Ruth a cultural and athletic luminary).
21 Glenn C. Altschuler, *Clean living? Not quite, but Ruth was a force of nature*, The Boston Globe, June 4, 2006.
22 Douglas Perry, *Roger Federer's tennis records are being wiped away, one by one. Does it matter?,* The Oregonian, Mar. 2, 2021. *See also, e.g.*, Paul Doyle, *In His Own League: No Surpassing Babe Ruth as Baseball Icon*, Hartford Courant, May 13, 2006 ("Ruth remains an iconic figure in American history, an enduring source of fascination and perhaps the biggest personality in the history of athletics.").
23 *ETW Corp. v. Jireh Pub., Inc.*, 332 F.3d 915, 937-38 (6th Cir. 2003).
24 National Baseball Hall of Fame, Babe Ruth, https://baseballhall.org/hall-of-famers/ruth-babe.
25 *Id.* (quoting Smith).
26 For other recent decisions citing Babe Ruth, see *supra* note 5.
27 For discussion of litigation that did involve Ruth, see Jarvis, *supra* note 5 at 886-91.
28 *Vosse v. The City of N.Y.*, 144 F. Supp.3d 627 (S.D.N.Y. 2015).
29 *Id.* at 629 n.1.
30 462 Md. 713 (Md. 2019).
31 *Id.* at 1247.
32 21 Mass. L. Rptr. 77 (Mass. Super. Ct. 2006).
33 *Id.* at 1.
34 *Id.* at 4.
35 *Patton v. Babson Statistical Org., Inc.*, 259 Mass. 424, 426 (1927).
36 *Vespers, supra* 4.

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# TAX COURT ALLOWS DEFERRAL OF INCOME FOR CONTINUING CARE COMMUNITY

SCOTT VINCENT[1]

THE U.S. TAX COURT RECENTLY ADDRESSED THE TAX TREATMENT OF UP FRONT PAYMENTS A CONTINUING CARE COMMUNITY BUSINESS RECEIVED FROM ITS RESIDENTS, AND THE BUSINESS REPORTED AS INCOME IN LATER YEARS AS CALLED FOR UNDER GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

In *Continuing Life Communities Thousand Oaks LLC v. Commissioner of Internal Revenue*,[2] the tax court ruled against the Internal Revenue Service in holding that the business could treat the deferred fees as income when it completed its commitment to the residents making the payments.

**Scott E. Vincent**

**Background**

Continuing Life Communities Thousand Oaks, LLC is a Delaware limited liability company with its principal place of business in California. Continuing Life Communities Thousand Oaks' business is providing housing and care to seniors as their needs change, including housing, food, and care services like eventual skilled nursing care if needed. Continuing Life Communities Thousand Oaks charges residents large initial fees to move into its community and significant monthly payments to live there, which the court noted are similar to other communities in the continuing care industry.

To protect seniors against potential abuse, California law requires continuing care communities to provide lifetime care under "life care contracts." California also places minimum standards on these contracts, including financial statements to residents prepared under generally accepted accounting principles (GAAP). The court indicated other states also have strict regulations on continuing care communities, making this a national consideration.

Continuing Life Communities Thousand Oaks' residence agreement is a life care contract under California law and includes a contribution amount, as well as deferred and monthly fees. For the years in question, contribution amounts ranged $245,000-$570,000 based on the floor plan and residence chosen by the resident. The contribution amount for each resident was paid to a trustee of a separate master trust that provided financial protection and accounting to residents.

Deferred fees were based on a percentage of contribution amounts, accruing at 5% per year up to a maximum of 25%. Under the agreement, deferred fees were paid from the master trust when a resident died or moved out, and a new resident acquired the unit and paid his or her own contribution amount. After a resident died or moved out, the master trust paid the deferred fee and any other outstanding expenses, along with the balance of the original contribution amount back to the resident or his or her estate. Notably, the residence agreement referred to the deferred fee as a future payment, and Continuing Life Communities Thousand Oaks received no deferred fee if a resident was expelled, which does occasionally occur.

Continuing Life Communities Thousand Oaks' monthly fees were set based on operating costs and economic indicators. These expenses included the costs to provide lifetime care and operating utilities like electricity, water, gas, and trash collection. Optional utilities like internet, cable TV, and telephone services were itemized separately from the monthly fees. If a resident with unpaid fees died, moved out, or was expelled, Continuing Life Communities Thousand Oaks subtracted the unpaid fees from the otherwise refundable contribution amount.

As required by California law, Continuing Life Communities Thousand Oaks followed GAAP for its tax reporting of payments received from residents. Accordingly, the contribution amount was not treated as income when initially paid. Instead, Continuing Life Communities Thousand Oaks amortized and recognized a fraction of the deferred fee as income yearly on a straight-line method based on the actuarially determined estimated life of the resident. When residents died or moved out, Continuing Life Communities Thousand Oaks immediately recognized the remaining unamortized deferred fee as income before it resold the residence and received cash from the master trust.

The tax court noted that amortization of deferred fees based on estimated lives of residents was actuarially re-determined annually, and the Continuing Life Communities

Thousand Oaks was therefore able to defer recognizing unamortized portions of the deferred fees until termination of a residence agreement. As a result, Continuing Life Communities Thousand Oaks recognized relatively small deferred fee income during the years in question and reported millions of dollars of losses for tax purposes. On audit, the IRS disallowed Continuing Life Communities Thousand Oaks' accounting method for the deferred fees, resulting in proposed deficiencies of nearly $20 million.

**Tax court decision**

The parties agreed on the facts, and both moved for summary judgment in tax court. The sole issue before the court was whether Continuing Life Communities Thousand Oaks' accounting for deferred fees was allowed under the Internal Revenue Code.

Continuing Life Communities Thousand Oaks argued that it is allowed to follow its own method of accounting under Code § 446 unless it does not clearly reflect income or is not consistently followed. Continuing Life Communities Thousand Oaks also cited Treasury Regulation § 1.446-1(a)(2) for the proposition that a "method of accounting which reflects the consistent application of generally accepted accounting principles in a particular trade or business in accordance with accepted conditions or practices in that trade or business will ordinarily be regarded as clearly reflecting income."[3] Although case law exceptions have developed, Continuing Life Communities Thousand Oaks argued that it would be an abuse of discretion by the Commissioner of Internal Revenue to apply an exception since Continuing Life Communities Thousand Oaks' method of accounting clearly reflects income.

The commissioner argued that the commissioner can determine whether a taxpayer's accounting method clearly reflects income. The commissioner acknowledged there are limitations on this discretion but argued that Continuing Life Communities Thousand Oaks did not demonstrate abuse of discretion in this case.

