



By Thomas J. Shroyer



Tom Shroyer is our President and Chief Executive Officer and a member of our litigation practice area. He counsels and advocates for clients on a wide range of legal issues, including complex civil litigation with an emphasis on business torts, professional liability, securities litigation, and shareholder rights disputes. He is certified by the Minnesota State Bar Association as a Civil Trial Specialist. Tom can be reached at 612.877.5281 or [ShroyerT@moss-barnett.com](mailto:ShroyerT@moss-barnett.com).

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## REFLECTIONS ON MINNESOTA LAW, PRESENTED BY MOSS & BARNETT

Even though Moss & Barnett had dabbled with a short-lived, five-minute radio show featuring legal news on KCCO AM in 2001, we had no idea what to expect when we were approached in 2008 to co-produce an hour-long weekly legal news radio program by Minnesota's premier radio station, WCCO 830 AM. Our research revealed no evidence that any other lawyer or law firm had attempted anything even remotely close. Indeed, the only prior legal programming we could locate was the famous "Point of Law" – and we knew that none of us could come anywhere close to replicating the famous voice of Charlie Boone.

With opportunity knocking on the door, our law firm had to decide if it would make sense to pull together a live radio program, for a full hour every week – and on a Saturday morning, to boot! After significant internal consideration, we took the plunge. The decision came down to the recognition that we had a unique chance to partner with WCCO 830 AM, the iconic "Good Neighbor" at the center of our common life in the Upper Midwest, in a way that would showcase the great attorneys at our firm and their tremendous legal knowledge, while serving our community with legal news and information.

After a very nervous start on May 3, 2008, we settled into presenting a single legal topic each week through a Q&A format. A big initial concern was whether we could divine a fresh topic each week, with broad appeal, but we soon found that our audience was eager to learn about even the most obscure areas of the law. As WCCO radio host John Hines observed, "Even when I don't think a topic will be interesting I always learn something useful on *Minnesota Law*." That realization proved crucial for our successful run of more than four and one-half years, because it assured us of an audience and meant that we could come up with a virtually limitless number of topics for the show.

Another early learning point was provided at the start of our very first show by the weekly host of our program, Steve Thomson. He no doubt saw great anxiety in our last-minute preparations in the Green Room when he quoted Johnny Carson's advice to nervous guests, "Don't leave your best stuff in the Green Room." It took about eight months on the air to realize that the show should be a *conversation* – not a cross-examination. That epiphany not only relieved a great deal of the stress for me, it also meant that we simply had to organize the presentations of our guests and then concentrate on drawing out their knowledge and expertise.

I had great fun on the "air." The broadcast studio was a relaxed and often zany place, with guests and hosts in their "Saturday clothes" and bouncing off the walls during commercial breaks. This activity helped to keep the programming "fresh" and helped ensure that guests stayed relaxed and relatively unrehearsed in order to present live programming that sparkled with spontaneity and creativity. This qualitative difference between live and "canned" broadcasts is why WCCO insisted that we do the shows on the air, instead of in the recording studio, except on holiday weekends.

There was never any doubt as to who was the true professional on our programs – our host, Steve Thomson. Whether we needed a quick jump or sometimes as much as 90 seconds to transition from our programming into a break, Steve knew just what to say and how long to say it to make everything fit into a nice, tidy package. He also proved to be a quick study of even the most arcane legal concepts so that he was able to contribute some of the more insightful and helpful questions and comments on behalf of our listeners who were not initiated in legal jargon. One of the genuinely nice people in the world, Steve's friendly and low-key manner also greatly helped to allay the anxiety of skittish guests.



By Terese A. West



*Terese West is a shareholder and member of our banking and commercial transactions, business litigation, and professional liability practice areas. As part of her practice, Terese counsels clients on the practical aspects of resolving business disputes. She can be reached at 612.877.5407 or WestT@moss-barnett.com.*

## EVERYBODY PAYS: ATTORNEY FEES AND THE AMERICAN RULE

In business litigation, clients frequently ask whether there is any prospect of recovering their attorney fees from the opposing party. In most cases, the answer disappoints, but not without good reason.

In the United States, win or lose, a party to a lawsuit pays its own attorney fees unless otherwise allocated under contract or by statute. For more than 200 years, courts in this country have based their consideration of attorney fee awards on this so-called American rule. In this, we stand remarkably alone.

The loser-pays rule, known as the English rule, is the default rule in England and throughout most of the rest of the Western world. At first blush, the loser-pays rule seems so very right (particularly to those who cannot conceive of losing). So why, in America, do we adhere to the general rule that, regardless of the outcome, everybody pays his or her own way? The answer lies in the notions of freedom and equal access to justice.

