

TB

LAW

NEWSLETTER

PAGE 6

The Secret is Out

The Defend
Trade Secrets
Act of 2016

Inside

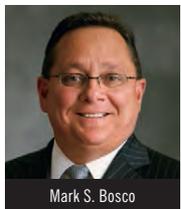
- 2 Announcements
- 5 International Child Abduction and the Hague Convention
- 8 Inherit Right
Business succession planning during the great wealth transfer
- 9 Rainwater: The "Common Enemy" of Landowners
- 10 Out of Office Reply
How some Tiffany & Bosco, P.A. attorneys are active in their free time
- 12 Attorney Directory



ANNOUNCEMENTS

PROFESSIONAL AND PERSONAL ACHIEVEMENT

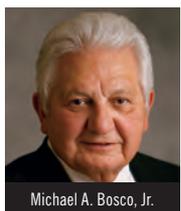
MARK S. BOSCO has been appointed to the Board of Trustees of the University of San Diego, a Roman Catholic institution committed to advancing academic excellence, expanding liberal and profes-



Mark S. Bosco

sional knowledge, creating a diverse and inclusive community, and preparing leaders who are dedicated to ethical conduct and compassionate service. Mark also has been appointed to serve his second three-year term on the Executive Committee of the Board of Governors of The Boys and Girls Clubs of Greater Scottsdale, which provides assistance to over 18,000 youth yearly by offering programs including the arts, recreation, team sports, homework help, and leadership initiatives.

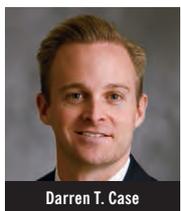
MICHAEL A. BOSCO, JR. has been appointed to the University of Notre Dame Law School Advisory Council for a three-year term, commencing July 1, 2016. He and his wife Kathy have also been selected to receive the Alumni Service Award from Michi-



Michael A. Bosco, Jr.

gan State University (MSU). This award is the highest recognition awarded by the MSU Alumni Association on behalf of Michigan State University, which will be presented on MSU's campus on October 13, 2016, at the MSU Alumni Association Grand Awards Gala.

DARREN T. CASE was elected President of the Central Arizona Estate Planning Council (CAEPC) for the 2016-2017 season. Established in the 1960s and recently recognized



Darren T. Case

by the National Association of Estate Planners & Councils as a 5-Star Council, CAEPC is one of the most well-known and prestigious estate planning organizations in Arizona.

SARAH K. DEUTSCH was elected to serve as the 2016-2018 Bylaws/Parliamentarian for the Junior League of Phoenix (JLP). Sarah was also designated by the JLP President to serve on the JLP Foundation Board of Directors.

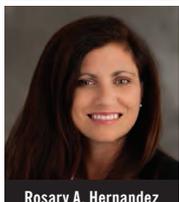


Alisa J. Gray



James A. Fassold

ALISA J. GRAY and **JAMES A. FASSOLD** presented at two seminars on workflow and stress management, "The Future, Now: The Art and Science of the Mindful Lawyer," for the Arizona Bar Convention, and "Beyond Burnout," for the Child and Family Protection Division of the Office of the Arizona Attorney General.

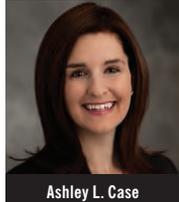


Rosary A. Hernandez

ROSARY A. HERNANDEZ was named to the Scottsdale Cultural Council's Board of Trustees.



Nora L. Jones



Ashley L. Case

NORA L. JONES and **ASHLEY L. CASE** presented the seminar "Lawyer Hacks: The Millennials' Guide to the Ethical and Efficient Practice of Law," to the State Bar of Arizona on June 21, 2016.

STEPHEN P. LINZER and **DARREN T. CASE** were featured in the Spring/Summer 2016 issue of *Iowa Auto Dealer* magazine, the official publication of the Iowa Automobile Dealers Association,

discussing the complexities involving business succession planning for dealerships from both an automotive law, and tax and estate planning perspective.

MAY LU co-presented at a Strafford webinar titled "Structuring MOUs, LOIs, Term Sheets and Other Nonbinding Legal Documents" in May 2016 and presented at the Asian Corporate & Entrepreneur Leaders' Dynamics of Leadership Conference in July 2016 on business formations. May also served as a moderator for the CLE program "Why Insurance Is Only Boring Until It Matters — Insurance Law for the Generalist" at the American Bar Association's Business Law Section Annual Meeting in September 2016.

LEONARD J. MCDONALD was elected



Leonard J. McDonald

the Chairman of the Board of Directors for the National Kidney Foundation of Arizona. He has been a member of the Board of Directors since 2011, and previously served as Chairman for the years 2013 and 2014.

JAMES P. O'SULLIVAN and **MAY LU** recently presented at the State Bar of Arizona's Annual Convention at a seminar entitled "From Boomers to Millennials — Promoting Understanding and Communication Between Generations."



James P. O'Sullivan

DAVID L. ROSE was recently appointed to a three-year term on the State Bar of Arizona's Family Practice & Procedure Committee. He also gave a presentation on the history of The



David L. Rose

Hague Convention and The Hague Convention on the Civil Aspects of International Child Abduction to the Sandra Day O'Connor Inn of Court in March 2016. Finally, in May, David hosted a table at the annual dinner for Center for Arizona Policy, which promotes and defends the foundational values of life, marriage, and family, and religious freedom.

ANNOUNCEMENTS

FIRM NEWS

T&B Lawyers Obtain Record Internet Defamation Verdict

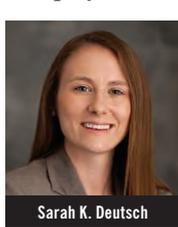
On February 17, 2016, an eight-member jury panel in the U.S. District Court in Las Vegas, Nevada entered a unanimous verdict in a civil internet defamation trial in favor of Tiffany & Bosco's client, Los Angeles businessman Bradley S. Cohen.