The tax court decision provides an extensive outline of applicable law and historical cases addressing deferred income and applicable accounting methods. The court cited Treasury Regulation § 1.451-1(a) for the rule that where a right to receive compensation for services requires completion of the services, the compensation is ordinarily income for the tax year in which such determination can be made; in this case, when Continuing Life Communities Thousand Oaks has fulfilled its lifetime care obligation. The court also noted, and appeared to rely on, the fact that the residents' contribution amount (from which deferred fees were ultimately paid) was held in a master trust and was not under Continuing Life Communities Thousand Oaks' control or available for use to pay taxes. Finally, the court noted that applicable GAAP rules require consistent treatment and would not allow Continuing Life Communities Thousand Oaks discretion in reporting income, since it was governed by actuarial determinations. In the context of these factual findings, the court reviewed prior cases in a variety of contexts where following GAAP accounting may or may not have been adequate for tax purposes. Ultimately, the court found that in this case Continuing Life Communities Thousand Oaks' compliance with GAAP and its overall accounting method clearly reflected income.

The court also acknowledged the commissioner's discretion, noting that Treasury Regulation § 1.446-1(a)(2) contains the "remarkable sentence: 'However, no method of accounting is acceptable unless, in the opinion of the Commissioner, it clearly reflects income.'"[4] The court reasoned that the commissioner's discretion has significant weight but recited prior cases holding that it cannot be exercised without consideration of the facts in a particular case and cannot be abused. Otherwise, the court noted the commissioner's decision would be unreviewable.

Ultimately, the court decided that the facts and support for Continuing Life Communities Thousand Oaks' treatment of the deferred fees under GAAP "fits snugly into the pattern of similar cases."[5] The court further found that, at least in this case, the commissioner's discretion to change accounting methods should not overcome its conclusion, noting that "the history of how that discretion came to be weakens its power to overcome text, purpose, and analogy."[6] Based on these findings, the court granted summary judgment to the Continuing Life Communities Thousand Oaks.

**Conclusion**

*Continuing Life Communities Thousand Oaks LLC v. Commissioner of Internal Revenue* is an excellent review and analysis of the history and case law regarding deferred income and the interplay between financial and tax accounting. The case is also a good reminder that the commissioner has broad discretion to challenge and change a taxpayer's accounting method. However, importantly, the U.S. Tax Court can find that the commissioner's discretion does have limitations and can be challenged if it abuses that discretion.

**Endnotes**

1 Scott E. Vincent is the founding member of Vincent Law, LLC, in Kansas City.
2 T.C. Memo. 2022-31.
3 *Id.* at 7.
4 *Id.* at 21 (citing Treas. Reg. § 1.446-1(a)(2)).
5 *Id.* at 25.
6 *Id.* at 25.

# IN MEMORIAM

Edwin D. Akers Jr., age 88, of St. Louis, on Feb. 5, 2022. Akers was a corporate litigator at Thompson Mitchell Douglas & Neill as well as Gallop, Johnson & Neuman. He graduated from the University of Missouri School of Law and joined The Missouri Bar in 1961. Akers served in the U.S. Army.

Norman M. Arnell, age 89, of Overland Park, KS, on Dec. 8, 2021. Arnell practiced law in Kansas City for more than 50 years at Margolin & Kirwan as well as Morrison Hecker – later Stinson LLP. He graduated from the University of Illinois School of Law and joined The Missouri Bar in 1957.

Jeff H. Bess, age 30, of Springfield, on Sept. 14, 2021. Bess was a lawyer in the Springfield area. He graduated from the University of Washington School of Law and joined The Missouri Bar in 2018.

Lori L. Bockman, age 62, of St. Louis, on Feb. 14, 2021. She joined The Missouri Bar in 1985.

Darren K. Cann, age 56, of Charleston, on Sept. 16, 2021. Cann served as prosecuting attorney for Mississippi County. He joined The Missouri Bar in 2003.

Monte Paul Clithero, age 68, of Springfield, on Jan. 16, 2021. Clithero served as a trial lawyer for 45 years. He graduated from the University of Missouri School of Law and joined The Missouri Bar in 1978.

James S. Collins II, age 83, of Clemmons, NC, on May 20, 2021. Collins owned The Law Offices of James S. Collins II and practiced law for more than 50 years. He graduated from Washington University School of Law and joined The Missouri Bar in 1961.

Timothy L. Curran, age 79, of Milwaukee, WI, on April 27, 2021. Curran worked for nearly 40 years as a journalist with the Associated Press. He graduated from the University of Kansas School of Law and joined The Missouri Bar in 1997.

William Charles Dale Jr., age 91, of Clayton, on Feb. 21, 2021. Dale joined The Missouri Bar in 1953.

Jefferson Wayne Norton Davis, age 61, of Nevada, on Jan. 15, 2022. Davis practiced law in Topeka, KS, after graduating from Washburn University School of Law. He joined The Missouri Bar in 2008.

Karen Marie DeLuccie, age 64, of Independence, on April 12, 2022. During her 40-year legal career, DeLuccie was a partner at Paden, Welch, Martin and Albano before partnering with her husband to start DeLuccie & O'Hara Law Offices, LLC. She graduated from the University of Missouri-Kansas City School of Law and joined The Missouri Bar in 1982.

Audrey Verona Dorch, age 53, of Renton, WA, on Feb. 24, 2021. Dorch was executive vice president and chief legal officer of Providence Health. Prior to that, she served as executive vice president, chief legal officer, head of government affairs, and corporate secretary at Peabody Energy in St. Louis. She graduated from Harvard Law School and joined The Missouri Bar in 2016.

Bernard Jay Dowling, age 60, of Belleville, IL, on May 15, 2021. Dowling was a partner at Clayborne & Wagner. He graduated from Saint Louis University School of Law and joined The Missouri Bar in 1989.

Lois M. Drossman, age 86, of Maryland Heights, on Oct. 23, 2020. Drossman owned Lois M. Drossman, P.C., and joined The Missouri Bar in 1986.

Michael H. Dunker, age 51, of St. Louis, on Jan. 14, 2021. Dunker joined The Missouri Bar in 2011.

Joe. E. Edwards, age 72, of Oklahoma City, OK, on Sept. 24, 2021. Edwards worked at several law firms, most recently Crowe & Dunlevy. He graduated from Oklahoma City University School of Law and joined The Missouri Bar in 2006.

Rebecca L. Elliston, age 60, of Carl Junction, on March 2, 2022. Elliston opened a law office in Stockton, as well as served as Cedar County prosecuting attorney and public defender. She graduated from the University of Missouri School of Law and joined The Missouri Bar in 1989.

Hon. David Jeffery Ferman, age 61, of Wildwood, on Jan. 13, 2022. Ferman served as public defender and night court judge, as well as operated his own private practice. He graduated from the University of Missouri and joined The Missouri Bar in 1986.

