

BECE Summer 2012 Edition



We Are Moving!

The attorneys and staff at Barrett, Easterday, Cunningham & Eselgroth LLP are excited to announce that the Firm is expanding and moving to a new office building. Having outgrown our current space at 7269 Sawmill Road, Suite 100, we are moving across the parking lot to 7259 Sawmill Road and taking over the whole building. We are in the same office complex, our phone numbers and other contact information will all stay the same; we are just moving to another building. The move will take place on Friday, August 24, 2012, so we ask for your patience and understanding in the event of any technical difficulties should you try to reach us on that date. We plan to be up and running in our new location on Monday, August 27, 2012.

August 2012 Inside this issue:

<i>Defer Crop Income</i>	2
<i>MF Global Bankruptcy Update</i>	2
<i>Dogs & Dog Bites</i>	3
<i>BECE News and Notes</i>	4
<i>BECE Travels Abroad</i>	5
<i>Did You Know?</i>	5

Open House To Celebrate BECE's 10 Year Anniversary

BECE is having an Open House celebration! Not only are we moving to a new, larger office space, we also are proud to mark the Firm's 10-year anniversary! We would be honored for our clients and friends to join us to celebrate this achievement. Please "save the date" and come celebrate with us!

Date: Friday, October 5, 2012
Time: 3:30 p.m. to 7:00 p.m.
Location: 7259 Sawmill Road
Dublin, Ohio 43016
RSVP: (614)210-1840 or to
rwilliams@farmlawyers.com

Please kindly RSVP by October 2, 2012

Hors d'oeuvres and drinks will be provided. We will also be giving tours of our new office.



Defer Crop Income

Beware Constructive Receipt With Timely Contract

By Jeff Easterday

Farmers have a unique ability to manage their taxable income by deciding whether to sell grain in the year of harvest or in a subsequent year. Grain income is generally reportable in the year the grain is delivered and paid for.

But what about income from grain that is delivered in one year but paid

for in the following year. The IRS considers grain income to be reportable in the year in which the farmer has the right to the income even if the grain is not yet paid for. If the grain is delivered and the farmer then asks the buyer to defer issuing payment even though the farmer is entitled to payment upon delivery, the grain income is likely reportable in the year of delivery. The farmer is deemed to be

in constructive receipt of the income because all events have occurred that entitle the farmer to receive the income.

To avoid constructive receipt of income and to properly defer income, the farmer must have contracted to receive deferred payments prior to the time that the crop proceeds were due and owing. The contract should be executed prior to delivery of any crops on that contract.

MF Global Bankruptcy Update

By Amanda Stacy

Most have heard about the MF Global bankruptcy that was filed on October 31, 2011, when nearly \$1.6 billion in customer funds went missing from the futures commission merchant. Customers of MF Global have lost millions of dollars. Positions did transfer to other clearing houses, along with a few monetary distributions, as allowed by the James W. Giddens, the Trustee for the liquidation of MF Global Inc.

Former customers of MF Global were asked to complete claim forms to make a claim for money they were owed from the company. The deadlines have since passed for all former customers to submit their claim forms. BECE assisted



former customers in completing numerous claim forms earlier this year.

In June, James W. Giddens, the Trustee for the liquidation of MF Global Inc., began distributing approximately \$600

million to former commodity futures customers that had finalized claims. Mr. Giddens must obtain court approval before making any further distributions, but also must keep adequate reserves on hand for disputed customer claims.

If you are a former MF Global customer and have questions regarding the status of your claim, selling your claim, or any other issues related to the MF Global bankruptcy, please contact this office.

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Crop Insurance During a Drought

The United States Department of Agriculture Risk Management Agency Springfield Regional Office has issued a Fact Sheet giving an overview of the crop insurance program entitled, "Crop Insurance During a Drought". It covers topics such as the notification process of a drought loss, appraisal of a drought loss and Frequently Asked Questions about the crop insurance program. You can download copies of the Fact Sheet at <http://www.rma.usda.gov/pubs/#bfr>.