The Supreme Court of the United States first acknowledged the American rule in 1796 in a case involving maritime law entitled *Arcambel v. Wiseman*. In that case, the Circuit Court of Rhode Island had awarded damages and a charge of \$1,600 in attorney fees against the losing party. On appeal, the Court succinctly rejected the charge:

We do not think that the charge ought to be allowed. The general practice of the United States is in opposition to it; and even if that practice were not strictly correct in principle, it is entitled to the respect of the court, till it is changed, or modified, by statute.

The general practice referred to by the Court, and to which we adhere today, springs from the American colonists' desire for freedom from religious persecution, poverty, and oppression. In 1776, in declaring their independence from British

rule, the colonists "submitted to a candid world" a list of "abuses and usurpations" in support of their cause. These included, among other things, King George III's refusal to consent to laws for the public good, to establish judicial powers, and to allow the colonists to legislate for themselves. By 1783, the colonists had secured their independence, and they depended on equal access to the courts to vindicate the rights accruing from self governance.

As the Court expounded in later cases, because "litigation is at best uncertain[,] one should not be penalized for merely defending or prosecuting a lawsuit." Without the American rule, "the poor might be unjustly discouraged from instituting actions to vindicate their rights if the penalty for losing included the fees of their opponents' counsel." In this respect, the Court views the parties to be on equal footing:

There is no fixed standard by which [attorney fees] can be measured. Some counsel demand much more than others. Some clients are willing to pay more than others. More counsel may be employed than are necessary. When both client and counsel know that the fees are to be paid by the other party there is danger of abuse. We think the principle of disallowance rests on a solid foundation . . . and sound public policy.

Of course, parties to a lawsuit have some measure of control over their own attorney fees. Each case involves a continual assessment of cost versus benefit, risk versus reward. Each party has the right to choose its own legal counsel. An individual may choose to represent himself or herself. A party may choose to accept the consequences of its actions, forgo certain discovery, buy peace, prosecute an unremarkable case beyond all appearance of reason to protect a business model, or pursue a claim or defense based on a novel legal theory that may make new law. These decisions drive the fees.

Certainly there should be, and are, exceptions to the American rule. For example, the parties to a contract may agree to shift fees amongst themselves under certain circumstances. This may occur pre-dispute or post-dispute by allocating the risk of incurring fees in the event of a dispute or by shifting incurred fees in an out-of-court settlement.

Federal and state statutes also provide for exceptions to the American rule to advance the public interest. The statutes may provide for fee awards, for example, to discourage deceptive trade practices, to encourage shareholders to take action to right corporate wrongs, or to encourage the private enforcement of civil rights.

Federal and state courts recognize exceptions to the American rule where necessary to ensure a just result. For example, the common fund exception relieves a plaintiff who creates or preserves a common fund for the benefit of others from the burden of attorney fees. The exception is based on the theory that it is unjust for the plaintiff to bear the entire cost of litigation for the greater good. In class actions, the exception provides for attorney fees to be paid out of any fund recovered for the class.

Where a defendant's wrongful act forces a plaintiff into litigation with a third party, the plaintiff may be permitted to recover from the defendant its attorney fees incurred in the third-party litigation as special damages. This exception applies most often in cases involving professional malpractice or, for example, where a third party's tortious interference with a non-compete agreement compels an employer to sue to enforce it. In that case, the employer may be entitled to recover its attorney fees.

In addition, courts have the discretion to award attorney fees against a party who disobeys court orders, refuses to cooperate in discovery, acts in bad faith by pursuing a baseless claim or defense to harass or delay, or engages in other misconduct. Not coincidentally, the exceptions to the American rule are founded on familiar themes: the freedom of contract, the public interest, and the interests of justice.

In the final analysis, the American rule rejects the notion that the losing party had a meritless claim or defense. One party to a lawsuit is likely to be as convinced of the correctness of his position as the other. In short, the American rule presumes the existence of legitimate disputes and ensures that neither party need fear an undue financial burden for turning to an impartial forum for resolution.



## ALERTS:

### **Patent Law Change**

Inventors considering filing for U.S. patent protection should note that effective March 16, 2013, the United States will convert from a first-to-invent system to a first-to-file system. As the name suggests, under a "first-to-file" system, the first inventor to file a patent application with the U.S. Patent & Trademark Office (USPTO) for a particular invention will, in most cases, prevail over competitors who subsequently file a similar patent application even if they invented earlier. Further, on or after March 16, 2013, patent applications will be subject to a greater scope of prior art that can be used by the USPTO to invalidate the patent application claims. Consideration should be given to filing a patent application before the March 16, 2013 deadline, if possible; if not possible, inventors should consider filing a *provisional* patent application as early as possible. A provisional patent application can provide significant potential patent protection for an invention at a relatively modest cost by establishing an early filing date and providing up to an additional year for the inventor to complete work on the invention and file a full application.