Hon. Samuel Donald Frank, age 59, of Unionville, on Dec. 18, 2021. Frank opened a law firm in Putnam County and practiced for 20 years before serving as associate judge of Putnam County. He graduated from the University of Oklahoma School of Law and joined The Missouri Bar in 1990.

George Patrick Garrett, age 72, of Edmond, OK, on Jan. 2, 2022. Garrett operated a law office and was an administrative law judge for the Oklahoma Department of Human Services. He graduated from Oklahoma City University School of Law and joined The Missouri Bar in 1979. Garrett served in the U.S. Air Force Reserves.

Donald W. Giffin, age 91, of Kansas City, on Sept. 26, 2021. Giffin was a trial lawyer and partner at Spencer Fane LLP. He attended Yale University School of Law. Giffin joined The Missouri Bar in 1954. He served in the U.S. Army.

Bert Michael Godding, age 54, of Kansas City, on Feb. 18, 2022. Godding worked in the public defender's office before starting his own firm, where he worked for over 22 years. He graduated from the University of Missouri-Kansas City School of Law and joined The Missouri Bar in 1993.

Hon. Carl Gum Jr., age 89, of Raymore, on Feb. 22, 2022. Gum was a lawyer and circuit court judge. He joined The Missouri Bar in 1960.

Kathleen S. Hall, age 68, of Kansas City, on April 11, 2021. Hall worked as a lawyer before serving as the full-time chaplain at Bishop Spencer Place. She joined The Missouri Bar in 1998.

Charles Martin Hart II, age 85, of Chambersburg, PA, on Feb. 9, 2022. Hart was president of Insurance Concepts, Inc. He graduated from the University of Missouri School of Law and joined The Missouri Bar in 1962. Hart served in the U.S. Air Force.

Hon. James R. Hartenbach, age 80, of St. Charles, on April 1, 2022. Hartenbach served as a judge for the Circuit Court of St. Louis County and joined The Missouri Bar in 1966.

John G. Holland Jr., age 66, of Cairo, IL, on June 24, 2021. Holland practiced law in Alexander County in Illinois for 31 years. He graduated from Southern Illinois University School of Law and joined The Missouri Bar in 1996.

Raleigh West Johnson, age 87, of Gilbert, AZ, on Feb. 26, 2022. Johnson practiced law for more than 35 years. He graduated from Columbia University School of Law and joined The Missouri Bar in 1983.

Robert L. Johnson, age 71, of Duncanville, TX, on Dec. 9, 2021. Johnson served as a defense lawyer with American Family Insurance for 22 years. He graduated from the University of Missouri School of Law and joined The Missouri Bar in 1983.

Dewey R. Jones, age 84, of Woodridge, IL, on April 8, 2021. Jones joined The Missouri Bar in 1971.

Vonne Karraker, age 52, of Farmington, on March 21, 2022. Karraker started her own firm, Manley, Karraker & Karraker P.C., and served as a staff lawyer with Legal Services of Southern Missouri. Karraker graduated from Case Western Reserve University School of Law and joined The Missouri Bar in 2004.

Terrence O. Kelly, age 76, of Los Angeles, CA, on Aug 27, 2021. Kelly was a partner at McKenna & Fitting as well as Roers & Wells. He graduated from New York University School of Law and joined The Missouri Bar in 1999. Kelly served in the U.S. Marines in the Judge Advocate General's Corps.

Jerome "Jerry" Kraus, age 82, of St. Louis, on March 26, 2022. Kraus practiced law for more than 50 years. He graduated from Washington University School of Law and joined The Missouri Bar in 1963. Kraus served in the U.S. Army.

John Thomas Long, age 71, of Godfrey, IL, on Jan. 28, 2022. He was CEO and vice chairman of Argosy Gaming Company and chairman of the board and principal shareholder of First National Bank of Grant Park and First Community Bank of Godfrey. He graduated from the Southern Methodist University School of Law and joined The Missouri Bar in 1977. Long served in the U.S. Army.

Christel E. Marquardt, age 84, of Topeka, KS, on March 8, 2020. Marquardt was a partner at Cosgrove, Webb, and Omen before starting her own practice – Palmer, Marquardt and Snyder. She was also the first woman president of the Kansas Bar Association. She graduated from Washburn University School of Law and joined The Missouri Bar 1992.

Charles F. Marvine Jr., age 73, of Shawnee, KS, on Jan. 4, 2022. Marvine practiced in corporate and tax law in the Kansas City area. He graduated from the University of Kansas School of Law and joined The Missouri Bar in 1977. Marvine served in the U.S. Army.

David James Massa, age 66, of Maryville, IL, on Oct. 15, 2021. Massa practiced business law for 40 years and was a partner at Bryan Cave LLP before joining Gallop, Johnson & Neuman, L.C. He graduated from the Yale University School of Law and joined The Missouri Bar in 1979.

Hugh McPheeters, age 79, of St. Louis, on Jan. 26, 2022. McPheeters was a partner at Bryan, Cave, McPheeters and McRoberts. He graduated from Washington University School of Law and joined The Missouri Bar in 1967.

John G. "Jack" Meyer, age 73, of Lubbock, TX, on Jan. 19, 2021. Meyer practiced law in Tiptop, Perryville, and Union, as well as served as Perry County prosecuting attorney and Franklin County assistant prosecutor for 39 years. He graduated from the University of Missouri School of Law and joined The Missouri Bar in 1973.

Hon. Arthur F. Miorelli, age 90, of St. Louis, on March 1, 2022. Miorelli practiced law before serving as associate

circuit court judge. He later served as a senior judge for the State of Missouri. He graduated from Washington University School of Law and joined The Missouri Bar in 1954. Miorelli served in the U.S. Army.

Richard A. Moran, age 90, of St. Charles, on Dec. 7, 2020. Moran worked as a lawyer for Shelter Insurance for more than 30 years. He graduated from the University of Missouri School of Law and joined The Missouri Bar in 1957. Moran served in the U.S. Navy.

John R. Murphy Jr., age 81, of Kansas City, on Aug. 26, 2020. Murphy practiced law in the Kansas City area for 50 years. He joined The Missouri Bar in 1966.

Timothy S. O'Grady, age 50, of Fairview Heights, IL, on Feb. 6, 2021. O'Grady practiced primarily in family law. He graduated from Oklahoma City University School of Law and joined The Missouri Bar in 1995.

Jeffrey H. Pass, age 78, of St. Louis, on April 30, 2021. Pass was a partner at Lewis Rice. He graduated from Harvard Law School and joined The Missouri Bar in 1967.

Linda Louise Roediger, age 71, of Kirkwood, on Jan. 15, 2022. Roediger joined The Missouri Bar in 1994.

Charles M. Schmidt, age 94, of Chesterfield, on July 30, 2020. Schmidt practiced law for several decades and joined The Missouri Bar in 1949.