Cohen, and his company, Cohen Asset Management, Inc., were awarded \$35.3 million in damages for defamation per se and false light invasion of privacy, and



Robert D. Mitchell

an additional \$3 million in punitive damages against the defendants, a Seattle-based business, its owner — disgruntled former tenants — and an employee, who had posted a website



Sarah K. Deutsch

falsely comparing Mr. Cohen and his business to the notorious convicted felon Bernie Madoff.

None of the allegations were true and were made to retaliate for the plaintiff's company holding the defendant company and its

owner responsible for environmental contamination on plaintiff's property.

ROBERT D. MITCHELL was lead counsel in the case, and was assisted by **SARAH K. DEUTSCH**. Defendants' motion for new trial or to reduce the verdict was denied in April.

FIND AN ATTORNEY

See the directory on the back page of this newsletter or visit us online at tblaw.com.

NEW FACES

Three New Associates Join Firm

E. TORY BEARDSLEY joined the firm's Land Use and Zoning group in March 2016. Tory graduated from the Sandra Day O'Connor College of Law at Arizona State University in May 2014. During her time there, she worked for municipalities and real



E. Tory Beardsley

estate firms alike, gaining experience at various levels of the development process. Tory is a native Phoenician with a passion for the local real

estate industry. She is also a member of the Herberger Theater Center Young Leadership Board's inaugural class, a group aimed at fostering the arts and enriching life in downtown Phoenix.

MICHELLE M. BUCKLEY joined the firm in May 2016. Michelle concentrates her commercial litigation practice in construction, product liability, catastrophic injury, general business torts, and contract-related disputes. Michelle graduated from Arizona State University with a Bachelor's degree



Michelle M. Buckley

in orchestral performance. She earned her Juris Doctor from the University of Arizona with honors in legal writing and oral argument.

JUSTIN P. NELSON joined the firm in July 2016. Justin earned his Bachelor of Arts in Communication from Southern Utah University in 2011 and his Juris Doctor from The Ohio State University



Justin P. Nelson

Moritz College of Law in 2015. During law school, Justin was an editor for the Ohio State Law Journal and an extern to the Honorable Jeffrey

Sutton of the United States Court of Appeals for the Sixth Circuit. After law school and prior to joining the firm, Justin clerked for the Honorable Kenton D. Jones of the Arizona Court of Appeals, Division One. Justin is licensed to practice in Arizona.

May Lu Promoted to Shareholder

MAY LU was promoted to Shareholder at Tiffany & Bosco, P.A. in June 2016. May focuses her practice on the transactional needs of businesses and their owners, including business formations of limited li-

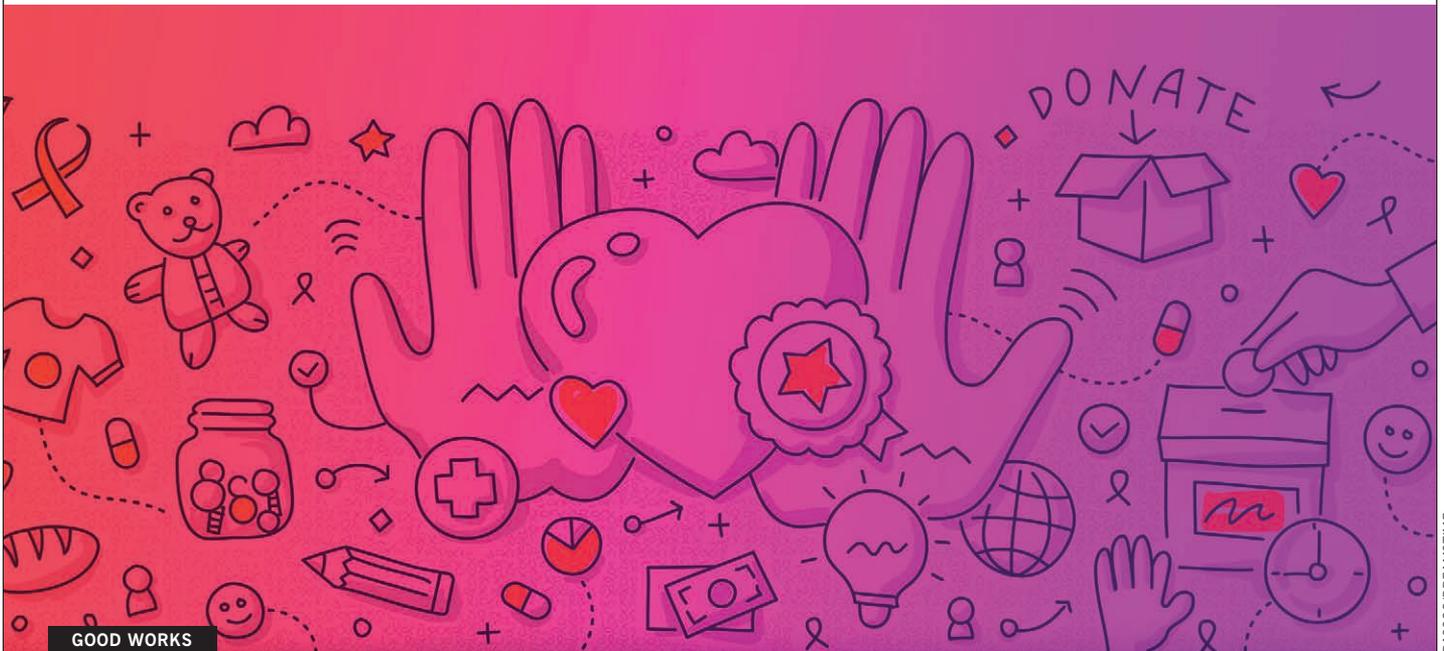


May Lu

ability companies and corporations, joint ventures, mergers and acquisitions, recapitalizations, succes-

sion strategies, general business planning, business disputes, and other business agreements. She also assists clients with regulatory and governance issues related to the U.S. Small Business Administration and other federal, state, and local programs. Prior to joining the firm, May served as a Law Clerk for the Honorable Lawrence F. Winthrop, of the Arizona Court of Appeals, Division One.