### **Remedies for Companies in Financial Trouble**

As part of the recent "fiscal cliff" negotiations in Washington, D.C., the American Taxpayer Relief Act of 2012 (the "2012 Act") was signed into law by President Obama on January 2, 2013. The law permanently codifies certain transfer tax provisions of the prior 2010 Tax Relief Act ("TRA 2010") that were set to expire on January 1, 2013. It also increases the maximum estate and gift tax rate to 40%, as compared to 35% in the TRA 2010, but sets the unified estate and gift tax exemption amounts at \$5,000,000 (subject to inflation adjustments). The 2012 Act permanently codifies the "portability" of a deceased spouse's unused federal estate tax exemption for use by the surviving spouse introduced in the TRA 2010. The federal estate tax and gift tax exemption amounts for 2013 are set at \$5,250,000. Likewise, the generation-skipping transfer (GST) tax rate is set at 40% and the GST exemption amount for 2013 is \$5,250,000. Importantly, the 2012 Act does not affect Minnesota estate tax laws, which provide for an estate tax exemption amount of \$1,000,000, with a top tax rate of 16%.

***If you would like assistance in assuring best practices in either of these areas, please contact your attorney at Moss & Barnett.***





## ELECTION NEWS

**Dave Senger** and **Tom Shroyer** were recently re-elected to three-year terms as members of the firm's board of directors. Dave serves as the firm's Chairman of the Board and is chair of our wealth preservation and estate planning practice area and is also a member of our business law practice area. Tom serves as the firm's President and Chief Executive Officer and is a member of our litigation practice area. They each will continue practicing law on a full-time basis in addition to handling their management responsibilities. Dave and Tom join returning directors, **Kevin Busch**, **Brian Grogan**, **Rick Johnson**, and **Susan Rhode**.

**Chris Stall**, a member of our business law practice area, and **Marsha Stolt**, co-chair of our intellectual property practice area, have been appointed as adjunct directors for 2013. Adjunct directors are shareholders who serve as non-voting members on our board of directors for one year. The adjunct director program is intended to train future leaders of the firm.



*From left to right: Marsha Stolt, Chris Stall, Tom Shroyer, and Dave Senger*

## NEW SHAREHOLDERS

We are pleased to announce that two of our attorneys have been elected shareholders: **Shannon Bixby-Pankratz** and **Shanna Strowbridge**. Shannon, who is a member of our family law practice area, has been with the firm since 2006. Prior to joining our firm, Shannon served a clerkship for a Hennepin County District Court judge specifically assigned to family court matters. She has almost ten additional years of experience providing assessments and recommendations to judicial officers. Shanna, who is a member of our business law and real estate practice areas, has been practicing law since 2000. Prior to joining our firm in 2011, she was a shareholder at a local law firm and served as in-house counsel for a real estate developer and property management company.



*Shanna Strowbridge and Shannon Bixby-Pankratz*

## ATTORNEY CHRISTOPHER FERREIRA JOINS THE TEAM



*Chris Ferreira*

**Christopher Ferreira** has joined our banking and commercial transactions, bankruptcy and creditors' remedies, business law, and real estate practice areas. Chris focuses his practice on banking and finance. His work includes all aspects of major commercial and industrial lending, including traditional asset-backed financing, real estate and construction financing, government guaranteed financing, equipment and leasehold financing, mezzanine and subordinated debt financing, and loan participation and inter-creditor arrangements. Chris received his J.D. from William Mitchell College of Law and his B.S., *magna cum laude*, from Northeastern University. Prior to joining Moss & Barnett, Chris was in private practice in Minnesota and western Wisconsin for over 15 years.



## CASS WEIL APPOINTED TO BANKRUPTCY PRACTICE COMMITTEE



Cass Weil

We are pleased to announce that **Cass Weil**, a member of our creditors' remedies and bankruptcy practice area, was recently appointed to a three-year term on the Bankruptcy Practice Committee for the United States Bankruptcy Court, District of Minnesota. His term commenced January 1, 2013. The Committee's main functions are to recommend needed changes to the Local Rules and to serve as a liaison between the bankruptcy court and the bankruptcy community, providing input and suggestions from the bar and the community at large for improving the administration of bankruptcy cases and proceedings in the District of Minnesota.