Ann Marie Seward, age 65, of Deerfield Beach, FL, on Aug. 3, 2021. Seward worked at private practices in Tucson, AZ; Las Vegas, NV; and St. Louis. She graduated from the University of Arizona School of Law and joined The Missouri Bar in 1991. Seward served in the U.S. Air Force in the Judge Advocate General's Corps.

Jackson L. Smith, age 88, of Colorado Springs, CO, on July 24, 2021. Smith owned a law firm in Louisiana, MO, before moving to Colorado Springs. He worked in the Colorado Springs city attorney office before serving as general counsel to Colorado Springs Memorial Hospital. He graduated from the University of California School of Law and joined The Missouri Bar in 1967. Smith served in the U.S. Air Force.

Henry Meade Summers Jr., age 85, of St. Louis, on May 26, 2021. Summers graduated from the University of Michigan School of Law and joined The Missouri Bar in 1961.

Reed F. Steele, age 86, of Kennesaw, GA, on Sept. 13, 2021. Steele joined The Missouri Bar in 1962.

James D. Stevens, age 76, of Nappanee, IN, on Sept. 2, 2021. Stevens worked in the Oklahoma employment security commission and as a procurement attorney at Tinker Air Force Base. He graduated from the University of Missouri School of Law and joined The Missouri Bar in 1969. Stevens served in the U.S. Air Force for 28 years and worked in the Judge Advocate General's Corps.

Thomas M. Tepe Sr., age 76, of Cincinnati, OH, on Oct. 16, 2021. He joined The Missouri Bar in 1971.

Hon. Todd Thornhill, age 61, of Springfield, on April 8, 2022. Thornhill served as chief judge of the 31st Judicial Circuit for nearly 30 years. He graduated from the University of Missouri School of Law and joined The Missouri Bar in 1987.

Paul K. Travous, age 61, of St. Charles, on May 8, 2021. He graduated from Saint Louis University School of Law and joined The Missouri Bar in 1998.

Robert T. Williams, age 46, of Broken Arrow, OK, on Aug. 13, 2020. Williams worked at Creative Planning in Overland Park. He graduated from the University of Tulsa School of Law and joined The Missouri Bar in 2017.

Christopher H. Wilson, age 66, of Swannanoa, NC, on April 9, 2021. Wilson practiced law with a focus on computer software and hardware transactions. He graduated from the University of Florida School of Law and joined The Missouri Bar in 1986.

William L. Vaughan III, age 78, of Glendale, AZ, on July 17, 2021. He joined The Missouri Bar in 1973.

## How to submit an obituary for In Memoriam

Obituaries are submitted to The Missouri Bar through a variety of mechanisms. To facilitate this process, the bar created a form that may be accessed via MoBar.wufoo.com/forms/in-memoriam/ or by scanning this QR code. We will not print the obituary unless a copy of the death certificate or obituary is submitted.

## SUPREME COURT RULE CHANGES

In an order dated March 15, 2022, the Supreme Court of Missouri repealed subdivision 7.03.2, entitled "Membership," of Court Operating Rule 7.03, entitled "Circuit Court Budget Committee: Established," and in lieu thereof adopted a new subdivision 7.03.2, entitled "Membership."

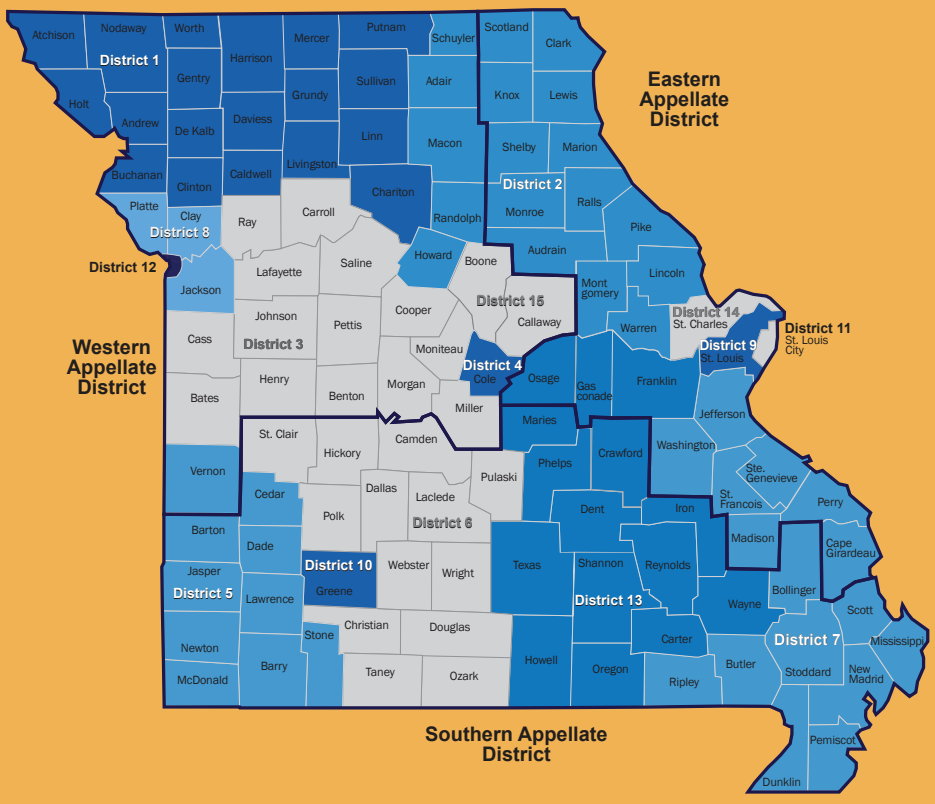
The order became effective March 15, 2022.

The complete text of the order may be read in its entirety at courts.mo.gov.

# MAKE YOUR VOICE HEARD IN BOARD OF GOVERNORS ELECTIONS

Missouri Bar members seeking election to the Board of Governors must submit their nominating petitions to the clerk of the Supreme Court of Missouri by June 21. There are vacancies in districts 1, 2, 4, 5, 7, 8, 9, 10, 11, 12, and 13, as well as the Eastern Appellate District.

Lawyers can begin voting July 20. To access the petitions and learn more about the elections, visit MoBar.org/Board-Elections.



# NOTICES OF CORPORATE DISSOLUTION

Notice of Corporate Dissolution Rates: $1.25 per word for a member of The Missouri Bar; $2.00 for non-members. For purposes of the total word count, any element surrounded by spaces is considered to be a word. DO NOT SEND A CHECK with the notice. You will be invoiced in advance of publication, and all invoices must be paid prior to publication.

Copy must be received by July 1, 2022 (for July/August 2022 issue) September 1, 2022 (for September/October 2022 issue), November 1, 2022 (for November/December 2022 issue), January 4, 2023 (for January/February issue), March 1, 2023 (for March/April 2023 issue).

Send notices by email to ads@mobar.org.

## NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST 3A IOWA FAMILY FARMS LLC

On April 1, 2022, 3A IOWA FAMILY FARMS LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State. Dissolution was effective March 30, 2022.

Said corporation requests that all persons and organizations who have claims against it present them immediately by letter to the corporation at:

3A IOWA FAMILY FARMS LLC
Attn: Parker B. Condie
20 Warson Downs
Saint Louis, MO 63141
Or
Ned Reilly, Esq.
Sandberg Phoenix & von Gontard P.C.
120 S. Central Ave. Ste 1600
St. Louis, MO 63105

All claims must include the name and address of the claimant; the amount claimed; the basis for the claim; and the date(s) on which the event(s) on which the claim is based occurred.

NOTICE: Because of the dissolution of 3A IOWA FAMILY FARMS LLC, any claims against it will be barred unless a proceeding to enforce the claim is commenced within three years after the date of publication of this notice.

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## NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS AND CLAIMANTS AGAINST AB COLORADO CROSSROADS COMMERCIAL RETURN, LLC

On Feb. 24, 2022, AB Colorado Crossroads Commercial Return, LLC, a Missouri limited liability company (hereinafter the "Company"), filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

Any claims against the Company may be sent to: Joan L. Will-Jones, 1111 Main St., Suite 1600, Kansas City, Missouri, 64105. Each claim must include the following information: name, address, and phone number of the claimant; amount claimed; date on which the claim arose; basis for the claim; and documentation in support of the claim.

All claims against the Company will be barred unless the proceeding to enforce the claim is commenced within three years after the publication of this notice.

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## NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST AB COLORADO DEERWOOD RETURN, LLC

On Feb. 24, 2022, AB Colorado Deerwood Return, LLC, a Missouri limited liability company (hereinafter the "Company"), filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

Any claims against the Company may be sent to: Joan L. Will-Jones, 1111 Main St., Suite 1600, Kansas City, Missouri, 64105.

Each claim must include the following information: name, address, and phone number of the claimant; amount claimed; date on which the claim arose; basis for the claim; and documentation in support of the claim.

All claims against the Company will be barred unless the proceeding to enforce the claim is commenced within three years after the publication of this notice.

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## NOTICE OF DISSOLUTION BY VOLUNTARY ACTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST ARCHWAY IMPORT AUTO PARTS, INC.

On Feb. 9, 2022, ARCHWAY IMPORT AUTO PARTS, INC., a Missouri corporation, filed its Articles of Dissolution by Voluntary Action with the Missouri Secretary of State.

ARCHWAY IMPORT AUTO PARTS, INC. requests that all persons and organizations who have claims against it present them immediately by letter to ARCHWAY IMPORT AUTO PARTS, INC., Attn: James Trunko, 1900 Telegraph Road, St. Louis, Missouri, 63125.

All claims must include the following information: (a) name and address of the claimant; (b) the amount claimed; (c) date on which the claim arose; (d) basis for the claim

and documentation thereof; and (e) whether the claim was secured and, if so, the collateral used as security.

All claims against ARCHWAY IMPORT AUTO PARTS, INC. will be barred unless a proceeding to enforce the claim is commenced within two years after the date of publication of this notice.

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## NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO CREDITORS OF AND CLAIMANTS AGAINST B & R CATTLE, LLC

B & R CATTLE, LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State on Jan. 20, 2022.

If you believe you have a claim against the company, you must submit a written claim to Travis Roberts, 12983 Rabbit Run, Lancaster, MO 63548. Claims must include: (1) the name, address, and telephone number of the claimant; (2) the amount claimed; (3) the basis of the claim; (4) the date on which the claim arose; and (5) any documentation in support of the claim.

All claims against B & R CATTLE, LLC will be barred unless a proceeding to enforce the claim is commenced within three years after the date of the publication of this notice.

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## NOTICE OF ARTICLES OF DISSOLUTION BY VOLUNTARY ACTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST BARN METAL FABRICATION, INC.

Barn Metal Fabrication, Inc., a Missouri corporation, filed its Articles of Dissolution by Voluntary Action with the Missouri Secretary of State on April 6, 2022.

All claims against the corporation should be sent to J. Michael Conway, Conway Law Office, LC, Attorney at Law, 213 Main Street, P.O. Box 412, Boonville, MO 65233. Each claim should include the following: name, address, and telephone number of the claimant; amount of the claim; the date the claim accrued; and the basis of the claim and any documentation.

All claims against the corporation shall be barred unless a proceeding to enforce the claim is commenced within two years after the date of this publication.

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## NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST C AND V, LLC

On April 4, 2022, C and V, LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

Said limited liability company requests that all persons and organizations who have claims against it present them by letter immediately to the company in care of: Rick J. Muenks, Attorney at Law, 3041 S. Kimbrough Avenue, Suite 106, Springfield, Missouri 65807. Claims must include name and address of claimant; amount of claim; basis of claim; and documentation of claim.

Pursuant to § 347.141 RSMo., any claim against C and V, LLC will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

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## NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS AND CLAIMANTS AGAINST CENTRAL STATES MERGERS & ACQUISITIONS, LLC

Central States Mergers & Acquisitions, LLC, a Missouri limited liability company (the "Company"), filed of a Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State on Feb. 25, 2022.

The Company requests all persons and entities with claims against the Company present them in writing by mail to: Central States Mergers & Acquisitions, LLC, c/o Paths Law Firm, 5008 NE Lakewood Way, Lee's Summit, MO. Each claim must include:

1. The name, address, and telephone number of the claimant;
2. The amount of the claim;
3. The basis of the claim;
4. The date(s) of the event(s) on which the claim is based occurred; and
5. Documentation in support of the claim.

NOTICE: Any and all claims against the Company will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

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## NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST DDAB HOLDINGS, LLC

Please take notice that DDAB HOLDINGS, LLC, Missouri Charter No. LC001412047, is winding up its affairs and dissolving. The notice was effective April 20, 2022.

Persons with claims against the company must furnish the following information: the amount of the claim; basis of the claim; and documentation of the claim. Claims must be mailed to: Daryl Daniels, 1401 S. Joyce St., Apt. 813, Arlington, Virginia 22202.

All claims against the company will be barred unless a proceeding to enforce the claim is commenced within three years after publication of this notice.

## NOTICE OF CANCELLATION OF REGISTRATION OF A LIMITED PARTNERSHIP TO ALL CREDITORS OF AND CLAIMANTS AGAINST DISTINGUISHED INTELLECTUAL CONSORTIUM, L.P.

On Feb. 24, 2022, DISTINGUISHED INTELLECTUAL CONSORTIUM, L.P., a Missouri limited partnership, was dissolved upon the filing of a Cancellation of Registration of a Limited Partnership with the Missouri Secretary of State.

