

In this issue

Firm Changes Management Structure

Page 1

Business Divorce: Part Two

Page 2

In the News...

Page 3

Another exciting year for the Pittsburgh 100

Page 4

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Firm Changes Management Structure

The shareholders of Rothman Gordon, P.C. have elected to adopt a new management structure. Previously, the firm was run by a management committee, consisting of three elected shareholders. Under the new structure, the firm will have a CEO/Managing Partner, elected by the shareholders for a three year term, who is responsible for the overall supervision of all aspects of the firm, including, but not limited to, internal operational and financial issues and external growth and marketing issues. An executive committee, consisting of two additional shareholders, will function as advisors on major firm issues.

Bill Lestitian was elected as CEO/Managing Partner. Bill served on the management committee for five years, so he is already familiar with the day to day issues of running the firm. His background as a CPA and business attorney make him an ideal candidate to assume the CEO/Managing Partner position. "The time seemed right to evaluate the firm's current position in Pittsburgh and where we'd like to be – Bill is the right choice to take us to the next stage," says Tom Solomich, who served alongside Bill on the management committee under the old structure.

"As the youngest shareholder of Rothman Gordon, Bill is the face of our future," says Louis Kushner. "Tom and I have the longest tenures at Rothman Gordon (34 and 39 years respectively) and it's very exciting to see the firm transitioning to the next generation of attorneys. Ensuring that our firm stays strong and nimble enough to respond to changes in the market is the best way to serve our clients. We've been around for over 50 years. The changes we've elected were made to ensure we're around another 50."

Bill is enthusiastic to assume his new role. "Rothman Gordon is blessed with many excellent lawyers and we are fortunate that our firm culture allows them to practice law and maintain a work-life balance. We're well positioned as a mid-sized law firm to take advantage of opportunities in the legal market and continue our plans for growth."

Tom Solomich and Doug DeNardo will serve as executive committee members, meeting as needed with Bill, who will continue to serve his clients and function as head of the Corporate Department.

Business Divorce: Part Two By Robert A. Galanter, Esq.

In the spring issue, I discussed an overview of business divorce and opined on various choices, including resolution, dissolution, appointment of a custodian, appointment of a neutral director, the hiring of an outside consultant, and mediation. However, if none of these are acceptable to resolve the issues, I also suggested that one partner buy out the other as an alternative to dissolving the entity. This article will discuss the partnership buyout agreement and the issues that may arise under such an agreement.

The first order of business is who buys whom? In the absence of a shareholder agreement, or the like, in a retirement scenario, obviously the non-retiring partner is going to buy out the retiring partner. However, when there are issues of “stalemate”, dishonesty by one partner, resentment, or distrust, the resolution of who buys whom becomes more difficult. Usually, in a theft situation, the purchaser is the innocent partner and part of the purchase price is paid by issuing a credit against the buyout price for money or property misappropriated. In the other situations, excluding retirement, factors such as one partner being more capable to operate the business than the other; one partner being willing to work and the other not; or general acquiescence by the partner being bought out are controlling.

Once it is determined who buys whom, the next step is to determine the value of the departing partner’s shares or interest. Frequently there are shareholder agreements or the like which define the procedure for a partner who wants to sell his or her interest. It is not unusual to see an agreement which provides for an annual valuation of a shareholder’s interest. Unfortunately, it is unusual to see that the valuation of the interest has been kept up on a yearly basis. As a default position, most agreements provide for an appraisal. Either both parties agree upon one appraiser or each party picks his own appraiser and the average of the two is the appraised value of the selling shareholder’s interest.

Once agreement upon the value of the interest being sold is reached, payment terms will be discussed. If there is a wrongdoer, the payment term is usually longer - somewhere between five and ten years. If retirement is the reason, the payment term can be significantly shortened. Ultimately, the payment term is negotiable and should favor the business so that the business does not have to sacrifice liquidity to make the payments.

A provision for confidentiality and non-competition is essential in a hostile buyout situation. Certainly, the purchasing shareholder does not want to finance a competitor. It is not unusual to have a non-compete agreement lasting five years or more depending on the business and whether it is necessary to protect the company from a competitor that knows all of its intricacies and trade secrets.

In the event of a dispute or default under a buyout agreement, the agreement should either provide for alternative dispute resolution (ADR) or allow the matter to go to court. Each of these options has its advantages and disadvantages. ADR is increasingly the resolution forum of choice and provides the choice of arbitration, mediation, or use of an early neutral advisor.

One of the frequently overlooked issues in a buyout is the tax implications. Pass through entities, such as Sub S Corps and LLCs charge the individual with the receipt of income or losses that they don’t know they have until the end of the tax year. As the seller of a business interest, there may be a tax liability for this income. The buyout agreement should provide for payment of these taxes as a distribution. Of course, in the event of a loss, the use of that loss will counter some or all of the capital gains tax incurred from selling one’s interest.

Another important issue to consider is the company’s line of credit. Most companies have one and for small companies, the line is usually personally guaranteed. Banks or other lenders almost never release a guarantor and the departing owner does not want a knock on his or her door from a lender at some unknown time in the future, should the company default on the line of credit. Most companies don’t want (or aren’t able) to pay off the line and rewrite the loan. The standard resolution of the problem is to provide notice to the lender that one guarantor will not be responsible for an increase in the line beyond the notice date. Then the buyer (other guarantor) agrees to indemnify the seller from any claims against him or her on the line. This solution definitely benefits the buyer but is usually the best arrangement that the seller can manage.

