EXECUTIVE REPORT

HAPPY SPRING TO OUR CLIENTS AND FRIENDS!

We hope this finds you all well and enjoying the longer days and warmer temperatures than we endured in January, February and March of this year. In this edition of the Petrie + Pettit newsletter we are pleased to provide you with articles from our firm's attorneys on a variety of trending legal topics - from labor and employment to corporate bankruptcy to tax and estate planning matters. We encourage you to contact us at any time with questions.

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COMMON CHAPTER 11 BANKRUPTCY CONFIRMATION ISSUES

By David J. Espin

In chapter 11 bankruptcy cases, debtors must contend with an array of issues that frequently arise in business bankruptcies, such as first day motions, motions for relief from stay, adversary proceedings, and approval of a disclosure statement. Debtors who can effectively navigate these obstacles still have one additional hurdle to overcome before successfully emerging from bankruptcy: confirmation of a plan of reorganization. While the Bankruptcy Code requires debtors to comply with an extensive list of statutory requirements in order to receive the court's approval of a plan, the following are some of the most common issues which could present problems for a debtor at confirmation:

1. PLAN FEASIBILITY. Bankruptcy judges are obligated to ensure that a plan is feasible, and not likely to be followed by either the liquidation or need for further financial reorganization of the debtor. Essentially, the judge must decide that a debtor has the financial wherewithal to actually make the payments it is proposing to creditors under its plan of reorganization. This is usually done by taking the debtor's historical financial statements and monthly operating reports, which are filed during the pendency of the case, and comparing these numbers with the cash flow projections included in the plan. While the debtor isn't required to show that it is guaranteed to succeed, it must provide concrete evidence demonstrating a "reasonable assurance of commercial viability."

2. ACCEPTANCE OF THE PLAN BY CREDITORS. A chapter 11 debtor is required to mail out ballots to its creditors, along with a copy of the proposed plan that creditors must vote on. Creditors are grouped into "classes" with other similarly situated creditors, and each creditor has the right to return a ballot accepting or rejecting the proposed plan. In order for a class of creditors to be deemed to have accepted the plan, at least two-thirds of the total dollar amount of all claims comprising the class and more than one-half of the total number of claims in the class must vote in favor of the plan.

3. ACCEPTING IMPAIRED CLASS OF CREDITORS. In order to confirm a plan of reorganization, at least one class of creditors' claims that is impaired (i.e., not being paid in full when the plan takes effect) must vote in favor of the plan. This often leads to accusations that a debtor has "gerrymandered" an impaired class with friendly creditors. As a result, debtors should proceed with caution when classifying certain claims.

4. BEST INTEREST TEST. The "best interest test" mandates that creditors who vote to reject a debtor's plan of reorganization must receive at least the amount that they would have received if the debtor's assets were liquidated and creditors' claims were paid pursuant to the Bankruptcy Code's priority scheme. This ensures that creditors who reject the plan are not worse off than they would be in a chapter 7 liquidation scenario (which is often the alternative if the debtor's reorganization plan is not approved by the court).

5. ABSOLUTE PRIORITY RULE. Finally, a debtor's chapter 11 plan must comply with the "absolute priority rule," under which claims of any objecting, impaired class of creditors must be paid in full before a junior class of claims is allowed to retain an interest pursuant to the plan. In practice, this means that if a debtor cannot obtain the accepting votes for an impaired class of claims, the debtor's owners cannot keep their equity interests in the debtor post-bankruptcy. Since the main point of filing the chapter 11 case is typically to allow a debtor's owners to retain their interests in the company, each class of creditors must either be paid in full or vote in favor of the plan to accomplish this goal.

Complying with all of the Bankruptcy Code's provisions is never an easy feat. Companies considering a chapter 11 filing should meet with an experienced chapter 11 practitioner in order to evaluate the pros, cons, and merits of a bankruptcy filing. A chapter 11 debtor's chances of a successful plan confirmation are greatly improved if it formulates a strategy for dealing with all of these requirements before the case is even filed.

DOL ISSUES NEW OVERTIME RULE

By David A. McClurg

On March 7th, 2019, the U.S. Department of Labor (DOL) unveiled a long-awaited replacement to an Obama era rule (blocked by a federal court in November, 2016) that would have increased the salary level required for ***exemption*** from federal overtime regulations from $455/week ($23,660/year) to $913/week (over $47,000/year), and added over 4 million U.S. workers to the ranks of those eligible for overtime pay. Under the proposed replacement rule, the salary level requirement would still increase, but only to $679/week ($35,300/year), so that workers making less than that amount would automatically be eligible for time-and-a-half pay for all hours worked in excess of 40 per week – even if they are paid on a salary basis. The DOL estimates that this change would result in making an additional 1 million workers eligible for overtime.