Said partnership requests that all persons and organizations who have claims against it present them immediately by letter to: Ryan G. Polley, Blase & Associates, LLC, 14515 N. Outer 40 Road, Suite 111, Chesterfield, Missouri 63017. All claims must include the claimant's name, address, and telephone number and the amount, date, and basis for the claim.

Any claims against DISTINGUISHED INTELLECTUAL CONSORTIUM, L.P. will be barred unless a proceeding to enforce the claim is commenced within three years after the last publication date of the notices authorized by statute.

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## NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST DWELLINGS BY DESIGN, LLC

Dwellings by Design, LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State on Feb. 22, 2022.

Any and all claims against Dwellings by Design, LLC, may be sent to J. Brian Hill, Esq., 2900 Brooktree Lane, Suite 100, Gladstone, Missouri 64119. Each claim should include the following information: the name, address, and telephone number of the claimant; the amount of the claim; the basis for the claim; documentation supporting the claim; and the date(s) on which the event(s) on which the claim is based occurred.

Any and all claims against Dwellings by Design, LLC will be barred unless a proceeding to enforce such claim is commenced within two years after the date this notice is published.

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## NOTICE OF ARTICLES OF DISSOLUTION BY VOLUNTARY ACTION OF EARLEY TRACTOR, INC.

On Feb. 24, 2022, Earley Tractor, Inc., a Missouri corporation (the "Company"), filed its Articles of Dissolution by Voluntary Action with the Missouri Secretary of State. The dissolution was effective on that date.

You are hereby notified that if you believe you have a claim against the Company, you must submit a written summary of your claim to care of MaryAnn Ensign, 809 W. Grand Ave., Cameron, Missouri 64429.

The summary of your claim must include the following information:

1. The name, address, and telephone number of the claimant;
2. The amount of the claim;
3. The approximate date of the claim;
4. A brief description of the nature of the debt or the basis for the claim; and
5. Any documentation of or related to the claim.

All claims against the Company will be barred unless they are received within two years after the publication of this notice.

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## NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST GEI SOLID WASTE PROPERTIES, LLC

GEI Solid Waste Properties, LLC, a Missouri limited liability company (the "Company"), was dissolved on Jan. 14, 2022, by the filing of a Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

The Company requests all persons and entities with claims against the Company present them in writing by mail to: GEI Solid Waste Properties, LLC c/o J & K Trustee Services, 150 N. Meramec Ave., Suite 400, St. Louis, Missouri 63105. Each claim must include:

1. The name, address, and telephone number of the claimant;
2. The amount of the claim;
3. The basis of the claim;
4. The date(s) of the event(s) on which the claim is based occurred; and
5. Documentation in support of the claim.

NOTICE: Any and all claims against the Company will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

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## NOTICE OF ARTICLES OF DISSOLUTION BY VOLUNTARY ACTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST GIROUX INVESTMENTS, INC.

Giroux Investments, Inc., a Missouri corporation (the "Corporation"), was dissolved on Feb. 16, 2022, by the filing of a Articles of Dissolution by Voluntary Action with the Missouri Secretary of State.

The Corporation requests all persons and entities with claims against the Corporation present them in writing by mail to: Giroux Investments, Inc. c/o J & K Trustee Services, 150 N. Meramec Ave., Suite 400, St. Louis, Missouri 63105. Each claim must include:

1. The name, address, and telephone number of the claimant;
2. The amount of the claim;

3. The basis of the claim;
4. The date(s) of the event(s) on which the claim is based occurred; and
5. Documentation in support of the claim.

NOTICE: Any and all claims against the Corporation will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of this notice.

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## NOTICE OF ARTICLES OF DISSOLUTION BY VOLUNTARY ACTION TO ALL CREDITORS AND CLAIMANTS AGAINST HAWTHORNE SITE MANAGEMENT COMPANY, INC.

On April 1, 2022, Hawthorne Site Management Company, Inc., a Missouri corporation, (the "Company") filed its Articles of Dissolution by Voluntary Action with the Missouri Secretary of State. The dissolution was effective on April 10, 2022.

You are hereby notified that if you believe you have a claim against the Company, you must submit a written claim to Gerald Beckerle, 6726 Walsh St., St. Louis MO 63109. Claims must include (1) the name, address, and telephone number of the claimant; (2) the amount claimed; (3) the basis of the claim; (4) the date on which the claim arose; and (5) any documentation in support of the claim.

All claims against the Company will be barred unless a proceeding to enforce the claim is commenced within three years after the date of publication of this notice.

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## NOTICE OF ARTICLES OF DISSOLUTION BY VOLUNTARY ACTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST HTD BATTERY SUPPLY, INC.

On April 4, 2022, HTD BATTERY SUPPLY, INC., a Missouri corporation, filed its Articles of Dissolution by Voluntary Action with the Missouri Secretary of State.

You may submit any claim against the corporation by mail in writing to: John H. Schmidt, 2838 S. Ingram Mill Road, Springfield, MO 65804. All claims must include claimant's name, telephone number, and address; the claim amount; the date the claim arose; the basis for the claim; and documentation for the claim.

All claims against the corporation will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of this notice.

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## NOTICE OF ARTICLES OF DISSOLUTION BY VOLUNTARY ACTION TO CREDITORS OF AND CLAIMANTS AGAINST HUGHES AUTOMOTIVE, INC.

On Feb. 25, 2022, Hughes Automotive, Inc. ("Hughes Automotive"), a Missouri corporation, filed its Articles of Dissolution by Voluntary Action for a corporation with the Missouri Secretary of State.

You are hereby notified that if you believe you have a claim against Hughes Automotive, you must submit a summary in writing of the circumstances surrounding your claim to: Collins & Jones, P.C., Attn: Eric W. Collins, 1010 W. Foxwood Drive, Raymore, Missouri 64083. The summary of your claim must include the following information:

1. The name, address, and telephone number of the claimant;
2. The amount of the claim;
3. The date the event on which the claim is based occurred; and
4. A brief description of the nature of the debt or the basis for the claim.

All claims against Hughes Automotive will be barred unless the proceeding to enforce the claim is commenced within three years after the publication of this notice.

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## NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST IC TRUCK 1 LLC

On April 21, 2022, IC TRUCK 1 LLC, a Missouri limited liability company, filed its Articles of Termination and Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State, effective on April 21, 2022.

Said limited liability company requests that all persons and organizations who have claims against it present them immediately by letter to the company at:

IC TRUCK 1 LLC
Attn: Daniel N. Claypool
213 S. Cool Springs Road
O'Fallon, MO 63366

With a copy to:

Sandberg Phoenix & von Gontard, P.C.
Attn: Douglas Whitlock, Esq.
600 Washington Ave., 15th Floor
St. Louis, MO 63101
314-231-3332

All claims must include the name and address of the claimant; the amount claimed; the basis for the claim; and the date(s) on which the event(s) on which the claim is based occurred.

