SHERRARD, GERMAN & KELLY, P.C.
ATTORNEYS AT LAW

*a tradition of **innovative legal service***

ROBERT D. GERMAN

1953-2015

Robert ("Rob") German, one of the founding members and managing shareholders of Sherrard, German & Kelly, P.C., passed away on September 6, 2015 following a months-long battle against acute myeloid leukemia.

Rob was instrumental in the formation of the firm in 1990 through the unique combination of three longtime Pittsburgh law firms. At that time, it was more common for law firms to break apart than to merge together. Rob worked with the other founding members to develop the model for the new firm to deliver high quality legal services at a reasonable cost. As a member of the Executive Committee for the past 25 years, Rob oversaw the development of Sherrard, German & Kelly into one of Pittsburgh's most well-known and respected law firms, having a current roster of 50 attorneys; a growth of 200% from its beginning in 1990.

Rob attended the University of Pittsburgh School of Law, graduating cum laude with the Order of the Coif in 1978. He received his Masters of Law in Taxation in 1979 from New York University before joining his father, Ralph German, at the firm of Cooper, German, Kelly & Purcell.

Rob focused his practice on corporate and commercial law, non-profit law, tax law, mergers and acquisitions, and estate planning.

In addition to managing the firm, Rob served his own clients, which varied from individuals, and non-profits, and businesses of all sizes. Each received his attention and dedicated service even as he often managed projects with other attorneys in the firm. His inclusion of other attorneys in his caseload allowed him to supervise their professional growth and his clients to witness the depth of professionals in the firm.

Rob led the firm by example. His commitment to excellence in his work and habit of working in a team inspired those around him to do likewise. He demanded much of himself, and applied the same standard to others.

Additionally, Rob served his community by his service on board of Mt. Lebanon School District, Edgewood Country Club and with numerous other charitable activities. But his most dedicated service was to Juvenile Diabetes Research Foundation with which he was an active leader for decades, ultimately serving as Chair of its International Board.

The attorneys and staff of Sherrard, German & Kelly are honored by the leadership of Rob German over the last 25 years and dedicated to continuing to provide high quality, personal legal services to its clients in the tradition and standard he established.

Walter R. Bashaw II, Managing Shareholder and Director, was recently appointed as Interim General Counsel and Secretary of II-VI Incorporated.

Matt A. Jarrell, Shareholder and Director, and Chair of the Natural Resources Services Group was recently profiled by the Pittsburgh Business Times in its Who's Who in Energy, an annual listing of the top energy executives.

Best Lawyers®

LINKING LAWYERS AND CLIENTS WORLDWIDE

The results of the U.S. News-Best Lawyers 2016 survey of the American legal industry were just released, and several practice groups in Sherrard, German & Kelly, P.C. were recognized. These rankings are based on surveys from both law firms and clients.

In total, the Firm received six Metropolitan Tier rankings. U.S. News-Best Lawyers 2016 Best Law Firms awarded Sherrard German & Kelly, P.C. the following rankings:

METROPOLITAN TIER 1
Pittsburgh
Construction Law
Litigation - Construction

METROPOLITAN TIER 2
Pittsburgh
Litigation - Real Estate
Real Estate Law

METROPOLITAN TIER 3
Pittsburgh
Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law
Litigation - Bankruptcy

USE OF GRANTOR TRUSTS IN ESTATE GIFT AND TAX PLANNING

Estate planning often relates to gifts of property at death. However, many estate plans include gifts during lifetime for their tax advantages. Although property, whether given during life or at death, is subject to tax, the value for taxation is based on the time of the gift. Gifts during lifetime typically are worth less than if the donor waited until death. A lifetime gift, then, generally allows the donor to be taxed on a lower value than if the same gift was made at the time of death. This means that when a client makes a gift of $1 million of assets today, which grow to $2 million after the gift is made, $1 million will pass without exposure to any wealth transfer tax. This process, sometimes called an "estate tax freeze", allows an individual to freeze the value of assets at the time of gift, so that any appreciation will pass to heirs without estate tax exposure.

Gifting property to a trust can allow a donor to remove assets from his or her estate, while still retaining some control over the distribution, according to the terms of the trust document. Under certain circumstances, the use of a "grantor trust" can further reduce gift and estate taxes by causing the income taxes of the trust to be charged to the donor, thereby further reducing his or her estate.