The DOL used the same methodology to set the proposed new salary level test that was used the last time the test was modified during the George W. Bush administration. Under the new rule, the salary level test would not vary based on regional or other costs of living differences around the country as the Obama era rule had required. And unlike the earlier rule, this new proposal does not establish automatic, periodic increases of the salary threshold. Instead, public input has been requested on potential methods to update overtime requirements every 4 years. The DOL hopes that these modifications will avoid some of the legal challenges that led a federal court to bar implementation of the earlier rule.

Worker advocates are expected to argue, during the comment period on the proposed rule, that the DOL isn't going far enough to expand overtime pay for lower wage workers. The DOL hopes to make the new rule. It appears that many employers will accept the proposed new salary level test as a reasonable compromise. However, if it becomes effective by January 1, 2020 as the DOL hopes, it is likely that the new overtime rule will still be the target of legal challenges by some business groups concerned about rising payroll costs.

As always, employers should ensure that their exempt employees meet both the applicable salary level and white collar "duties" tests in order to justify their exempt classification. Employers should then determine which employees will be affected by the anticipated increase in the salary level test and consider whether it makes sense to raise affected employees' salaries or reclassify them as non-exempt employees. If the anticipated January 1, 2020, effective date is achieved, employers may not have a great deal of time to adapt once the rules are finalized.

If you have any questions about wage & hour policies or other labor & employment matters, please feel free to contact me at (414) 223-6956 or dmcclurg@petriepettit.com.

ANNOUNCEMENTS

On May 8th, **DAVID ESPIN** will be speaking at the Western District of Wisconsin Bankruptcy Bar's monthly luncheon presentation. These monthly luncheons, held at noon at the Concourse Hotel in Madison, cover trending topics in commercial bankruptcy law.

SUMEETA KRISHNANEY will be presenting a seminar for families with children who have special needs in the Muskego-Norway School District on April 11th. Sumeeta and Missy Burback, a Northwestern Mutual financial advisor, will discuss the topic of Special Needs Planning at 5:30 p.m. in the Muskego High School Library.

DAVE MCCLURG spoke to the Metro Milwaukee Society for Human Resources Management (SHRM)'s Legislative Committee on March 7th on the topic of ***"Serial Claim Filers: Private Attorneys General or Extortionists?"*** addressing the massive wave of claims filed under Title II of the ADA alleging accessibility barriers associated with both public buildings and websites, hundreds of serial claims alleging violations of obscure provisions of the Wisconsin Fair Employment Act and thousands of serial claims alleging technical violations of the Fair Credit Reporting Act. On March 20th, Dave also served as a panelist at a meeting of business and franchise owners discussing critical tax, management and employment issues that business owners will be facing in 2019.

As the 2018-2019 Director of Special Events of the Association for Women Lawyers (AWL), **RENEE RUFFIN NAWROCKI** planned and moderated the 39th Annual Women Judges' Night event held at the Hilton Hotel on March 7th. Women Judges' Night recognizes and celebrates how women in the legal profession have changed the landscape of the legal rules, regulations and practice.

On February 26th, **LAURA PETRIE** spoke on the topic of Estate Planning at a UWM School of Continuing Education course entitled ***"Financial Strategies for Successful Retirement."*** This continuing education course, sponsored by The WE Wealth Management Group at RBC, is offered multiple times per year.

TRISTAN PETTIT presented his 19th Landlord Boot Camp for the Apartment Association of Southeastern Wisconsin (AASEW) in February, and on April 11th, he will be presenting a seminar on the topic of screening rental applicants and rental documents as part of the West Allis Landlord Training program. Tristan also has several private seminars scheduled for clients on topics including fair housing issues, emotional support animals and rent assistance voucher holders as a protected class.

TAX TIME:

THE PERFECT TIME TO CREATE OR UPDATE YOUR ESTATE PLAN

By Renee Ruffin Nawrocki

During tax season, our mailboxes are filled with important tax documents. When reviewing our W-2s, 1098s, 1099s, and other tax-related forms, we instinctively evaluate the current tax year, comparing it to previous tax years and making personal commitments to improve our financial circumstances in the future. We also reflect upon any changes that occurred in our personal lives during the prior tax year. When contemplating whether our life changes impact our income tax filings, we should also assess whether they also create a need to execute new or revised estate planning documents.

- **DID YOU GET MARRIED?** Congratulations on tying the knot! If you were married on December 31st of the tax year, your tax return filing status will likely change to *"married filing jointly"* or *"married filing separately."*

  New or updated estate planning documents may also be needed to ensure your new spouse has the legal authority to carry out your financial and/or healthcare-related wishes in the event of your future incapacity. And if you have children from a prior relationship or marriage, new estate planning documents can clarify and confirm your wishes for providing for your new spouse as well as distributing assets to your children who are not of your current marriage.