ANNOUNCEMENTS



GOOD WORKS

RASSCO/DREAMTIME

The Power of Teamwork

Tiffany & Bosco's Staff Committee helps its employees to give back

By E. TORY BEARDSLEY

Tiffany & Bosco's Staff Committee works closely with local and national non-profit organizations to ensure the Firm gives back to the community at the grass roots level. The Committee invites all employees to participate, on an entirely voluntary basis, in fundraisers and collection drives organized by the Committee. The Firm also provides prizes for participants on a random basis as extra rewards for their support.

In preparation for the new school year, the Firm held a "Pack to School" drive, collecting school supply items on behalf of the Salvation Army. Over a two week period, attorneys and staff brought in backpacks, pencils, paper, crayons, etc. The Salvation Army filled the donated backpacks with school supplies and provided them to children across the Valley.

This was the second year that Tiffany & Bosco participated in this drive. Last year, the Salvation Army distributed 8,000 backpacks, as well as 300,000 school supplies, to more than 11,000 Valley children.



Presents collected during the Team Jaydie's Holiday Angel drive in 2012

In September, which was Hunger Action Month, Tiffany & Bosco participated in St. Mary's Food Bank's "Object to Hunger" food drive. Object to Hunger is a friendly competition among local law firms aimed at raising 100,000 meals for St. Mary's.

In addition to the "Object to Hunger" drive, the Firm frequently participates in other charity events for St. Mary's. During the summer, it held a "Casual for

a Cause" day for the benefit of the charity's water supply. St. Mary's distributes nearly 3 million pounds of water annually. Casual for a Cause participants made a minimum donation of \$5 to St. Mary's and were able to wear jeans to work. Additionally, participants who wore "Casual for a Cause" stickers raised awareness for the fundraiser.

During the holiday season, Tiffany & Bosco participates in another "Casual for a Cause" event by providing Thanksgiving Turkeys in collaboration with St. Mary's. Sponsored by the Staff Committee, as reported in our last newsletter, it also adopts families and donates Christmas gifts through Team Jaydie's Holiday Angel program. Last year, employees brought in over 200 gifts, including gift cards, bikes, wagons, Play Stations, and Barbies. Additionally, each family was given a \$200 grocery store gift card.

These are just a few of the various events the Firm's employees participate in on an annual basis. Tiffany & Bosco is proud to partner with such wonderful organizations and intends to join in these drives for years to come.

FAMILY LAW

International Child Abduction and the Hague Convention

By DAVID L. ROSE

With the world seemingly getting smaller, family law attorneys are finding themselves faced with a growing problem — international child abduction cases. In these cases, one parent travels to a foreign country with the couple's children but then later refuses to return the children. These cases involve complicated jurisdictional and international law issues. To deal with this problem, many countries around the world have signed on to a treaty called The Hague Convention on the International Abduction of Children ("Hague Convention").¹

Member countries to the Hague Convention agree to use a specialized process to determine which country has jurisdiction to decide a child custody matter. Although it happens regularly, the Hague Convention does not allow a court to determine *what* is in the best interest of a child, only what country should *hear the arguments* related to the child's best interest.

The process is based upon a concept called the "habitual residence." The official Convention Reporter does not define habitual residence; however, it is a well-established concept requiring a factual inquiry into such things as where the children were born and where their parents resided, worked, and owned a home.² If a member court determines that a child was wrongfully removed from his country of habitual residence, the absconding parent should (in theory anyway) be ordered to return the child to the country of



NADEZHDA1906/DREAMSTIME

habitual residence for the court there to make custody decisions.

The Hague Convention requires that "the remote parent must accept the country where the child is habitually resident and its legal system as given" unless the absconding parent can establish a change in the child's habitual residence.³ A change in habitual residence requires three conditions: (1) "a shared intent to abandon the prior habitual residence"; (2) a change in geography; and (3) presence in the new geographic location for an "appreciable period of time."⁴ A "shared intent" clearly means that both parents agree to the change in residence and in cases where a child's relocation is from an established habitual residence for a specific, delimited period, such as for a vacation, "courts have generally refused to find that the changed intentions of one parent led to an alteration in the child's habitual residence."⁵

At trial, the non-absconding parent must establish that the child was "wrongfully removed."⁶ Assuming that an Arizona child was taken to another country, the Arizona parent would have to show that: (1) Arizona was the child's "habitual residence" before his or her wrongful removal; (2) Arizona law conferred custody rights to the Arizona parent; and (3) the Arizona parent

exercised those custody rights before the wrongful removal and would have continued to do so had the child not been wrongfully removed.

A foreign nation is not bound to order the return of the child if the person opposing the return establishes that "there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation."⁷ This unfortunate language has been read by some courts in foreign countries to allow them to conduct a best interest test, even though the language of the Hague Convention is strictly jurisdictional and not intended to impart to a foreign court the substantive ability to grant custody rights.⁸

Finally, a foreign court may refuse to order the return of a child if the child would be denied "human rights and fundamental freedoms."⁹ Certainly, it would be hard to argue that a child wrongfully removed from the United States would be subject to the loss of human rights or fundamental freedoms.

International child abduction cases require a thorough understanding of state, federal, and international law and it is important to contact a lawyer with significant experience in these cases.