***Thank you, Cass, for your service to our legal community!***



## BEST WISHES AND CONGRATULATIONS TO CHUCK PARSONS

**Chuck Parsons** retired from the practice of law at year's end, following a career spanning four decades. After graduating from the University of Minnesota in 1965, Chuck started a lifetime of serving our country when he was commissioned as an officer in the United States Marine Corps, where he attained the rank of Captain while serving in Vietnam in 1968. Following his military service, Chuck entered the University of Minnesota Law School, graduating *cum laude* in 1972. He immediately joined Moss & Barnett and spent his entire career at our law firm. Chuck's career was distinctly marked by his excellent legal skills, his service to the bar, and his exceptional dedication to the provision of legal aid to the less fortunate.

As a real estate attorney, Chuck was hailed by his clients as a lawyer who always knew how to get the deal done. His peers in the bar consistently recognized him for his exceptional legal ability by selecting him for inclusion in *Minnesota Super Lawyers* and *Minnesota Top 100 Super Lawyers*, as well as on the national level in *Chambers USA* and *Best Lawyers*®. Chuck was further distinguished by his election as a Fellow of the American College of Real Estate Lawyers and the American College of Mortgage Attorneys, where he served on the Board of Regents and as State Chair for Minnesota.

In addition to his military service, Chuck served the legal community by co-chairing the Real Property Law Section's Legislative Committee of the Minnesota State Bar Association for 20 years, and as a member of the governing Council and Chair of the Section. Under Chuck's leadership, the Section prepared and was successful in causing the Minnesota Legislature to pass laws improving the real estate laws in Minnesota. The Real Property Law Section awarded Chuck its Distinguished Service Award in 2006.



*Chuck Parsons and Dave Senger, Chairman*

Arguably, Chuck's greatest accomplishment was his unstinting dedication to the cause of providing legal aid to the poor. Chuck was one of the early leaders and president of Legal Advice Clinics, now Volunteer Lawyers Network. In addition, throughout his career, Chuck served the Legal Aid Society of Minneapolis in a series of leadership positions as a director and as president. The Legal Aid Society ultimately awarded its Access to Justice Award to Chuck for his lifetime of providing legal service to the poor. Moss & Barnett also recognized Chuck for his exceptional service to the bar and to the community by awarding him the distinguished Paul Van Valkenburg Community Service Award in 2002.

***We salute Chuck and wish him and his wife, JoAnne, all of the best in their well-deserved years of retirement.***





By James J. Vedder



*Jim Vedder is a shareholder practicing exclusively in the area of family law. He assists clients in a variety of matters including antenuptial/prenuptial and postnuptial agreements, business valuations, complex litigation and settlement of marital and non-marital assets, complex non-marital tracing, custody settlement and litigation, settlement negotiations, and appeals. Jim brings a compassionate approach to difficult family law issues. He works diligently to minimize these potentially stressful situations and produce favorable results for his clients. Jim can be reached at 612-877-5294 or [VedderJ@moss-barnet.com](mailto:VedderJ@moss-barnet.com).*

## FAMILY LAW PRESUMPTIONS: WHAT IS BEING PRESUMED?

There are a number of key presumptions in family law that often confuse litigants and are misstated or misapplied. Knowing what the presumptions are and how they apply to a case can be a key to reaching a fair settlement or effectively presenting the case to the court. Misunderstanding of a legal presumption can lead to unrealistic expectations and unnecessary attorney fees.

There is often a misperception about the impact a presumption has on a family law case. If the presumption is a “conclusive” or “irrebuttable” presumption, then once the factors necessary to establish it are proven, the court must apply it. The court does not have discretion to choose not to follow a conclusive or irrebuttable presumption. More often, however, a presumption is “rebuttable,” meaning it is a legal assumption the court is required to make if certain facts are established and no contradictory evidence is produced. One should think of a rebuttable presumption as a starting point rather than an ending point.

There is a presumption in favor of joint legal custody, which is the ability to make decisions over education, religion, healthcare, and like issues. Application of this presumption means that parties will jointly share this right and have equal authority on these decisions. With that being said, the joint legal presumption is a rebuttable presumption and can be overcome if a party opposing the presumption can show it is not in the best interests of the child. Further, if a party establishes that there is a domestic abuse order, the presumption switches to a presumption for sole legal custody being given to the non-abusive parent. This presumption also is rebuttable if a party can prove it is in the best interests of the child for the parents to have joint legal custody, even with a domestic abuse order.

