

KDDK

ADVANTAGE *Newsletter*

Fall/Winter 2014

Alternative Dispute Resolution: Loser Pays

Settle or Risk Paying Both Sides' Fees

by G. Michael Schopmeyer



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In *Sierra Club v. Energy Future Holdings Corp.*, the U.S. District Court ruled against the Sierra Club on its claims that a Texas coal-fired power plant violated federal environmental laws based on the fact that, prior to the lawsuit being filed, the power plant had obtained a permit authorizing higher particulate levels during startup, shutdown and other activities. The Court further ruled that the Sierra Club must pay virtually all the defendant's attorney and expert witness fees: nearly \$6.5 million.

This award demonstrates that before bringing a lawsuit, or at least continuing it, substantial due diligence must be undertaken to establish that asserted claims are supported by adequate empirical evidence and the defendant does not have a valid defense.

This case also exemplifies that many American courts and legislatures are more often shifting from the historical "American Rule" that each party bear only its own attorney and expert fees and costs to the fee-shifting European model of "loser pays."

Where circumstances may provide for the right to a prevailing party/fee-shifting obligation, whether by contract, statute or procedural rules, there is a growing probability that such circumstances may induce swifter negotiated solutions. Many will agree that the acceleration of negotiated settlements, as opposed to litigation, generally serves the best interest of all sides.

For additional information about negotiated settlements, please contact Mike Schopmeyer at mschopmeyer@KDDK.com or (812) 423-3183. ♦

Real Estate Law: Responsible Property Transfer Law

Cutting the Red Tape or Buyer Beware?

by Allison K. Comstock



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With the Indiana Legislature's repeal of the Indiana Responsible Property Transfer Law ("IRPTL"), sellers of real property are no longer obligated to disclose certain environmental conditions to buyers on the Environmental Disclosure for Transfer of Real Property Form, State Form 52653, and will no longer be subject to the potential fines used to enforce IRPTL. Without the added protections of IRPTL, buyers of real property will need to

increasingly rely on their own due diligence and engage professional assistance to identify potential environmental issues. Additionally, sellers may need to reconsider the language used in purchase contracts for environmental disclosures.

For more information about any real estate-related legal topic, please contact Allison Comstock at acomstock@KDDK.com or (812) 423-3183. ♦

Employee Benefits Law: Affordable Care Act

Large Employer Penalties Start January 1st

by Mark S. Samila

Beginning January 1, 2015, employers with 100 or more employees that fail to offer health insurance coverage to full-time employees or that offer health insurance coverage that is not "affordable" are subject to penalties under the Affordable Care Act. Employers that fail to offer health insurance coverage are subject to a penalty of up to \$2,000 per full-time employee. Those employers that fail to offer "affordable" coverage are subject to a penalty of \$3,000 for each employee that purchases insurance coverage on an insurance exchange and receives a premium subsidy. For employers that have between 50 and 99 employees, these penalties go into effect on January 1, 2016.

If you have questions regarding these penalties, how the number of full-time employees is calculated or other issues, please contact Mark Samila, Steve Theising or Ashley Hollen at (812) 423-3183. ♦

**THE KDDK FAMILY WOULD LIKE TO WISH
YOU AND YOUR FAMILY A HAPPY HOLIDAY SEASON
AND HEALTHY, PROSPEROUS NEW YEAR!**

KAHN, DEES, DONOVAN & KAHN, LLP (KDDK) is an experienced full-service civil law firm located in Evansville, Ind., dedicated to effectively serving the legal needs of regional, national and international clients, including public and private businesses, manufacturers, educational institutions, healthcare providers, financial organizations, governmental units, and non-profit entities, for more than 105 years.

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KDDK News

Mark McNulty Named KDDK Partner

KDDK is pleased to announce that attorney Mark A. McNulty will be made a partner in the firm effective January 1, 2015. Mark is an experienced labor and employment law and business law attorney and litigator who serves clients in industries including manufacturing, banking and financial services, and education. He is licensed to practice in Kentucky, Indiana, Illinois, and Missouri.

Mark represents clients in administrative and judicial proceedings; counsels clients regarding hiring and disciplinary issues, as well as compliance with local, state and federal employment laws; works with clients in reviewing and drafting employment contracts, non-compete agreements, and employee handbooks; and advises and represents employers in labor management and union avoidance matters.

A resident of Owensboro, Ky., Mark is actively involved in the Owensboro Human Resources Association, Evansville-Area Human Resource Association, Owensboro Chamber of Commerce, Defense Trial Counsel of Indiana, Legal Aid Society of Evansville, Rotary Club of Evansville, Evansville Philharmonic Orchestra, and other civic and professional organizations. Please join us in congratulating Mark! ♦



Mark McNulty
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KDDK Welcomes Two Associate Attorneys



Matt Malcolm
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Matt Malcolm serves on the firm's business law, economic development law, real estate law, and creditors' rights and collections practice teams. Prior to joining KDDK, Matt interned with the Marion County Public Defender's Agency and with KDDK. Matt earned his Juris Doctor from Indiana University Maurer School of Law in 2014. In 2010, he earned his bachelor's degree from Butler University, where he majored in international management and minored in Mandarin.

A native of Westfield, Ind., Matt has become involved in the Southwest Indiana Chamber's Young Professionals Alliance, Bible Study Fellowship and VOICE since moving to Evansville.



Aaron Trump
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Aaron Trump practices education and labor and employment law at KDDK.

Aaron earned his Juris Doctor from Washington University School of Law in 2014; his master's degree in education, majoring in higher education, from Indiana University in 2011; and his bachelor's degree from IU, majoring in psychology and earning a certification in business from the Kelley School of Business, in 2006.

He interned for IU's Office of the General Counsel and Tueth Keeney Cooper Mohan & Jackstadt; and served as a graduate intern in the IU Office of the President. Aaron was also a six-year member of the Indiana Army National Guard. ♦

The Best Lawyers in America

Three KDDK attorneys have been selected by their peers for inclusion in *The Best Lawyers in America*® 2015.

- **Mike Schopmeyer**, a KDDK Co-Managing Partner, was selected for inclusion in *Best Lawyers* in the fields of Environmental Law and Litigation—Environmental.
- **Jeff Helfrich**, also a KDDK Co-Managing Partner, was selected for inclusion in *Best Lawyers* in the field of Commercial Transactions/UCC Law.
- **Kent (KAB) Brasseale**, a KDDK Partner, was selected for inclusion in *Best Lawyers* in the field of Real Estate Law.

Best Lawyers has become universally regarded as the definitive guide to legal excellence. *Corporate Counsel* magazine has called *Best Lawyers* "the most respected referral list of attorneys in practice." ♦

Ryan Schulz Receives Legal Writing Honor

Congratulations to KDDK attorney Ryan M. Schulz, who recently received the 2014 Donald R. Lundberg Writing Award presented by the Indiana State Bar Association Young Lawyers Section.

Ryan, an attorney who is licensed to practice in Indiana and Kentucky, focuses his practice on manufacturing law, business law, real estate law, construction law, estate planning, and litigation and trial services. Ryan has helped counsel clients through complicated business and construction transactions and can be of assistance to any company in reviewing, negotiating and drafting contracts, and handling litigation involving a variety of business transactions, including construction, manufacturing, real estate, and other business contracts. ♦

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