¹ Most countries allowing Sharia law do not subscribe to the Hague Convention; thus, it is dangerous if a child is taken to one of these countries.

² See e.g., *Mozes v. Mozes*, 239 F.3d 1067 (9th Cir. 2001); *Steffen F. v. Severina P.*, 966 F. Supp. 922, 926 (D. Ariz. 1997), *disapproved of on other grounds by Application of*

Blondin v. Dubois, 78 F. Supp. 2d 283 (S.D.N.Y. 2000).

³ *Cuellar v. Joyce*, 596 F.3d 505, 510 (9th Cir. 2010).

⁴ *Valenzuela v. Michel*, 736 F.3d 1173, 1177 (9th Cir. 2013) (citation omitted).

⁵ *Mozes*, 239 F.3d at 1077.

⁶ 22 U.S.C. § 9003(e)(1)(A).

⁷ Hague Convention, art. 13.

⁸ See *Hollis v. O'Driscoll*, 739 F.3d 108, 112 (2d Cir. 2014) ("The purpose of the habitual-residence inquiry under the Hague Convention is to determine which State's laws should govern the custody dispute.")

⁹ Hague Convention, art. 20.

THE SECRET IS OUT



The Defend Trade Secrets Act of 2016

By RICHARD E. ONEY

This year, Congress created a federal private cause of action for trade secret misappropriation. The Defend Trade Secrets Act of 2016, Pub. L. No. 114-153 [S 1890] (DTSA), provides remedies not previously available in our expanded and digitized environment.

Although thefts of intellectual property are not new, the numbers have exploded in recent years with increased digitization of critical data and expanding global trade. In 2013, the Commission on the Theft of American Intellectual Property estimated that theft of intellectual property from U.S. companies caused annual losses of over \$300 billion. While much of

MATTERS

this loss results from international cyber-enabled theft, misappropriation of corporate intellectual property by existing and departing employees has been and continues to be a constant problem for employers.

Trade secrets are susceptible to theft. Trade secrets are the commercially valuable designs, processes, techniques, and other forms of information kept confidential by companies because, by virtue of their secrecy, they provide an edge in a competitive marketplace. Examples include confidential formulas, manufacturing techniques, and customer lists. They can be a company's most valuable assets.

Companies can take steps to combat the threat of trade secret theft by strengthening their cybersecurity measures, encrypting key documents, examining their supply chains for weak points, employing strong contractual protections to safeguard their trade secrets in business relationships, and increasing the physical security of their plants and offices.

When thefts do occur, companies typically turn to state civil laws for a remedy. Most states (including Arizona) have adopted some version of the Uniform Trade Secrets Act (UTSA) to provide remedies for trade secret misappropriation. These state laws, however, vary somewhat from state to state and have perceived procedural weaknesses in protecting trade secrets in a national and global economy.

The DTSA was passed in response to these challenges and the growing impact of trade secret misappropriation. Some key aspects of the statute include:

The DTSA's definition of "trade secret" is similar to the UTSA. Trade secrets include "[a]ll forms and types of financial, business, scientific, technical, economic, or engineering information" if (A) the owner has taken reasonable measures to keep such information secret, and (B) the information derives independent economic value, actual

or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public.

The DTSA's definition of "misappropriation" also is similar to the UTSA. It includes (A) acquisition of a trade secret of another with knowledge or reason to know that the trade secret was acquired by improper means, or (B) disclosure or use of a trade secret of another without consent by a person who (i) used improper means to acquire knowledge of the trade secret or (ii) knew or had reason to know that the knowledge of the trade secret was obtained through improper means.

The DTSA provides for equitable remedies and damages, including double damages for willful and malicious misappropriation.

"Improper means" include "theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means" but "[d]oes not include reverse engineering, independent derivation, or any other lawful means of acquisition."

The DTSA does not preempt state laws, but instead offers a complementary federal remedy.

The DTSA provides for equitable remedies and damages, including double damages for willful and malicious misappropriation. It has a 3-year statute of limitations. If a claim of misappropriation is made or opposed in bad faith, or the trade secret was willfully and maliciously misappropriated, a court can award reasonable attorneys' fees to the prevailing party.

The DTSA provides a mechanism for obtaining, upon ex parte application in extraordinary circumstances, a court order for seizure of property

from the party accused of misappropriation to preserve evidence or prevent the dissemination of a trade secret.

The DTSA places some limits on injunctive relief against former employees. An injunction that would "prevent a person from entering into an employment relationship" must be "based on evidence of threatened misappropriation and not merely on the information the person knows." Also, an injunction preventing or limiting employment cannot "otherwise conflict with an applicable State law prohibiting restraints on the practice of a lawful profession, trade, or business."

The DTSA provides immunity from civil and criminal liability to whistleblowers who make confidential disclosures of trade secrets to governmental authorities or in a court filing under seal. The statute also mandates that an employer give notice of this whistleblower immunity in any new contract or agreement "with an employee that governs the use of a trade secret or other confidential information." For purposes of this notice, "employee" is defined to include any individual performing work as a contractor or consultant for an employer. An employer that fails to comply with the notice requirement may not be awarded exemplary damages or attorneys' fees under the statute in an action against an employee who misappropriates trade secrets.

The DTSA provides new options for trade secret owners to protect their assets. To fully benefit from remedies provided under the statute, employers should review their contracts governing the use of trade secrets and other confidential information to determine whether they comply with the DTSA notice requirements.

GET ANSWERS

Please contact Tiffany & Bosco if you need assistance in, or have any questions regarding, this practice area.