A grantor trust is a trust over which the grantor has retained certain powers over the administration of the trust for the IRS to treat the trust as being the same entity as the grantor for federal income tax purposes, but not for transfer tax purposes. The trust will still be considered a separate entity for the purposes of federal estate tax, such that the assets given to the grantor trust will be taxable gifts and outside a grantor's estate at death. A grantor trust's status under federal income tax provides two major advantages: (1) the grantor is responsible for income tax for all trust income and (2) financial interactions between the grantor and the trust are generally disregarded for federal income tax purposes.

Usually when someone pays tax on another's behalf, income or gift tax could be due on the amount paid. However, when a grantor pays income tax on "grantor trust" income, the payment of such tax does not constitute a taxable gift, even though the taxable income benefits the grantor trust and its beneficiaries rather than the grantor. By enabling the grantor to pay the income tax on grantor trust income, the trust assets are not depleted and the trust beneficiaries continue to enjoy them.

From the IRS's point of view, a grantor and a grantor trust are one and the same for income tax purposes. Income of the trust is deemed to be income of the grantor, even though he or she cannot receive or enjoy it.

The IRS's disregard for financial interactions between a grantor trust and its grantor may allow a grantor to reduce potential estate tax in some creative ways. Instead of gifting all available assets into a trust, the grantor can gift some assets into a trust and then have the trust purchase the rest of the assets. The purchase price is paid by a promissory note, evidencing a debt to be paid to the grantor. Because, for income tax purposes, the grantor and the grantor trust are not considered separate entities, the grantor will not have to pay income tax on interest received from the note. The promissory note should carry a minimum interest rate as prescribed by the IRS (the Applicable Federal Rate (AFR), 1.58% for November 2015). If the assets that were 'sold' via the promissory note appreciate at a higher rate than the AFR, no gift would be made by the grantor, since the trust acquired the assets by sale. In effect, if the trust assets appreciate at a higher percentage rate than the AFR, the grantor will be able to transfer the difference between the AFR and the rate that trust assets appreciate without having to pay gift tax.

The use of grantor trusts can be a powerful tool to enhance the value of lifetime gifting. Like most estate planning tools, it is not appropriate in all cases. If one has the flexibility to make lifetime gifts and has assets that are likely to appreciate over time at a rate in excess of the AFR, a sale to a grantor trust, along with other available strategies, should be considered in consultation with your estate attorney and financial team.

If you have any questions or would like more information on the issues discussed above, please call W. Chad Pociernicki, Esquire, or Peter Y. Herchenroether, Esquire at 412-355-0200 or email to wcp@sgkpc.com or pyh@sgkpc.com.

APPROXIMATELY 4.68 MILLION MORE EMPLOYEES WILL BE ELIGIBLE FOR OVERTIME IN THE FALL OF 2016 WILL YOUR COMPANY BE READY?

The U.S. Department of Labor (the "DOL") recently announced regulatory changes that will make it much harder for employers to treat employees as exempt from overtime payments under the Fair Labor Standards Act ("FLSA"). The new regulations are expected to increase the minimum salary employers must pay employees under the "white collar" exemptions from the current rate of $455 per week ($23,660 annually) to $970 per week ($50,440 annually). The DOL estimates that the increased salary threshold will entitle approximately 4.68 million more employees to overtime pay within the first year of its implementation and is estimated to cost employers between $239.6 and $244.3 million per year.

The new regulations are expected to become final in July of 2016, and are likely to take effect 30 to 60 days later. The three main components to the proposed rule are: (1) increasing the "salary level test" for the "white collar" exemption to $970 per week ($50,440 annually); (2) increasing the minimum salary that must be paid under the less frequently used "highly compensated individuals" exemption from $100,000 annually to $122,148 annually; and (3) establishing a mechanism for annually updating the minimum salary and compensation levels for these exemptions moving forward.

During the public comment period, a number of employers lodged objections to the proposed rule. Although the objections are unlikely to lower the proposed salary thresholds, the DOL has implied that if enough employers object to the proposed rule, it may reinstitute a two-tiered system that is similar to the one in effect prior to 2004. If the DOL ultimately adopts a two-tiered system, employers would probably have the option of either meeting the increased salary thresholds or paying a lower salary threshold, but then having to meet a more stringent duties test to prove that a white collar exemption is appropriate. Either way, the new regulations will substantially increase the number of employees who are entitled to overtime payments.

