

## Family Matters, Too

by Melissa Neckers, 616.831.1759; neckersm@mjsc.com

An article on creating families . . . in a business law newsletter? The fact is that business lawyers find many of their clients asking questions about family matters, and often those questions have to do with the legal issues involved in creating families through nontraditional means.

### ADOPTION

The most common nontraditional way to create a family is adoption. Infant adoptions often are direct placement adoptions and are handled through either an agency or an attorney who acts as a facilitator. In a direct placement adoption, it is now possible for a birth mother to choose the adoptive parent(s) rather than surrendering the child to an agency and allowing the agency to make the decision. For the adoptive parents, the benefit is added privacy; for the birth parents, a sense of control. Even in direct placement adoptions facilitated by an attorney, an agency will perform a pre-placement assessment, counsel birth or adoptive parents, and provide post-placement monitoring. Miller Johnson has established a unique relationship with a local adoption agency and therefore is able to arrange for the steps in the process to be performed.

It's often more economical for adoptive parents to work through an agency. However, many potential parents – for example, people over 40 or blended families – are not likely to be at the top of the list to adopt a baby through an agency. They would, instead, be prime candidates for direct placement adoptions facilitated by an attorney. Although attorneys are prohibited from advertising for birth mothers, they can show adoptive parents how to advertise legally and ethically. The ongoing shortage of adoptable babies may also spur some families to consult an attorney rather than an agency, in order to reach a larger group of birth parents.

Step-parent and in-family adoptions present different problems but are generally much easier to obtain. In such cases the standard for terminating parental rights is much lower than in adoptions outside the family. Often a biological parent is willing to consent to have his or her parental rights terminated, and if a biological parent has not had a relationship with or supported the child for some time, that parent's rights can be terminated despite his or her objection.

### ARTs

An attorney's expertise can also play a role when families are created by means of Assisted Reproductive Technologies – ARTs. Those technologies are evolving daily and include egg or sperm donation and gestational surrogacy. Obviously, ARTs give rise to ethical considerations and in some cases even criminal concerns. For example, there are

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## Miller Johnson's Upcoming Workshops

JANUARY HIPAA

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strict rules about what, if any, fees may be paid for them. People who wish to use such procedures need to be fully informed about the complicated legal rights and risks involved.

Family matters, like business matters, often have legal implications and complications. A family law attorney can help resolve them. Please contact a Miller Johnson attor-

ney if you wish to know more about the topics covered in this article. Members of the adoption practice group are: Jack Keiser, 269.226.2955, keiserwj@mjsc.com; Laurie Murphy, 616.831.1733, murphyl@mjsc.com; Julie Sullivan, 269.226.2964, sullivanj@mjsc.com; and Melissa Neckers, 616.831.1759, neckersm@mjsc.com.

## Holiday Wishes

The holiday season is synonymous with family traditions and sharing. This year is no exception as Miller Johnson continues our "family" tradition of sharing by making a gift in lieu of sending holiday cards.

This year's recipient is the Student Advancement Foundation (SAF) and its Literacy Impact Program. Over the past ten years, SAF has raised funds for the Grand Rapids Public Schools providing supplemental resources and enrichment opportunities. "Literacy has been identified as the key critical needs area so we are making it our top priority," explains Susan Heartwell,

Executive Director for SAF. This gift to the Literacy Impact Program will be instrumental in providing a literature-rich, treasure trove of books – books which are not only truly fundamental to the success of any literacy program, but which will enhance and enrich each student's enjoyment of reading.

Miller Johnson appreciates each of our clients and all of our friends who have made it possible for us to contribute to this worthy program. Please accept our sincere gratitude and best wishes for a peaceful, healthy and happy holiday season and new year.

## Apples and Oranges and Creditors and Debtors

by Salvatore W. Pirrotta, 616.831.1739; pirrottas@mjsc.com

The Perishable Agricultural Commodities Act (PACA) regulates the sale of perishable agricultural commodities, which are defined most often as fresh fruits and vegetables. One of its main purposes is to protect unpaid sellers of commodities (think apples and oranges) from financing arrangements between merchants, dealers, or brokers of commodities and lenders who receive a secured interest in commodities or monies received from the sale of commodities (proceeds). Without PACA's protection, the claim of such a secured creditor has priority over the claim of the seller of commodities.

To qualify for PACA's protection, a seller must be a wholesaler of commodities that move in interstate or foreign commerce; must sell commodities to a merchant, dealer, or broker; and must give proper and timely written notice of its intent to preserve its PACA rights. (Although there are exceptions, a merchant, dealer, or broker is generally anyone who receives commission, sells,

or negotiates the purchase of more than \$230,000 in commodities in any calendar year).