ESTATE PLANNING

Inherit Right

Business succession planning during the great wealth transfer

By DARREN T. CASE

The United States is presently in the midst of what is being described as the greatest wealth transfer in human history. Over \$30 trillion dollars is set to transfer from one generation to the next over the following few decades, with a large portion of this wealth being tied up in family businesses. Many owners are now facing very difficult business transition decisions. The actions or inactions of the business owners can have significant tax consequences, favorably or unfavorably, and can also have a corresponding impact on the value of the business during one's life and upon death. Thus, it is critical that tax and estate planning be contemplated and compared when implementing any business succession strategy, but it certainly cannot be the sole emphasis.

From a tax and estate planning standpoint, much of the focus on a potential sale of a family business involves the lifetime impact of capital gain taxes and post-mortem step-ups in basis. If a family business is sold by an owner during his or her life, many times the owner is subjected to capital gains taxes. In general, capital gains taxes are imposed on the difference between the adjusted basis of a family business and its sales price. If the asset is held for over a year, the "long-term" capital gains tax rate is anywhere from 15% to 23.8%. While these capital gains tax rates are often more preferential than the progressive ordinary income tax rates, it is still a significant hit to an owner's overall net worth. This is especially true considering that a successful family business ordinarily receives a step-up in basis upon the death of the owner.

Business owners that have properly



vetted the tax aspects of an exit strategy often learn that an incredibly effective tax strategy is one that the owner will never live to see. Presently, the Internal Revenue Code *generally* provides that a family business will receive a step-up in basis upon the death of its owner. For example, if a business that is owned long-term, with an adjusted basis of \$5 million and a value of \$7 million, is sold during the owner's life for \$7 million, the \$2 million in gain would be subjected to capital gains taxes at a rate of 23.8% (*i.e.*, \$476,000 in taxes). If, however, the owner died prior to the sale, the basis in the family business would receive a step-up to the date-of-death fair market value of \$7 million; if the heirs sold the business following the owner's death for \$7 million, then *zero* dollars in income taxes would be imposed. When faced with the decision of paying \$476,000 in taxes versus \$0, it seems like waiting until death is the best option. Unfortunately, that is not always the case and there are many more critical factors that the business owners must consider prior to implementing a sound exit strategy.

While the step-up in basis is effective from a capital gains tax standpoint, there are other taxes of great concern. The better known area of the tax code involving death is the estate tax. In 2016, the estate tax rate is 40% on the date-of-death value of a decedent's assets in excess of the \$5.45 million exemption. Using the fact pattern above, assume that the owner did not sell the business during his or her lifetime. While it is true that the sale of the business at \$7 million after the owner's death would generate no capital gains taxes, the valuation amount of the business in excess of the estate tax exemption by \$1.55 million would be subjected to the 40% estate tax rate. Thus, in attempting to avoid \$476,000 in capital gains taxes, the owner was subjected to \$620,000 in estate taxes, which is an overall net tax loss of \$144,000. Of course, in order for the business owner to avoid the estate taxes, regardless of when the business was sold, other tax strategies would need to be explored.

While the tax aspects of business succession planning are important, there are other non-tax factors that are equally important. The examples above

REAL ESTATE

Rainwater: The ‘Common Enemy’ of Landowners

By **WILLIAM M. FISCHBACH**
& **TIMOTHY C. BODE**

Arizona does not get rain very often, but when it does, the rainwater can be problematic for landowners. Arizona is a desert landscape and many of its soils are highly



William M. Fischbach



Timothy C. Bode

erodible. Consequently, Arizona rains and monsoon storms can cause substantial damage to property.

To mitigate these issues, many landowners modify property to divert or change the flow of water entering their property. While these improvements may seem like a common

sense solution, if landowners fail to comply with applicable laws, they may face serious legal consequences, including civil liability and daily regulatory fines. To avoid these potential consequences, landowners should be aware of relevant law governing rainwater in Arizona.

Generally, there are three types of water on land: surface water, stream water, and flood water. Surface water is water falling on and naturally spreading over lands, like rain or snow melt. Stream water is surface water that has joined a natural watercourse, like a stream or a dry wash that fills irregularly during heavy rains. Flood water is errant water that has escaped from a natural watercourse and flows over adjoining lands in no regular channel. Although flood water may make a temporary channel or follow some natural channel, that does not affect its character as flood water or make the course it follows a natural watercourse.

Under Arizona law, surface water and flood water are considered a “common

enemy” to all landowners. As a result, there is no duty to receive surface water coming from another’s land. Landowners may use embankments and other devices to protect their land from surface water without liability to adjacent landowners.

A landowner may also use ditches and other means to divert surface water into a watercourse without liability to an adjacent landowner, even if this causes the water flow to accelerate and increase. Similarly, a landowner may embank and divert flood water without liability to an adjacent landowner.

Once surface water has joined a watercourse, a landowner may not obstruct the flow of that watercourse. However, a landowner may divert or change the course of a watercourse flowing through his land, provided he returns it to its original or natural channel before it reaches the land of an adjacent owner.

There is a little-known statute, A.R.S. § 48-3613, that prohibits anyone from “diverting, retarding, or obstructing” a water-

course without first seeking authorization from the applicable county flood control district. Any party that is or

may be damaged by the diversion, retardation, or obstruction of a watercourse can bring an action for damages and obtain an award of costs and attorneys’ fees. The county may also assess financial penalties for each day the violation is not cured per A.R.S. § 48-3615(B)-(C).

Most urban Arizonans need not worry about these issues because drainage infrastructure is already in place. More often than not, these issues affect rural or agricultural properties. But as metropolitan Phoenix expands, the line between rural and urban blurs. Before making any improvements to a property that would affect the course or flow of a watercourse — even a dry wash or arroyo — landowners should consult with an attorney.

all assume that the family business can be sold post-mortem at its date-of-death value. Often times, this is not the case. The death of the owner, presumably one of the key persons involved in the business, can have a substantially negative impact on its value, and therefore, its sale price. It may take well over a year for the family business to go through a trust or probate administration process, causing fragmented ownership interests amongst beneficiaries and the business to be poorly run. This frequently leads to a so-called fire sale of the business, with buyers swooping in to purchase it for anywhere from 40-80% of its date-of-death value. It is doubtful that any tax strategy in place could offset the substantial decrease in value to the family’s wealth. This is just one of many non-tax factors to consider.