NOTICE: Because of the notice of winding up of IC TRUCK 1 LLC, any claims against it will be barred unless a proceeding to enforce the claim is commenced within three years after the publication date of the notices authorized by statute, whichever is published last.

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## NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST IC TRUCKING LLC

On April 21, 2022, IC TRUCKING LLC, a Missouri limited liability company, filed its Articles of Termination and Notice of Winding Up for Limited Liability Company with

the Missouri Secretary of State, effective on April 21, 2022.

Said limited liability company requests that all persons and organizations who have claims against it present them immediately by letter to the company at:

IC TRUCK 1 LLC
Attn: Daniel N. Claypool
213 S. Cool Springs Road
O'Fallon, MO 63366

With a copy to:

Sandberg Phoenix & von Gontard, P.C.
Attn: Douglas Whitlock, Esq.
600 Washington Ave., 15th Floor
St. Louis, MO 63101
314-231-3332

All claims must include the name and address of the claimant; the amount claimed; the basis for the claim; and the date(s) on which the event(s) on which the claim is based occurred.

NOTICE: Because of the notice of winding up of IC TRUCKING LLC, any claims against it will be barred unless a proceeding to enforce the claim is commenced within three years after the publication date of the notices authorized by statute, whichever is published last.

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## NOTICE OF ARTICLES OF DISSOLUTION BY VOLUNTARY ACTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST JAKE'S CAR WASH & STORAGE, INC.

On April 27, 2022, JAKE'S CAR WASH & STORAGE, INC., a Missouri corporation ("JAKE'S"), filed its Articles of Dissolution by Voluntary Action with the Missouri Secretary of State, effective April 27, 2022.

Any claims against JAKE'S may be sent to: JAKE'S CAR WASH & STORAGE, INC., c/o Jones Law Office, P.O. Box 35, Tarkio, MO 64491. Each claim must include the name, address, and phone number of the claimant; amount claimed; date on which the claim arose; basis for the claim; and claim documentation.

All claims against JAKE'S will be barred unless the claim enforcement proceeding is commenced within two years after publication of this notice.

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## NOTICE OF CANCELLATION OF REGISTRATION OF A LIMITED PARTNERSHIP TO ALL CREDITORS AND CLAIMANTS AGAINST JOHANNES FAMILY LIMITED PARTNERSHIP

Johannes Family Limited Partnership, a Missouri limited partnership, filed its Cancellation of Registration of Limited Partnership with the Missouri Secretary of State on April 7, 2022.

Any and all claims against Johannes Family Limited Partnership may be sent to David G. Bender, Esq., 7733 Forsyth Blvd., Suite 400, Clayton, MO 63105. Each claim should include the following information: the name, address, and telephone number of the claimant; the amount of the claim; the basis of the claim; and the date(s) on which the event(s) on which the claim is based occurred.

Any and all claims against Johannes Family Limited Partnership will be barred unless a proceeding to enforce such claim is commenced within three years after the date this notice is published.

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## NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST LS ELIZABETHTON TN RETURN, LLC

On Feb. 24, 2022, LS Elizabethton TN Return, LLC, a Missouri limited liability company (hereinafter the "Company"), filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

Any claims against the Company may be sent to: Joan L. Will-Jones, 1111 Main St.,

Suite 1600, Kansas City, Missouri, 64105. Each claim must include the following

information: name, address, and phone number of the claimant; amount claimed; date on which the claim arose; basis for the claim; and documentation in support of the claim.

All claims against the Company will be barred unless the proceeding to enforce the claim is commenced within three years after the publication of this notice.

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## NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST MATTHEWS FAMILY FARM, LLC

On March 10, 2022, Matthews Family Farm, LLC, a Missouri limited liability company (the Company) filed a Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

Any claims against the Company should be submitted to: CECB Registered Agent, Inc., 2805 S. Ingram Mill Road, Springfield, MO 65804. Each claim must include: the name, address, and telephone number of the claimant; amount and nature of the claim; date upon which the claim arose; and any claim documentation.

All claims against the Company will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

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## NOTICE OF WINDING UP AND DISSOLUTION OF LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST NAUGHT NBC, LLC

On April 20, 2022, NAUGHT NBC, LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary

of State. The Notice of Winding Up was effective April 20, 2022.

Said company requests that all persons and organizations who have claims against it present them immediately by letter to the company to: Richard L. Naught, 3614 W. Gordon Drive, Jefferson City, Missouri 65109.

All claims must include the name, address, and telephone number of the claimant; the amount claimed; the basis for the claim; the date(s) of occurrence on which the event(s) on which the claim is based; the documentation of the claim; and a brief description of the nature of the debt or the basis for the claim.

NOTICE: All claims against NAUGHT NBC, LLC will be barred unless a proceeding to enforce the claim is commenced within three years after the date of the publication of this notice.

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## NOTICE OF WINDING UP AND DISSOLUTION OF LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST NNA EARNOUT, LLC

On April 20, 2022, NNA EARNOUT, LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State. The Notice of Winding Up was effective April 20, 2022.

Said company requests that all persons and organizations who have claims against it present them immediately by letter to the company to: Richard L. Naught, 3614 W. Gordon Drive, Jefferson City, Missouri 65109.

All claims must include the name, address, and telephone number of the claimant; the amount claimed; the basis for the claim; the date(s) of occurrence on which the event(s) on which the claim is based; the documentation of the claim; and a brief description of the nature of the debt or the basis for the claim.

NOTICE: All claims against NNA EARNOUT, LLC will be barred unless a proceeding to enforce the claim is commenced within three years after the date of the publication of this notice.

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## NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST NORTH RIVER HOLDINGS, LLC

On Feb. 28, 2022, North River Holdings, LLC filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State. The event was effective Feb. 28, 2022.

You are hereby notified that if you believe you have a claim against North River Holdings, LLC, you must submit a summary in writing of the circumstances surrounding your claim to the corporation: Jennifer M. Snider, Witt, Hicklin, Snider & Fain, P.C., 2300 Higgins Road, P.O. Box 1517, Platte City, MO 64079

The summary of your claim must include the following information: (a) the name, address, and telephone number of the claimant; (b) the amount of the claim; (c) the date on which the event on which the claim is based occurred; (d) a brief description of the nature of the debt or the basis for the claim; and (e) copies of any documents supporting your claim.

The deadline for claim submission is 90 calendar days from the effective date of this notice. All claims against company will be barred unless the proceeding to enforce the claim is commenced within two years after the publication of this notice.

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## NOTICE OF WINDING UP OF LIMITED LIABILITY COMPANY TO ALL CREDITORS AND CLAIMANTS AGAINST PB OLIVE, LLC

PB Olive, LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State on March 2, 2022.