With respect to physical custody, the child’s daily care, there are no presumptions. The legislature has looked at the issue of whether to adopt a statutory

presumption in favor of joint physical custody for the last several years. Although none has passed yet, it likely will be raised again.

There is currently a rebuttable presumption that a parent is entitled to at least 25% of the parenting time with his or her child. The presumption is rebuttable, so the court does not have to adopt it if presented with evidence that it is in the child’s best interest that a parent have more or less than 25% of the parenting time. The parenting time presumption is typically measured by the number of overnights a parent has with a child, although the court has the discretion to measure it differently if it finds it is in the best interests of the child to do so. The legislature has explored whether a different parenting time presumption should be applied. The proposals from the legislature have looked at keeping the current presumption and at changing the presumption to at least 35% or 45.1% of the time. The legislature likely will be looking at the presumption on parenting time again in the near future.

A rebuttable presumption applies to the division of assets and liabilities such that all assets obtained during the marriage are marital property to be divided between the parties. A party can overcome this presumption if it can show the property is nonmarital property (*i.e.*, acquired before the marriage, received as an inheritance, received as a gift to one party but not both parties, or protected by a valid antenuptial agreement). To rebut the marital property presumption, a party should provide as much documentation as possible to show that the asset fits into one of the categories of nonmarital property. The more documentation a party can provide, the more likely the marital property presumption will be rebutted.

There is a conclusive presumption that both parties made a substantial contribution to the acquisition of assets during the marriage. No amount of evidence can overcome this presumption. The purpose of

this presumption is to avoid parties arguing over who made what contributions to the accumulation of assets during the marriage and thus trying to value the contributions of a homemaker.

With respect to spousal maintenance, there is a rebuttable presumption in favor of permanent spousal maintenance over temporary maintenance when a party has shown that there is uncertainty about his or her ability to make the adjustments necessary to be self-supporting. This is a rebuttable presumption, and the judicial officer assigned to the case has considerable discretion in determining whether and how to apply it.

With respect to child support there is a rebuttable presumption that child support will be calculated based on guidelines, which look at both parties' incomes and create a baseline amount and percentage each party will pay based on their respective incomes. In order to secure application of this presumption, a party must provide evidence regarding both parties' incomes, parenting time, childcare expenses, and medical/dental insurance premiums. A party can overcome this presumption by showing that the child support should be more or less than the guidelines would dictate. The courts look at a party's income, financial resources, standard of living, children's special needs, and the standard of living the child would have enjoyed had the parties remained married in deciding whether to deviate from the presumptive guidelines.

There is a rebuttable presumption a parent can work full time for purposes of calculating child support. This presumption can be overcome if a party can show it is not typical to work 40 hours a week in the trade or industry in which the party is employed.

It is presumed that an antenuptial agreement should be enforced so long as a party shows that it meets with the procedural fairness requirements set forth by statute. The court, however, still will look at whether it is substantively fair, and evidence can be provided by either party to rebut the presumption. A postnuptial agreement is only presumed enforceable if it proves that it meets with the procedural fairness requirements and the divorce or separation proceeding has not been commenced within two years of the execution of the postnuptial agreement. In the event a divorce or separation is commenced within two years of the postnuptial agreement being signed, then the rebuttable presumption switches so the agreement is presumed to be unfair unless a party can prove otherwise.

These are only some of the presumptions in family law – and a brief discussion at that. A party to a family law proceeding should talk with his or her attorney about the presumptions to make sure the party understands how the presumptions work and how they impact the case.







## KELLY HICKS NAMED PAUL VAN VALKENBURG SERVICE AWARD RECIPIENT

Moss & Barnett established the Paul Van Valkenburg Service Award\* in 2001. It is awarded annually to a Moss & Barnett team member in recognition of his or her outstanding volunteer contributions to the community. The award is named after our retired colleague, Paul Van Valkenburg, whose volunteer career set an example of the spirit of service and dedication that we seek to promote and recognize throughout our firm.

**Kelly Hicks**, a part-time floating legal assistant, was the 2012 recipient of the Paul Van Valkenburg Service Award. Kelly was given this award based on her work with a wide range of charitable organizations, including:

**Wishes & More**, a Minnesota based children's charity that enhances the lives of children fighting a terminal or life-threatening condition by providing extraordinary experiences, including wishes, scholarships, memorials, and more. Kelly has been a volunteer since 2006, including serving as a Wish Wizard volunteer, Wish Granting volunteer, Meeter & Greeter volunteer, and a member of the Wish Granting Committee.