Although tax analysis is necessary for any family business succession plan, all factors need to be explored, tax or otherwise, because the business often makes up the majority of a family’s wealth. Even if a business owner is not quite ready to sell his or her business, an exit strategy needs to be implemented at some point, or the process can take much longer than anticipated when realizing the necessity of a multi-faceted analysis. The examples and tax characteristics above showcase a few of the basic considerations to explore and their potential pitfalls, but it is highly recommended that a much more thorough analysis be conducted prior to proceeding with a succession plan. This will most likely facilitate a successful result, whether during life or upon death.

GET ANSWERS

Please contact Tiffany & Bosco if you need assistance or have any questions regarding succession planning. See the directory at the back of this newsletter or go online to tblog.com.



OUR ATTORNEYS

Out of Office Reply

From biking to cattle roping, how some Tiffany & Bosco attorneys spend their free time

Compiled By WILLIAM M. FISCHBACH

To the extent they can find any free time while juggling personal and professional demands, Tiffany & Bosco attorneys unwind with a variety of activities. Here is how some describe their endeavors of a more physical nature, in their own words.



TORY BEARDSLEY:

"I am a longtime swimmer and trail runner. I am a member of the Phoenix Swim Club masters team and compete regularly in open water swims in California. I recently completed the Imogene pass run, a 17-mile trail run from Ouray to Telluride, Colorado."

ASHLEY L. CASE:

"I began dancing ballet at age five and began dancing 'en pointe' at age 11. I took a 12-year hiatus (during law school and my three pregnancies) and have recently returned to the studio. I enjoy dance as a form of exercise and hope to be back 'en pointe' within the year."

DARREN T. CASE:

"I have been competing in triathlons since 2003. My highlights in the sport include various Ironman finishes at Ironman Arizona in 2012 and Ironman California Oceanside 70.3 from 2012 to 2016. I compete in triathlons simply for fun with the hope that my racing provides my three children a good example of living an active and healthy lifestyle."

MATTHEW D. DAYTON: "I enjoy a variety of outdoor activities including running, hiking, tennis, basketball, Frisbee, and most recently — pickleball. This fall I will be running the St. George Marathon for the tenth time. Loving to chase a Frisbee, I have competed in Ultimate Frisbee tournaments over the years with friends and family — which include a college intramural championship and two silver medals at the Utah Summer Games. My wife Heather and I train together, and have completed four Spartan Races this past year. It isn't always easy to get out the door to train or compete, but remind ourselves, 'We don't quit when we are tired, we quit when we are done!'"

TINA M. EZZELL: "As a nationally-certified (AFAA) group exercise fitness instructor, I teach Zumba four times and Group Fight (a Mossa program) a couple of times per week. Zumba is an hour-long Latin dance-inspired exercise class, while Group Fight is an hour-long cardiovascular and conditioning class inspired by mixed martial arts "in the cage and out of the cage" fighting (kicks, strikes, sprawls, push-ups, etc.). Besides enhancing my fitness and relieving stress, I really enjoy interacting with my students and making a positive difference in their lives. Recently, one student told me, 'Your Zumba class helped get me through my breast cancer ordeal. Don't stop teaching!'"



JAMES A. FASSOLD: “I spend as much time as I can riding or staring wistfully at my road bike. I also practice yoga with my wife, Alisa Gray, and work out regularly with our son.”

WILLIAM M. FISCHBACH: “In my free time I enjoy competing in triathlons and other endurance sports. Most years I do three half Ironman races and one full Ironman race at various locations in North and Central America, plus a smattering of shorter local races. I credit my wife for getting me into the sport. She is by far the superior athlete. But if you are going to spend 20 hours a week swimming, biking, and running, who better to do it with than your spouse?”

JAMES P. O’SULLIVAN: “Despite being a mild-mannered business lawyer, I don’t mind getting ‘down and dirty’ while following my passion for racing vintage motocross. My two restored early 1970’s off-road racing motorcycles were built in the former Czechoslovakia, and are representative of the “CZ” brand then-favored by the Soviets and other Eastern Bloc racing teams during the height of Cold War tensions. The history involved in this form of racing, the camaraderie with my fellow racers, and the fitness level required are the highlights of this hobby for me.”

MICHAEL E. TIFFANY: “I started roping calves when I was ten and switched to team roping as a header (roping the horns) twenty years ago. This rodeo sport clears my mind after a day at the office. Working with my horses is extremely satisfying, and chasing and roping the ‘steers’ is a never ending adrenaline rush. I won my favorite trophy buckle for catching ten steers in a row in a competition. From dust to water, I recently swam with my daughter, two of my sons, and about 800 competitors from the infamous prison on Alcatraz Island to the San Francisco mainland. The 1.5 mile distance was closer to two miles as a result of the changing currents.”

ALISA J. GRAY: “I have been practicing yoga regularly for over ten years. I usually attend two to three classes per week and find it to be a great counterpoint to my litigation practice. In 2010, I completed the 200-hour course to become a certified instructor, and currently teach at a local yoga and healing arts center. I am working on my advanced certification, but my primary goal is to maintain strength, flexibility, and balance.”

JUSTIN P. NELSON: “Being somewhat new to Arizona, I enjoy exploring and spending time with my wife in its beautiful mountains. When I was younger, I participated in mountain bike racing competitions. Although I have not competed for many years, I still enjoy riding, along with skiing and golfing.”