- **DID YOU GET DIVORCED?** If you were no longer married on December 31st of the tax year, your income tax filing status likely changed to *"single."*

  Following your Wisconsin divorce, if your ex-spouse was as your healthcare power of attorney, your **entire** healthcare power of attorney document is automatically revoked, even if you have named a successor agent in the document. Updating all of your estate planning documents may be needed to remove your ex-spouse or other ex-relatives as your nominated personal representative, power of attorney, or even legal guardian of your children.

- **DID YOU HAVE OR ADOPT A CHILD?** As your family grows, your income tax filing status may change to *"head of household,"* and your tax returns may include new dependent or child-related deductions.

  It can be scary to contemplate what would happen to your child if you pass away with minor or adult disabled children surviving. Now is the time to create or update estate planning documents in order to legally appoint trusted individuals to serve as your child's legal guardians/successors in order to ensure continuity of care and love if you pass away or are incapacitated while your children are minors (or are incapacitated).

- **DID YOUR CHILD TURN 18?** As your child reaches the age of majority, you will need to assess whether your child is still an eligible *"dependent"* for income tax purposes.

  In Wisconsin, when your child turns 18 years, you lose any legal authority you had as a parent of a minor child to make financial or health-related decisions on that child's behalf, or even to access their financial or health care information (regardless of whether you are still paying all the bills). As a legal adult, your child can now execute powers of attorneys to ensure that you (or other trusted adults) are authorized to make financial and healthcare-related decisions on his or her behalf, as needed, without court intervention.

- **DID A FAMILY MEMBER HAVE A LIFE CHANGING EVENT?** If a family member experienced a health-related issue, such as a stroke or mental health diagnosis, the amount of support you provide for that individual may allow you to claim him or her as a *"dependent"* on your income tax returns.

  However, if your current estate planning documents have nominated that same family member as your personal representative, trustee, or power of attorney, assessing his or her ability to carry out financial or healthcare-related decisions on your behalf is essential. Updates your estate planning documents may be needed to appoint other individuals to serve in these important roles should the need arise.

- **DID YOU PURCHASE A HOME?** After crossing the threshold of your new home, you may be eligible to take a mortgage interest deduction as well as a deduction for property taxes paid during the tax year on your income tax returns.

  On the estate planning side, Wisconsin law allows homeowners to execute and record a *"Designation of TOD Beneficiary"* document which ensures transfer of title to your home to a designated individual (or trust) upon your death - outside of the probate process.

We look forward to helping you assess whether executing new or revised estate planning documents will assist you in achieving your personal and financial goals, both now and in the future. Feel free to contact any member of the P+P estates and trusts team to discuss your recent life changes:

James Petrie, Laura Petrie, Sumeeta Krishnaney & Renee Ruffin Nawrocki

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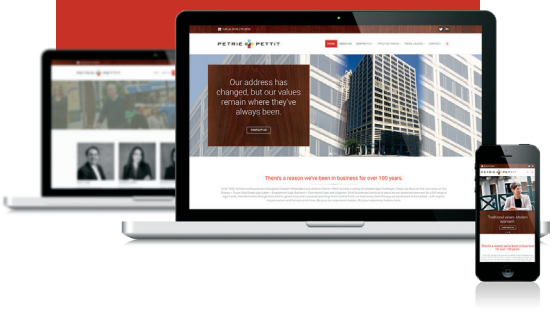
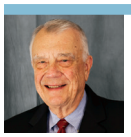


ESTATE PLANNING NOTES

In December 2017, a new tax bill passed by Congress and signed by the President doubled the federal estate and gift tax exemption amounts to $10 million per person adjusted for inflation, which for 2019 is now $11.4 million per person ($22.8 million per married couple, with portability). However, these enhanced exemption provisions are scheduled to sunset on January 1, 2026, which means that without further congressional action, the estate and gift tax exemptions amount will revert back to $5.49 million per person, adjusted for inflation. We must all remember that Congress and the President could change these exemption provisions sooner than 2026, and there will be several national elections between now and then. Stay tuned.

In addition to federal transfer tax planning, all adults – regardless of wealth - should be reviewing their estate planning documents to ensure that they have properly planned for the possibility of incapacity during their lifetimes and also to ensure the desired disposition of their assets at death. A revocable trust may be useful, if properly funded, for avoiding protracted probate court proceedings and public disclosure after your death. And coordinating the beneficiary designations on your various assets with your existing will and or trust documents is essential.

For all of these reasons and more, if you haven't thoroughly reviewed your estate planning matters in the last several years, it is time to get a meeting scheduled.



James R. Petrie