Employers should begin auditing their current employee populations to determine what changes, if any, will be needed to continue to treat employees as exempt from overtime payments under the FLSA. For instance, year-end financials will enable employers to gauge whether commissioned employees will meet the increased threshold under the highly compensated employee exemption. As decisions whether to increase salaries or pay overtime will hinge upon how many hours the employee is working, employers may want to start tracking hours worked by exempt employees now to gain insight into the hours employees are actually working.

Employers should also assess how much time employees spend on various types of upper-level versus clerical tasks. Because of the complexity in the regulations relating to the classification of employees under the FLSA, proper classification usually benefits from input and guidance from legal counsel. Where employees are working remotely or using electronics after work hours to respond to work-related emails, text messages, or cell phone calls, tracking actual hours worked will be challenging and may require changes in personnel policies.

If you have any questions or would like more information on the issues discussed above, please call Suzanne L. DeWalt, Esquire, or Curtis M. Schaffner, Esquire at 412-355-0200 or email to sld@sgkpc.com or cms@sgkpc.com.

Edward B. Gentilcore, Shareholder and Director, and Chair of the Construction Services Group, is the Program Co-Chair for the American Bar Association Forum on Construction Law 2016 Midwinter Meeting in San Francisco, California on January 21-22, 2016. The Program is entitled "Livin' on the Fault Line: Cutting Edge Solutions for Seismic Events that Threaten Your Construction Client." One of the Plenary Session speakers will be Shareholder and Director, and Chair of the Litigation Services Group, **James R. Hankle**, who will be co-presenting on Enduring the Electronic Slide: An Ethical Enclave on Economic Technology Developments. Registration information can be found at ambar.org/FCLmid16.

Please join the firm in congratulating the below individuals on their respective promotions, effective January 1, 2016:

Brian R. Boyer has been named as a Shareholder and Director of the Firm. Mr. Boyer is a member of the firm's Energy and Natural Resources and Real Estate Services Groups. He concentrates his practice on oil and gas, real estate, and general corporate matters. Mr. Boyer advises oil and gas clients in connection with various business and regulatory matters, including the acquisition and divestiture of oil, gas and mineral

Promotions Continued...

assets, unit operations and development, and the negotiation and drafting of leases, joint operating agreements, and purchase and sale agreements. He also regularly counsels clients regarding lease disputes, contract and commercial litigation, and title issues.

John R. Whipkey has been named as a Senior Associate. Mr. Whipkey is a member of the firm's Energy and Natural Resources Services Group. He concentrates his practice in the area of oil and gas and counsels clients with respect to transactional, leasing, title and litigation matters. Mr. Whipkey has extensive experience preparing certified title opinions and division orders for exploration and production companies, and he has advised clients in connection with the acquisition of oil, gas and mineral assets in several states. Prior to joining the firm, Mr. Whipkey worked at two Pittsburgh law firms, representing clients in oil and gas as well as medical malpractice defense, employment matters, and general liability.

A NEW ATTORNEY HAS JOINED THE FIRM

Jennifer P. Richnafsky is a member of the firm's Litigation Services Group. She is engaged in a diverse commercial litigation practice with considerable experience with all aspects of the litigation case cycle, including extensive discovery and briefing, along with participation in depositions and trials. Ms. Richnafsky has conducted legal research and is knowledgeable on a broad assortment of topics, including proximate causation, breach of contract, fiduciary duties, and the Foreign Corrupt Practices Act. She has reviewed and negotiated documents containing complex corporate and financial data, organized regulatory investigations, and frequently represented highly regulated clients. Ms. Richnafsky has conducted audits of commercial documentation and corporate practices for purposes of identifying potential violations, negotiating settlement agreements, and planning litigation strategies. Ms. Richnafsky graduated summa cum laude from Columbia University in 2004 receiving a B.A. in History and Psychology. She received her Master's degree in Linguistics from the University of Cambridge, Trinity College and she received her law degree from Harvard Law School in 2009. Before joining the firm, Ms. Richnafsky worked in New York and Washington D.C. for large international law firms.

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