DAVID L. ROSE: “My wife Karen and I are avid hikers, bikers, and outdoor enthusiasts. In addition to frequently hiking the mountain preserves in Phoenix, we recently hiked the entire Grand Canyon and many miles of Arizona’s beautiful Mogollon Rim. This past summer, we were also fortunate enough to be able to whitewater raft the Colorado River through the Grand Canyon with our church. Finally, after I finished arguing an international child custody case in Peru, we were able to tour the ancient ruins of Machu Picchu.”

MICHAEL A. WRAPP: “I am an avid long-distance runner. I regularly compete in half-marathons, and have also completed the Arizona Rock ‘n’ Roll Marathon and the Chicago Marathon. I enjoy running because it enables me to relieve stress, maintain my health, and form friendships with other runners.”



Tiffany & Bosco, P.A.
Camelback Esplanade II
Seventh Floor
2525 East Camelback Road
Phoenix, AZ 85016-9240

PRSR STD
U.S. POSTAGE
PAID
PHOENIX, AZ
PERMIT #1662

ADDRESS SERVICE REQUESTED

tblaw.com

Established in 1967, Tiffany & Bosco, P.A. provides legal services to the business community, representing domestic and foreign clients on a local, national, and international basis. Tiffany & Bosco, P.A. is a member of the USFN and the FNMA and FHLMC designated counsel programs.

Arizona

Camelback Esplanade II, Seventh Floor
2525 East Camelback Road
Phoenix, Arizona 85016-9240
T: (602) 255-6000 F: (602) 255-0103

Nevada

212 South Jones Boulevard
Las Vegas, Nevada 89107-2657
T: (702) 258-8200
F: (702) 258-8787

California

1230 Columbia Street, Suite 680
San Diego, California 92101
T: (619) 501-3503
F: (619) 487-9079



This newsletter is published as a service to clients and friends. It is intended to give general information only and not to provide advice on specific legal issues. For information, change of address, or copies, please contact our Editors, Pamela L. Kingsley or Robert A. Royal at (602) 255-6000. ©2016 Tiffany & Bosco, P.A.