Any and all claims against PB Olive, LLC may be sent to Carl C. Lang, 7733 Forsyth Blvd., Suite 400, Clayton, MO 63105. Each claim should include the following information: the name, address, and telephone number of the claimant; the amount of the claim; the basis of the claim; and the date(s) on which the event(s) on which the claim is based occurred.

Any and all claims against PB Olive, LLC will be barred unless a proceeding to enforce such claim is commenced within three years after the date this notice is published.

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## NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST P.C. BUCKLEY FARM, L.L.C.

P.C. Buckley Farm, L.L.C. filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State. The notice was effective Feb. 7, 2022.

1. You are hereby notified that if you believe you have a claim against P.C. Buckley Farm, L.L.C., you must submit a summary in writing of the circumstances surrounding your claim to the company at P.C. Buckley Farm, L.L.C., c/o Robert D. Murphy, Attorney At Law, P.O. Box 453, Independence, MO 64051-0453. The summary of your claim must include the following information: The name, address, and telephone number of the claimant.
2. The amount of the claim.
3. The date on which the event on which the claim is based occurred.
4. A brief description of the nature of the debt or basis

for the claim.

All claims against P.C. Buckley Farm, L.L.C. will be barred unless the proceeding to enforce the claim is commenced within three years after publication of this notice.

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## NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST PLATTE COUNTY ACQUISITION, LLC

On Feb. 11, 2022, Platte County Acquisition, LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company and Articles of Termination with the Missouri Secretary of State. Dissolution was effective on March 3, 2022.

All claims against the company should be directed to the company c/o Gary Kerns, 601 Main St., Platte City, Missouri 64079. All claims must include: (1) the name and address of the claimant; (2) the amount claimed; (3) the basis for the claim; and (4) documentation of the claim.

All claims against Platte County Acquisition, LLC, will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

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## NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMS AGAINST REAL LAW, LLC

On March 21, 2022, REAL Law, LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

You are hereby notified that if you believe you have a claim against REAL Law, LLC, you must submit a summary in writing of the circumstances surrounding your claim to REAL Law, LLC, 222 E. Dunklin St., Suite 102, Jefferson City, MO 65101. The summary of your claim must include the following information: 1) name, address, and telephone number of the claimant; 2) claim amount; 3) date of event on which the claim is based; and 4) brief description of the nature of the debt or basis for the claim.

All claims against REAL Law, LLC will be barred unless the proceeding to enforce the claim is commenced within three years after the publication of this notice.

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## NOTICE OF ARTICLES OF DISSOLUTION BY VOLUNTARY ACTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST RPO, INC.

You are hereby notified that RPO, INC., a Missouri corporation, the principal office which is located at 517 S. Main St., Rock Port, Missouri 64482, filed Articles of Dissolution by Voluntary Action with the Missouri Secretary of State on Feb. 11, 2022.

Any claims against RPO, INC. may be sent to Kenneth Siemens, 3007 Frederick Ave., St. Joseph, Missouri 64506. Each claim should include the following: name, address, and telephone number of claimant; amount of claim; basis of the claim; and documentation supporting the claim.

All claims against RPO, INC. will be barred unless a proceeding to enforce a claim is commenced within two years after the date this notice is published.

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## NOTICE OF ARTICLES OF DISSOLUTION BY VOLUNTARY ACTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST S.I.S. PAINT, INC.

On April 4, 2022, S.I.S. PAINT, INC., a Missouri corporation, filed its Articles of Dissolution by Voluntary Action with the Missouri Secretary of State.

You may submit any claim against the corporation by mail in writing to: John H. Schmidt, 2838 S. Ingram Mill Road, Springfield, MO 65804. All claims must include claimant's name, telephone number, and address; the claim amount; the date the claim arose; the basis for the claim; and documentation for the claim.

All claims against the corporation will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of this notice.

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## NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST SNA INVESTMENTS, LLC

On March 21, 2022, SNA Investments, LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

Said limited liability company requests that all persons and organizations who have claims against it present them by letter immediately to the company in care of: Rick J. Muenks, Attorney at Law, 3041 S. Kimbrough Avenue, Suite 106, Springfield, Missouri 65807. Claims must include name and address of claimant; amount of claim; basis of claim; and documentation of claim.

Pursuant to § 347.141 RSMo., any claim against SNA Investments, LLC will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

## NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST SOLID WASTE PROPERTIES, LLC

Solid Waste Properties, LLC, a Missouri limited liability company (the "Company"), was dissolved on Jan. 14, 2022, by the filing of a Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

1. The Company requests all persons and entities with claims against the Company present them in writing by mail to: Solid Waste Properties, LLC c/o J & K Trustee Services, 150 N. Meramec Ave. Suite 400, St. Louis, Missouri 63105. Each claim must include: The name, address, and telephone number of the claimant;
2. The amount of the claim;
3. The basis of the claim;
4. The date(s) of the event(s) on which the claim is based occurred; and
5. Documentation in support of the claim.

NOTICE: Any and all claims against the Company will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

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## NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST SONOMA COUNTY SOAP COMPANY LLC

On Feb. 23, 2022, SONOMA COUNTY SOAP COMPANY LLC, a Missouri limited liability company ("Company"), filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

You are hereby notified that all parties that have claims against the Company must present them in writing to the Company: Robert L. Knapp, Attorney at Law, 14701 E. 42nd St., Independence, MO 64055.

All claims must include 1) the name, address, and telephone number of the claimant; 2) the amount of the claim; 3) the date(s) on which the claim is based occurred; 4) brief description of the nature of the debt or the basis for the claim and copies of any supporting documentation; and 5) if the claim is secured and if so, the collateral used as security.

All claims against the Company will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

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## NOTICE OF ARTICLES OF DISSOLUTION BY VOLUNTARY ACTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST SOUTHWEST INDUSTRIAL SUPPLY, INC.

On April 4, 2022, SOUTHWEST INDUSTRIAL SUPPLY, INC., a Missouri corporation, filed its Articles of Dissolution by Voluntary Action with the Missouri Secretary of State.

You may submit any claim against the corporation by mail in writing to: John H. Schmidt, 2838 S. Ingram Mill Road, Springfield, MO 65804. All claims must include claimant's name, telephone number, and address; the claim amount; the date the claim arose; the basis for the claim; and documentation for the claim.

All claims against the corporation will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of this notice.

## NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST WAVE AUTO WASH LLC

On April 13, 2022, Wave Auto Wash LLC, a Missouri limited liability company ("Company"), filed a Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

All persons with claims against the Company must mail claims to: Phillip S. Lupton, P.O. Box 7061, Kansas City, Missouri 64113. Each claim must include the name, address, and telephone number of the claimant; the amount of the claim; the basis for the claim; and the documentation of the claim.

All claims against the Company will be barred unless a proceeding to enforce the claim is commenced within three years after publication of this notice.

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