If an unpaid seller gives a merchant, dealer, or broker proper written notice, a statutory trust is imposed for the seller's benefit on all commodities supplied by it and any receivables or proceeds from their sale, until the seller has been paid in full.

In fact, if the seller complies with PACA, the debt owed it becomes a trust obligation of the merchant, dealer, or broker that is prior to and superior to any lien or other security interest, including interests of banks or other secured lenders. Injunctive relief to prevent dissipation of trust assets is available if facts are presented to show both dissipation of trust assets and debtor financial instability.

Other important PACA protections include that

- a PACA debt to the seller may not be discharged in bankruptcy

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## Nexus and Multi-state Taxes

by Robert B. Bettendorf, 616.831.1722; [bettendorfr@mjsc.com](mailto:bettendorfr@mjsc.com)

When your company conducts business out of state, it can easily establish nexus (Latin word for connection). Nexus is the minimum connection or contact between a taxpayer and a state sufficient to subject the business to the taxing jurisdiction of that state. Business income taxes and sales/use tax requirements imposed by another state can be significant and interest and penalties can be assessed for all previous years back to the first year nexus was established.

States do not use a standard tax system when imposing their taxes on business entities. Differences occur according to the type of tax imposed, the base on which the tax is assessed, the type of return required, which

entities are included in the return, how receipts are divided among the states, and when returns are due.

Your Miller Johnson Business Section attorney can assist with nexus reviews, audit representation, relocation analysis, voluntary disclosure agreements and other related matters.

To learn more on this topic, read the in-depth article at:

[www.millerjohnson.com/resource/articles\\_books.asp](http://www.millerjohnson.com/resource/articles_books.asp)

Then click on the article title "Nexus and Multi-state Taxes" under the practice area of Taxation.

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- shareholders, officers, or directors of a corporation who are in a position to control PACA trust assets owe the seller a fiduciary duty to preserve those assets
- debtors who breach their fiduciary duty to a seller can be held personally liable to the seller
- a debtor may be required to pay interest and reasonable attorney fees to a seller if

the seller's invoices expressly reserve the right to such interest and fees; and

- parties who receive PACA trust assets, even banks and other secured lenders, can be forced to divest those assets to the sellers of commodities.

If you have any questions about this article or topic, please contact the author.

## Miller Johnson in the News

- In October, CAROL J. KARR had the following speaking engagements: "What You Need to Know About Estate Planning" for the Managed Care Academy, "Retirement Plans: A Ticking Time Bomb or Your Hidden Power" for the Blodgett Butterworth Health Care Foundation, "Estate Planning: Your Will, Your Wishes" for the Kent County Humane Society, "Estate Planning for Physicians" for Fifth Third Bank Private Banking and "Estate Planning for Women" for the Girl Scouts of America.
- JEFFREY S. AMMON participated in the "Joint Ventures, Strategic Alliances and Partnerships" series coordinated by The Right Place. On October 27, he spoke on the "Legal Impact of a Joint Venture or Strategic Alliance."
- The Grand Rapids Business Journal (GRBJ) recently recognized Miller Johnson as the Top Area Estate Planning Law Firm. In the same issue, GRBJ interviewed LAURETTA K. MURPHY. While she has a diverse practice in estate planning,

the focus of the GRBJ article was planning for the transfer of estates in the often controversial area of blended families.

- CATHERINE C. METZLER presented estate planning seminars to State Farm Insurance at both the Kalamazoo and Marshall, MI offices and to customers of Edward Jones & Company in Plainwell, MI.
- ROBERT D. BROWER became the statewide Chairperson of Hospice of Michigan Foundation, a Michigan non-profit responsible for the development of endowment and annual financial support of Hospice of Michigan, Inc., the nation's largest provider of hospice services regardless of patient diagnosis or ability to pay.
- CATHERINE C. METZLER was recently elected Vice President of the Board of Directors for Friendship Village, a retirement community in Kalamazoo.



## Business Section Welcomes New Member

■ JOHN T. PIGGINS joins Miller Johnson as a member in the Grand Rapids office. He will continue his practice in business counsel and bankruptcy – creditors/debtors rights. John received his education at Wayne State University Law School and Michigan State University.

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Have a question about a specific legal area? If so, please contact one of the following members of the Miller Johnson Business Section. We would welcome the opportunity to assist you.

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Any of the above lawyers can also put you immediately in contact with firm attorneys who practice in the areas of Banking, Environmental Law, Government Relations, Health Care, Health Professionals, Immigration, International Contracting, Municipal Law, and Small Business.

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