Shaine T. Alleman	(602) 452-2712	sta@tblaw.com	Land Use and Zoning; Real Estate Development; Governmental Relations; Planned Community and Condo Law
Tory Beardley	(602) 452-2717	etb@tblaw.com	Land Use and Zoning; Real Estate Development; Governmental Relations
Timothy C. Bode	(602) 255-6069	tcb@tblaw.com	Civil and Commercial Litigation
Mark S. Bosco	(602) 255-6006	msb@tblaw.com	Foreclosures/Trustee Sales; Creditor Bankruptcy; Forcible Entry and Detainer/Eviction; REO Closings and All Loan Default Issues
Michael A. Bosco, Jr.	(602) 255-6002	mab@tblaw.com	Probate; Real Estate Litigation; Foreclosures/Trustee Sales and Default Servicing; Receiverships
Lance R. Broberg	(602) 255-6061	lrb@tblaw.com	Civil and Commercial Litigation; Corporation and Shareholder Litigation; Intra-Company Disputes
Michelle M. Buckley	(602) 452-2739	mmb@tblaw.com	Civil and Commercial Litigation
Ashley L. Case	(602) 255-6063	alc@tblaw.com	Estate Planning; Probate Administration
Darren T. Case	(602) 255-6093	dtc@tblaw.com	Estate Planning; Taxation; Corporate, Business Planning and Formations; Employee Benefits
David L. Case ¹	(602) 255-6097	dlc@tblaw.com	Estate Planning; Taxation; Corporate, Business Planning and Formations; Real Estate
Theron S. Covey III ⁵	(619) 501-3503	tsc@tblaw.com	Banking; Bankruptcy; Unlawful Detainer/Eviction; Foreclosures/Trustee Sales; Real Estate; Civil and Commercial Litigation
Matthew D. Dayton ²	(702) 258-8200	md@tblaw.com	Bankruptcy; Civil and Commercial Litigation; Forcible Entry and Detainer/Eviction
Sarah K. Deutsch	(602) 452-2726	skd@tblaw.com	Business and Commercial Litigation; Securities and Financial Litigation
Tina M. Ezzell ³	(602) 452-2747	tme@tblaw.com	Automotive Law; Civil and Commercial Litigation; Appellate Practice; Business Divorce; Employment and Labor; Real Estate Litigation
James J. Farley, II	(602) 288-7918	jff@tblaw.com	Banking, Civil, Commercial, and Real Estate Litigation; Construction Law; Insurance Law
James A. Fassold	(602) 452-2720	jaf@tblaw.com	Probate/Trust Litigation and Administration; Elder Law; Appellate Practice
William H. Finnegan	(602) 255-6009	whf@tblaw.com	Business Planning, Formations and Dispositions/Corporate; Estate Planning; Taxation; Tax Controversy
William M. Fischbach	(602) 255-6036	wmf@tblaw.com	Civil and Commercial Litigation; Real Estate Litigation; Personal Injury, Medical Malpractice, and Wrongful Death
Richard C. Gramlich	(602) 255-6079	rcg@tblaw.com	Construction, Business, and Real Estate Litigation; Personal Injury
Alisa J. Gray	(602) 452-2719	ajg@tblaw.com	Probate/Trust Litigation and Administration; Elder Law; Mediation; Alternative Dispute Resolution
Brett M. Hager	(602) 255-6045	bmh@tblaw.com	Aviation; Business Divorce and Business Litigation; Civil and Commercial Litigation; Personal Injury and Wrongful Death
Beth A. Heath	(602) 255-6084	bah@tblaw.com	Real Estate Transactions; Environmental; Business Formations
Rosary A. Hernandez ¹	(602) 452-2735	rah@tblaw.com	Civil and Commercial Litigation; Personal Injury and Wrongful Death; Construction Law; Insurance Law; Real Estate
Richard G. Himelrick	(602) 255-6021	rgh@tblaw.com	Securities and Investment-Fraud Litigation; Commercial Litigation
Nora L. Jones	(602) 255-6014	nlj@tblaw.com	Civil and Commercial Litigation; Probate/Trust Litigation and Administration; Elder Law
Megan R. Jury	(602) 452-2725	mrj@tblaw.com	Business and Commercial Litigation; Securities and Financial Litigation
Christopher R. Kaup	(602) 255-6024	crk@tblaw.com	Commercial Bankruptcy/Creditors' Rights; Fraudulent Transfers; Civil and Commercial Litigation
Pamela L. Kingsley	(602) 255-6015	plk@tblaw.com	Employment and Labor Law; Business and Commercial Litigation; Appellate
William E. Lally	(602) 452-2716	wel@tblaw.com	Land Use; Zoning; Real Estate Due-Diligence; Regulatory and Administrative Law
Christopher A. LaVoy	(602) 452-2731	cal@tblaw.com	Civil and Commercial Litigation; Business Disputes; Securities and Investment-Fraud Litigation
Todd T. Lenczycki	(602) 255-6022	ttl@tblaw.com	Civil and Commercial Litigation; Securities and Investment-Fraud Litigation
Stephen P. Linzer	(602) 452-2748	spl@tblaw.com	Automotive Law; Civil and Commercial Litigation; Corporate, Business Planning and Formations
Aaron T. Lloyd	(602) 255-6085	atl@tblaw.com	Intra-Company and Business Litigation; Business Divorce; Civil and Commercial Litigation
May Lu	(602) 255-6032	mlu@tblaw.com	Business Solutions; Intra-Company Disputes; Mergers and Acquisitions; Civil and Commercial Litigation
Leonard J. Mark	(602) 255-6003	mark@tblaw.com	Family Law; Personal Injury and Wrongful Death
J. Lawrence McCormley	(602) 255-6005	jlmc@tblaw.com	Real Estate; Bankruptcy; Commercial Litigation
Leonard J. McDonald	(602) 255-6007	ljd@tblaw.com	Forcible Entry and Detainer/Eviction; Foreclosures/Trustee Sales and Default Servicing; Bankruptcy; Real Estate Litigation; Receiverships
William F. McDonald III ⁵	(619) 794-0515	wfm@tblaw.com	Bankruptcy; Unlawful Detainer/Eviction; Foreclosure/Trustee Sales; Real Estate and Civil and Commercial Litigation
Robert D. Mitchell ⁶	(602) 452-2730	rdm@tblaw.com	Complex Financial and Commercial Litigation, Securities Litigation, and Civil Trials and Arbitrations
Justin P. Nelson	(602) 255-6008	jpn@tblaw.com	Civil and Commercial Litigation
Kevin P. Nelson	(602) 255-6028	kpn@tblaw.com	Banking, Commercial, and Real Estate Litigation; Construction Law; Indian Law
Richard E. Oney	(602) 255-6094	reo@tblaw.com	Intellectual Property; Civil and Commercial Litigation
James P. O'Sullivan	(602) 255-6017	jpo@tblaw.com	Business Solutions; Intra-Company Disputes; Mergers and Acquisitions
Alexander Poulos	(602) 255-6030	ap@tblaw.com	Family Law; Criminal Investigations and Defense
James W. Reynolds	(602) 255-6042	jwr@tblaw.com	Business Formations; Financing and Acquisitions; Real Estate Purchases; Sales and Leasing; Limited Liability Companies and Partnerships
Michael J. Rogers	(602) 452-2740	mjr@tblaw.com	Banking, Commercial, and Real Estate Litigation; Indian Law
David L. Rose	(602) 288-7905	dlr@tblaw.com	Family Law; Personal Injury and Wrongful Death; Appellate Practice; Civil Litigation; Criminal Defense; Civil Rights
Robert A. Royal	(602) 255-6011	rar@tblaw.com	Intra-Company and Business Litigation; Business Divorce; Shareholder, Director, Officer and Manager Litigation
Matthew K. Schriever ⁴	(702) 258-8200	mks@tblaw.com	Bankruptcy; Civil and Commercial Litigation; Forcible Entry and Detainer/Eviction
Amy D. Sells	(602) 452-2713	ads@tblaw.com	Business Litigation; Real Estate Litigation; Banking; Bankruptcy and Creditors Rights; Construction Law
Kevin S. Soderstrom ⁴	(702) 258-8200	kss@tblaw.com	Bankruptcy; Civil and Commercial Litigation; Forcible Entry and Detainer/Eviction
Michael E. Tiffany	(602) 255-6001	met@tblaw.com	Real Estate; General Business Counseling; HUD Insured Multihousing Loans
Carlotta L. Turman	(602) 452-2722	clt@tblaw.com	Civil and Commercial Litigation; Real Estate
Gregory L. Wilde ⁴	(702) 258-8200	glw@tblaw.com	Bankruptcy; Civil and Commercial Litigation; Forcible Entry and Detainer/Eviction; Real Estate
Laura L. Wochner	(602) 255-6060	llw@tblaw.com	Real Estate; Civil, Commercial, and Real Estate Litigation
Michael A. Wrapp ¹	(602) 452-2741	maw@tblaw.com	Banking, Commercial, and Real Estate Litigation; Real Estate Transactions
Ashley N. Zimmerman	(602) 452-2742	anz@tblaw.com	Civil and Commercial Litigation; Personal Injury and Wrongful Death; Construction Law; Insurance Law; Real Estate

Attorneys are active Arizona Bar members, unless noted: ¹Arizona & California; ²Nevada & Utah only; ³Arizona & Nevada; ⁴Nevada only; ⁵California & Oregon only; ⁶Arizona, California, Utah & Texas