Dogs and Dog Bites

By David Barrett

If you own a dog and live in Ohio, you need to be aware that in most situations you are liable for damages to someone bitten by your dog regardless of the circumstances. It is a concept called "strict liability." Ohio statutory law [Ohio Revised Code § 955.28(B)] provides as follows:

The owner, keeper, or harbinger of a dog is liable in damages for any injury, death, or loss to person or property that is caused by the dog, unless the injury, death, or loss was caused to the person or property of an individual who, at the time, was committing or attempting to commit criminal trespass or another criminal offense other than a minor misdemeanor on the property of the owner, keeper, or harbinger, or was committing or attempting to commit a criminal offense other than a minor misdemeanor against any person, or was teasing, tormenting, or abusing the dog on the owner's, keeper's, or harbinger's property. Additionally, the owner, keeper, or harbinger of a dog is liable in damages for any injury, death, or loss to person or property that is caused by the dog if the injury, death, or loss was caused to the person or property of an individual who, at the time of the injury, death, or loss, was on the property of the owner, keeper, or harbinger solely for the purpose of engaging in door-to-door sales or other solicitations regardless of whether the individual was in compliance with any requirement to obtain a permit or license to engage in door-to-door sales or other solicitations established by the political subdivision in which the property of the owner, keeper, or harbinger is located, provided that the person was not committing a criminal offense other than a minor misdemeanor or was not teasing, tormenting, or abusing the dog.

Strict liability means the owner will be responsible for damages arising from a dog bite to an uninvited person who comes up to the dog to pet it when walking the leashed dog down the street. It means the owner will be responsible for damages to the uninvited child who comes into the fenced yard. In other words, the

only defenses available are the ones set forth in the statutory language. The assumption of the risk or negligence of the person who was bitten is irrelevant under the statute.

It gets worse for dog owners because a person bitten by a dog also has the right to pursue the historic common law remedies. The Ohio Supreme Court has held that "in a common-law action for bodily injuries caused by a dog, a plaintiff must show that (1) the defendant owned or harbored the dog, (2) the dog was vicious, (3) the defendant knew of the dog's viciousness, and (4) the dog was kept in a negligent manner after the keeper knew of its viciousness. ... In a common-law action for bodily injuries caused by a dog, as in any other common-law tort action, punitive damages may be awarded." So, the stakes are higher if the dog is known to have a bad temperament. In some situations, criminal penalties also may apply.

If you own a dog and don't have liability insurance, you might want to look into getting some. The costs of owning a dog include more than food, water and rabies shots.

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BECE GOES GOLFING



On July 11, 2012, Barrett Easterday Cunningham & Eselgroth LLP sponsored a hole for the Ohio Poultry Association's 2102 Allied Industries Golf Outing. Representing BECE as golfers at the event were (from L to R), Jeff Easterday, Kristi Kress Wilhelm, Amanda Stacy, and Chris Henney (President of the Ohio AgriBusiness Association).



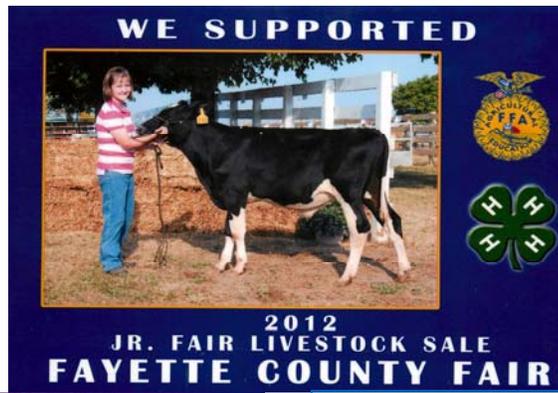
BECE SUPPORTS YOUTH AT OHIO COUNTY FAIRS



While many Ohio County Fairs are still going on, BECE has already been supporting local 4-H and FFA youth at the Fayette and Union County Fairs. This year, we have partnered with other local businesses to purchase the dairy feeders of Virginia Schappacher and Victoria Schappacher at the Fayette County Fair, as well as the Grand Champion Wether Lamb of Jakob Wilson at the Union County (Ohio) Fair.



BECE's Jeff Easterday, his wife Gloria Easterday, and Jakob Wilson with his Grand Champion Wether Lamb at the Union County (Ohio) Fair.



Victoria Schappacher



Virginia Schappacher



BECE News and Notes

- Ohio State Bar Assn. President Judge Patrick Fischer has named BECE's Troy Callicoat as the new chairman of the Agricultural Law Committee of the Ohio State Bar Association, effective July 1, 2012.
- BECE was pleased to sponsor the 63rd Annual Past State FFA Officers' Reunion on May 4, 2012, during the Ohio FFA Convention. BECE attorneys David Barrett and Kristi Kress Wilhelmy are past State FFA Officers.
- David Barrett was named one of Central Ohio's Top Lawyers in the April 2012 Edition of "Columbus CEO" magazine.
- The internet version of the Ohio State University Extension Estate Planning Fact Sheet Series, co-authored by BECE's Russell Cunningham, has been updated for 2012. Please visit:

<http://ohioline.osu.edu/ep-fact/index.html>

Sarah Morrison Joins BECE as Office Assistant

BECE is pleased to announce the addition of Sarah Morrison as an Office Assistant. Sarah joined the firm on May 7, 2012, to replace Trish Bradley, who relocated with her family to Pennsylvania. Sarah has been busy familiarizing herself with BECE and our client files and will be assuming additional duties as receptionist when we move to our new office space. Sarah currently resides in Mount Sterling, Ohio, with her husband Nathan and three small children.