The foregoing is the bare bones of a buyout agreement. There are usually special considerations and those things that are particular to a business which appear in the agreement. Also, the shareholder agreement or the like between the parties will generally control many terms

of the buyout agreement. It is always a good idea to conclude the buyout quickly and to provide for a release of each party for any claims that either has against the other. Avoiding a court battle by coming to an agreement on the buyout is certainly a benefit to all parties.

In the News...

John Zatkos Selected as a Lawyer on the Fast Track by ALM



John Zatkos, a partner in the Workers' Compensation and Social Security Disability practice, has been selected as a "Lawyer on the Fast Track," an award bestowed upon Pennsylvania lawyers under 40 by *The Legal Intelligencer* and the *Pennsylvania Law Weekly*.

The award was created by ALM and its Pennsylvania newspapers to honor young lawyers who are an asset to the Pennsylvania legal community. John was chosen because he has shown outstanding promise in the legal profession and has made a significant commitment to the community-at-large, especially through his dedication to educating workers, specifically those in the labor community, of their rights under the Workers' Compensation Act.

The award recipients were honored at a dinner in Philadelphia on September 20, 2007 and U.S. Middle District Judge John E. Jones III was the keynote speaker. John was profiled along with the other honorees in a special supplement to the September 24th editions of the *Pennsylvania Law Weekly* and *The Legal Intelligencer*.

Paul Yagelski re-certified as a Creditors' Rights Specialist

Paul Yagelski has been re-certified as a Creditors' Rights Specialist by the American Board of Certification. Paul has been certified since 2002 and has represented a large number of clients in varying creditor actions. He has had extensive involvement in bankruptcy proceedings, including proceedings involving motions for relief from stay; motions for dis-

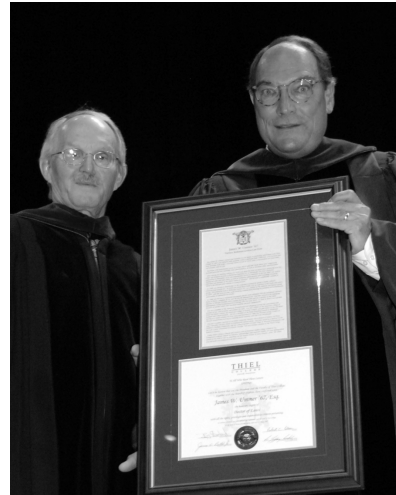


missal of bankruptcy proceedings; and objections to the discharge of claims.

In order to become re-certified, Paul satisfied the requirements, including devoting at least 30% of his practice and at least 400 hours to creditors' rights related matters in the last three years; completing a peer review process by nine lawyers; and demonstrating commitment to continuing legal education by earning 60 hours of creditors' rights related education in the past three years.

The American Board of Certification (ABC) is a non-profit organization dedicated to serving the public and improving the quality of bankruptcy and creditors' rights bars.

Jim Ummer awarded Honorary Degree by Thiel College



Dr. Robert C. Olson confers an honorary degree upon Jim Ummer

When Jim Ummer graduated from Thiel College in 1967, little did he know he would return forty years later to receive an honorary degree. At the May 5th commencement exercises, Thiel College President Dr. Robert C. Olson conferred an honorary doctor of laws degree upon Jim. Also being recognized were

Dr. Jagdish N. Sheth, noted Charles H. Kellstadt Professor of Marketing at Emory University, and Firdaus Kharas, director and producer of animation, film and television media.

Anne Parys elected to SSLDC Board of Directors

The firm's Director of Marketing, Anne Parys, was elected to the Board of Directors of the South Side Local Development Company (SSLDC) at their annual meeting held on June 20, 2007. Also elected were Laura Guido, Communications Manager for UPMC South Side; Greg Quinlan, Managing Director of the City Theatre; and Robert Russ, a Project Architect with MacLachlan, Cornelius & Filoni, Inc.

Another Exciting Year for the Pittsburgh 100

For the third year in a row, Rothman Gordon was proud to be a sponsor of the *Pittsburgh Business Times* Pittsburgh 100. The Pittsburgh 100 is a list of the fastest growing private companies in the Greater Pittsburgh area and this year's growth ranged from 37% to 599.83%. (Yes, you read that right!)

Bill Lestitian represented Rothman Gordon at the awards ceremony and reception at the Duquesne Club and presented three awards: the overall Pittsburgh 100 winner, which was Hawthorne Partners, the top Marketing/Advertising/Publishing winner, which was IMPAQT and the top Real Estate/Construction/Development winner, which was Hawthorne Partners again.



Pictured from left to right: Mark Scholl of Janney Montgomery Scott, and Ryan Hayes and Mike Zavoina of The Gateway Engineers, who ranked 82 on this year's list.



Pictured from left to right: Bill Lestitian of Rothman Gordon with Alyssa Francescone and Steven Smith of Plus Consulting.



Bill Lestitian of Rothman Gordon presents a Pittsburgh 100 plaque to Matt Naeger of IMPAQT, which topped the Marketing/Advertising/Publishing Category.

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