**Children's Hospital and Clinics of Minnesota (St. Paul campus)**, a not-for-profit health care system providing health care to children since 1924. Kelly has been a volunteer since 2007, with over 350 hours since that time. Kelly specializes in working with the epilepsy unit, has volunteered at numerous hospital-sponsored activities for



*Kelly Hicks*

children, was part of the start up for the Arts & Healing Initiative, and has been active in the "Hands Joining Hands" committee.

Past recipients of the Paul Van Valkenburg Service Award include **Chuck Parsons, Tom Keller, Adrienne Summerfield, Kevin Busch, Cheryl Riggs, Marcy Frost, Bill Haug, Jennifer Reussé, and Sharon Artmann**. We are proud to recognize Kelly and our other award recipients for their willingness to be a part of organizations focused on improving the lives of others.

*\*The Paul Van Valkenburg Service Award includes a cash donation by the firm to the recipient's chosen charity, a special recognition ceremony, and a commemorative piece of pottery created by Minnesota artist, Steve Hemmingway. For 2012, the firm's donation was made to Wishes & More.*

## VARIOUS ACCOLADES

### ***Moss & Barnett is Pleased to Recognize the Following Team Members:***



*Best Lawyers®* has named **Susan C. Rhode**, co-chair of our family law practice area, as the Minneapolis *Best Lawyers* "Family Law Mediation Lawyer of the Year" for 2013. Susan was previously named the Minneapolis *Best Lawyers* "Family Law Lawyer of the Year" for 2012 and 2010. *Best Lawyers* began designating "Lawyers of the Year" in the U.S. in high-profile legal practice areas in conjunction with its 15th edition (2009). Only a single lawyer in each practice area and designated metropolitan area is honored as the "Lawyer of the Year," making this accolade particularly significant. Lawyers being honored as "Lawyer of the Year" are selected based on particularly impressive voting averages received during the exhaustive peer-review assessments conducted with thousands of lawyers each year. Receiving this designation reflects the high level of respect a lawyer has earned among other lawyers in the same communities and the same practice areas for their abilities, their professionalism, and their integrity.



**Dave Senger**, chair of our wealth preservation and estate planning practice area and a member of our business law practice area, was selected as a "FIVE-STAR Wealth Manager" for 2013. This is the fifth consecutive year Dave has been selected for this recognition. The "FIVE-STAR Wealth Manager" award is limited to less than five percent of all wealth manager professionals within the Twin Cities area. Wealth managers are rated by their clients and other financial service professionals on service, integrity, knowledge/expertise, communication, value for fees charged, meeting of financial objectives, quality of recommendations, and overall satisfaction. Dave represents and advises both individual and business entities in business succession planning; complex estate planning techniques; estate preservation; financing, sale, and acquisition of businesses; and tax planning.

***Congratulations once again, Susan and Dave, on these well-deserved recognitions!***



Speaking of guests, it was always an adventure to head into a broadcast and find out who had actually shown up! It was amazing how some of the most gifted, fierce, and expressive attorneys turned into relatively soft-spoken and quiet personas from whom it was sometimes difficult to pry out information. Conversely, “office lawyers” who dread going to court seemed to turn into veritable extroverts when speaking with a headset into the sonorous, but ineffable, depths of a padded microphone.

The same paradox emerged with the programming itself. Some topics that were expected to generate great buzz proved to be relative duds, while programming that seemed to promise legal minutia proved to be interesting and entertaining. Perhaps the best example of this came during the classic series of programs presented by Kevin Busch on the Uniform Commercial Code – a complex set of arcane legal precepts that even the most energetic law students find to be, well, boring. As Kevin was wrapping up his programming segment on the law of checks, he noted that an Iowa court had once upheld the lawfulness of a check written to the IRS on the side of a heifer. The show ended in hilarity when our DJ for that program, Denny Long, said he would not have wanted to have had to look for the endorsement on that check! Another highlight with Kevin was his presentation of legal phrases and maxims, which had both of us armed in the studio with thousand-page legal dictionaries, spouting Latin and the “law French.”

Another favorite show featured a presentation on the law of wills by Cindy Ackerman. We were about eight months into the program and I was still feeling highly stressed during the broadcasts. For some reason, I largely discarded the heavily structured scripts that I had been using and decided to simply “wing it” with Cindy. That proved to be a crucial step, as we had a much more conversational program about the fine points of writing wills that was fun to broadcast and led to a much more fluent and fast-moving production.