Sarah Morrison

Welcome, Sarah!

BECE Travels Abroad

In the fall of 2011, BECE became a member of the Grain and Feed Trade Association (GAFTA). GAFTA is an international trade association based out of London, England and currently has more than 1370 members in 87 countries. It aims “to promote international trade in grain, animal feed materials, pulses and rice and to protect the interests of our members worldwide, providing the support and international contracts they require.”

BECE’s Amanda Stacy attended the GAFTA Trade Foundation Course on February 15-17, 2012 in Barcelona, Spain. As part of the Trade Foundation Course, Amanda also attended the GAFTA Young Persons Dinner, which was held at the historic Camp Nou stadium, home to FC Barcelona.

The Trade Course offered a broad introduction to international trade. Topics discussed during the course included contract negotiation and formation; delivery terms; quality and condition; sampling rules; shipping documents; shipping vessels; insurance; payment terms; futures and options contracts; NYSE LIFFE Contracts; an introduction to charterparties, laytime, dispatch and demurrage; exceptional circumstances such as force majeure, strikes and prohibition; and breach of contract, default and damages, claiming default and the duty to mitigate. A mock arbitration also was held at the end of the course.

Attendees at this Course were from many different countries, including Malaysia, Italy, Switzerland, Netherlands, Hungary, Austria, Denmark, Ukraine, France, Spain, Ger-



Amanda Stacy in Barcelona, Spain

many, Ireland, and the United Kingdom. Attendees were attorneys (solicitors/barristers), traders, brokers, commercial managers, shippers, along with other professions.

Did You Know?

- The 3.8% Medicare surtax coming in 2013 applies to more than individuals. It also will apply to trusts and estates with undistributed net investment income, provided they are in the highest income tax brackets (which for trusts and estates start at about \$12,000 of income). Investment income includes interest, dividends, royalties, capital gains, annuities and passive rental income. IRS expects to issue detailed regulations on the surtax.
- Having incomplete substantiation for charitable donations may result in a disallowed deduction. The Tax Court recently found that gifts made by a couple to their church were disallowed because the acknowledgment letter from the church failed to state that no goods or services were given for the donations. The taxpayers obtained a corrected acknowledgement but the IRS denied the deduction saying that the donors did not have valid substantiation in hand before filing.
- One internet rumor claims that the 3.8% Medicare surtax (misabeled as a sales tax) will apply to all home sales starting in 2012. While the surtax can apply to net gain from disposition of property, the surtax only applies to the extent the gain is taken into account in computing taxable income. Since all or part of the gain from sale of a personal residence for taxpayers who meet certain ownership and residency tests is not included in income (up to \$250,000, \$500,000 for married filing jointly), the surtax should not apply in many cases involving sale of a residence.
- The federal health care law generally requires that 85% (80% for individual and small business plans) of premium dollars must be spent on health care benefits and quality improvement. If the insurance companies do not meet these standards due to higher administration costs or profits, they must provide rebates to consumers.
- Starting in 2014, most individuals will be required to carry health insurance or to pay a tax. This provision was recently upheld by the U.S. Supreme Court.
- The federal health care law requires that employers report the cost of employer-sponsored health insurance coverage on employee’s W-2 forms. This requirement was to have applied to 2011, but was delayed for at least one year.
- Brokers must report the basis for securities on Form 1099-B. Basis of stocks were required starting in 2011. Mutual fund basis reporting will start in 2012.
- The Section 179 expensing limit is \$125,000 for 2012 and drops to \$25,000 thereafter (unless changed by Congress). The expensing limit is reduced by the amount by which the cost of Section 179 property placed in service during the year exceeds \$500,000 for 2012 (\$200,000 for years after 2012). Additional limitations may apply.

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Our law firm provides a wide range of individual and business-related legal services, including a special emphasis on serving the needs of agricultural producers and agribusiness clients. Areas of emphasis include agricultural legal issues, business and estate planning, agricultural finance, commodities law, commercial transactions, environmental law, estate/probate administration, federal farm program issues, government regulation, land use planning and valuation, real estate, like-kind exchanges, income and estate tax law, litigation and dispute resolution.

We are located in Dublin, Ohio, a northwest suburb of Columbus.

See us on the web at:

<http://www.ohiocounsel.com>

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The information provided in this newsletter is for educational purposes only and should not be used as a substitute for professional advice, as there are often many exceptions to the general rules. Before applying any of this information to a specific legal problem, readers are urged to seek advice from an attorney.

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