My personal, all-time favorite show featured Curt Smith presenting on the law of property boundary lines. In addition to covering the law of falling branches and encroaching neighbors, Curt delved into the legal risks of pruning a neighbor’s overhanging trees and erecting “spite” fences. That show received perhaps the greatest number and some of the most interesting calls from listeners, including several that were highly complimentary. What made the show particularly enjoyable was the on-air revelation that Curt had developed an expertise in the topic because he was himself embroiled in a boundary line dispute with a neighbor at that very time.

One of the more important improvements that we made to *Minnesota Law* was to periodically invite guests of public interest from outside

of our law firm. From Minnesota Supreme Court Chief Justices to bar association leaders and representatives of the Legal Aid Society, these presentations were timely and provided a great public service. The presentation by Robert Stein on the Uniform Law Commission reminded all of us why Minnesota has produced so many great national leaders. The program featuring Hennepin County Judge Joseph Klein, still available as a podcast on our web site, is a timelessly



Tom Shroyer  
“Minnesota Law Host Extraordinaire”

eloquent commentary on the experiences of a new trial court judge. Another example of the great leadership we enjoy in Minnesota was revealed in the broadcast with the Minnesota State Revisor of Statutes, Michele Timmons, who described how her office brings order and precision to the chaotic process of drafting and enacting new laws.

We were often asked, “Who listens to the show?” The answer was both surprising and gratifying. As it turned out, we heard from clients, judges, general counsel from Fortune 500 companies, and lawyers alike, that they were avid fans of the program. Judges appreciated getting updated on aspects of the law that they did not routinely encounter, as did other lawyers. Clients said they appreciated the practical tips on various legal matters and the “free advice.”

That feedback, combined with the bonds forged with the entire family of professionals at WCCO Radio, made the decision to end the show very difficult to execute. Still, ending the program after more than 200 shows was the right move – we had accomplished our goals of giving something back to the community, while greatly enhancing the name recognition of Moss & Barnett and demonstrating the tremendous depth and breadth of experience and service offerings of our fine law firm. We wanted to “go out on top” before the show became repetitive or lost its edge. Of course, it is also nice for me to be free to putter around the yard and listen to WCCO Radio on Saturday mornings.

*Audio of all shows is available at [MossandBarnettonWCCO.com](http://MossandBarnettonWCCO.com)*



## MOSS & BARNETT ONCE AGAIN RANKED A "BEST LAW FIRM" FOR 2013!

U.S. News Media Group and *Best Lawyers*® have released their 2013 "Best Law Firms" rankings – marking the third edition of this highly-anticipated annual analysis – and we are very pleased to report that Moss & Barnett has once again been ranked a "Best Law Firm" for 2013!

The rankings are based on a rigorous evaluation process that includes the collection of client and lawyer evaluations, peer review from leading attorneys in their field, and review of additional information provided by law firms as part of the formal submission process. The third edition of these rankings features law firms with consistently impressive performance ratings by clients and peers.

The methodology used for the rankings involved surveying thousands of law firm clients, leading lawyers, and law firm managers, partners, and marketing and recruiting officers. Clients were asked to provide feedback on firm practice groups, addressing expertise, responsiveness, understanding of a business and its needs, cost-effectiveness, civility, and whether they would refer another client to the firm. Lawyers also voted on expertise, responsiveness, integrity, cost effectiveness, whether they would refer a matter to a firm, and whether they consider a firm to be a worthy competitor. In addition to lawyer and client feedback, law firms were asked to provide general demographic and background information on the law firm and attorneys. All of the quantitative and qualitative data were combined into an overall "Best Law Firms" score for each firm. This data was then compared to other firms within the same metropolitan area and at the national level. Achieving a high ranking is a special distinction that reflects a unique combination of excellence and breadth of expertise.

We would like to once again thank our many clients who took the time to participate in this survey on our behalf. The attorneys, paralegals, and administrative and support staff at Moss & Barnett are committed to providing you with effective, high quality, timely, and efficient solutions to your legal needs and disputes. It is our honor to offer you the quality service that you have every right to expect from your law firm.

***To learn more about Moss & Barnett, our attorneys, and our various practice areas, please visit our web site at [moss-barnett.com](http://moss-barnett.com).***



Moss & Barnett is pleased to report that we received a **National Tier 1 Ranking** in **Professional Malpractice Law - Defendants** and a **National Tier 3 Ranking** in **Corporate Law** and **Energy Law**.

Additionally, Moss & Barnett received special recognition in these Minneapolis specialties:

- Administrative / Regulatory Law
- Appellate Practice
- Banking and Finance Law
- Corporate Governance Law
- Corporate Law
- Energy Law
- Family Law
- Family Law Mediation
- Financial Services Regulation Law
- Litigation -
  - Banking and Finance
  - Bankruptcy
  - Commercial
  - Intellectual Property
  - Securities
- Mergers & Acquisitions Law
- Professional Malpractice Law – Defendants
- Real Estate Law
- Securitization and Structured Finance Law

# PROFESSIONAL *Excellence + Teamwork*

## *MOSS & BARNETT CONGRATULATES ITS ATTORNEYS INCLUDED IN 2013 BEST LAWYERS®*

***Moss & Barnett is pleased to congratulate its attorneys who were included in The Best Lawyers in America® for 2013:***

- **Cindy J. Ackerman** - *Trusts and Estates*
- **Yuri B. Berndt** - *Tax Law and Tax Litigation & Controversy*
- **Michael J. Bradley** - *Administrative/Regulatory Law and Energy Law*
- **Kevin M. Busch** - *Banking and Finance Law, Financial Services Regulation Law, and Securitization and Structured Finance Law*
- **Richard J. Johnson** - *Administrative/Regulatory Law and Energy Law*
- **Richard J. Kelber** - *Corporate Law and Mergers & Acquisitions Law*
- **Thomas A. Keller III** - *Corporate Governance Law*
- **Peter A. Koller** - *Appellate Practice*
- **Dan Lipschultz** - *Administrative/Regulatory Law*
- **James E. O'Brien** - *Corporate Law*
- **Charles A. Parsons, Jr.** - *Real Estate Law*
- **Susan C. Rhode** - *Family Law and Family Law Mediation*
- **James A. Rubenstein** - *Bankruptcy Litigation*
- **Thomas J. Shroyer** - *Commercial, Intellectual Property, and Securities Litigation and Professional Malpractice Law-Defendants*
- **Jeffrey L. Watson** - *Real Estate Law*
- **Edward L. Winer\*** - *Family Law*



*Cindy J. Ackerman*



*Yuri B. Berndt*



*Michael J. Bradley*



*Kevin M. Busch*



*Richard J. Johnson*



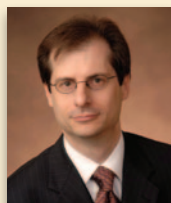
*Richard J. Kelber*



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*James E. O'Brien*



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*Thomas J. Shroyer*



*Jeffrey L. Watson*



*Edward L. Winer*

***\*Special congratulations to Ed Winer, who has been published in all editions of The Best Lawyers in America since its first publication in 1983.***

*Best Lawyers* is the oldest peer-review publication in the legal profession. *Best Lawyers* compiles lists of outstanding attorneys by conducting exhaustive peer-review surveys in which tens of thousands of lawyers confidentially evaluate their professional peers. *Best Lawyers* then publishes an annual referral guide, *The Best Lawyers in America*, which includes attorneys in 128 practice areas, covering all 50 states and the District of Columbia.







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## DID YOU KNOW?...

That attorney **Marcy Frost**, chair of our employment law practice area, served as editor for the memoirs of a Holocaust survivor? Mary Neuman of Golden Valley was raised in Lvów, Poland, and was 18 years old when the Nazi army marched into town. Ms. Neuman survived for two years in the Lvów Ghetto and another year in hiding. She was arrested for having false papers and subsequently spent time in two prisons and two concentration camps, including Auschwitz.

Ms. Neuman worked with Fred Amram, a professor emeritus at the University of Minnesota, to take her story from the far reaches of her memory to a sprawling history beginning in her pre-war childhood and going through the present time. Ms. Neuman then turned to her friends to edit the book for publication. Marcy Frost, with the assistance of Janny Silver, another friend of Ms. Neuman, edited the memoir to focus more sharply on Ms. Neuman's experiences during the German occupation of Poland, in captivity, and after the war at a Displaced Persons Camp located at Bergen-Belsen in Germany.

The book, *Pockets in My Soul*, was published in 2012. It is currently available at the Temple Israel Sisterhood Gift Shop, 2324 Emerson Avenue South, Minneapolis, MN, 612-377-8680.



Mary Neuman and Marcy Frost

### IMPORTANT NOTICE

This publication is provided only as a general discussion of legal principles and ideas. Every situation is unique and must be reviewed by a licensed attorney to determine the appropriate application of the law to any particular fact scenario. If you have a legal question, consult with an attorney. The reader of this publication will not rely upon anything herein as legal advice and will not substitute anything contained herein for obtaining legal advice from an attorney. No attorney-client relationship is formed by the publication or reading of this document. Moss & Barnett, A Professional Association, assumes no liability for typographical or other errors contained herein or for changes in the law affecting anything discussed herein.